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### CRIMINAL CASES

**62** I. Section 1, paragraph (1) of the Criminal Code constitutes public law [Article XXVIII, paragraph (4) of the Fundamental Law] and international law [Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950 in Rome, announced by Act number XXXI of 1993] obstacle for judicial legal practice.

Section 1, paragraph (1) of the Criminal Code specifies the principle of “*nullum crimen sine lege*”, according to which the perpetrator's criminal responsibility shall only be established with regard to an action which – except for the punishable actions based on the generally accepted rules of international law – was to be punished upon the time of commission. Thus, if a behaviour, upon the time of commission – even due to the lack of one single element of fact – is not a crime, then for the time of judgement, the change of the law is indifferent, and the perpetrator may not be punished even, if his/her previous behaviour was completely in line with the partial facts of the newer criminal code.

II. If in the course of proceedings, actions are judged, out of which some are not crimes in accordance with the previous criminal code, but otherwise the new law shall be applicable, the mixed application of acts shall be avoided by the court examining whether in the new law, there are legal facts, which correspond to the evaluation of the action upon commission.

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**63** In the event of drunk (intoxicated) driving, the application of disqualifications from driving, as a main rule is obligatory even in case of driving not subject to licence. However, the penalty violates material law, if the disqualification is limited by the court to a vehicle category, which is not included in Appendix 2 of Government Decree number 326/2011 (of 28 December 2011) on road traffic administration tasks and the issue and withdrawal of road traffic documents. 335

**64** In case of first degree murder with special circumstances, when determining such circumstance, primarily the factors of humanity and morality shall be taken into consideration.

It is not only the sense of pain due to physical injury which is to be considered, but also the mental condition of the injured party during the commission of the crime. Murder is bad, but the method of murder that puts the injured party at total hopelessness by way of its

uninterrupted nature means obvious extra suffering, who not only bears the horror of his/her death physically, but also lives through it. 336

**65** The party entitled to submit a private application may submit the same within a month after knowing about such crime. If the injured party knows about the person of the perpetrator at the same time of the commission of the crime, namely that the perpetrator is his/her relative, the private application may only be submitted within a month from the commission of the crime.

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**66** Proceedings without accusation made by the entitled party is not a material, but a procedural violation. The accusation is not violated, if the court establishes the commission behaviour of the accused party presented during the action, named in the indictment is established differently from the content of the indictment as a result of the evidence proceedings even by establishing a different commission quality for the accused party from that in the indictment.

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**67** Criminal supervision may be terminated, behavioural rules may be changed and the criminal supervision may partially be released, if during the prohibition, the living conditions of the accused party are materially changed, due to which the leave of the area, district to which the prohibition is related, place of residence or permanent address is necessary.

The pure need for keeping contact with family members in the future – different from the customs of the previous years –, and the possible change in the method of the same may not be regarded as such, nor is the need for keeping contact with the defence attorney.

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**68** I. In the proceeding of third instance – in accordance with section 617 of the Code of Criminal Procedure – section 590, paragraph (5), point b) of the Code of Criminal Procedure shall be applicable, according to which the part of the verdict not affected by the appeal may also be reviewed with regard to the decision establishing guilt, if the accused person is to be acquitted or the related proceedings to be terminated.

A natural civil law consequence of the application of section 590, paragraph (5), point b) of the Code of Criminal Procedure is the review of the material correctness of the verdict, otherwise the standpoint free from reasonable doubts in the matter of acquittal or termination could not be accepted.

Obviously, this provision is to be enforced in the proceedings of third instance independent from one the hand, section 618, paragraphs (2) and (3), on the other hand the part of the verdict aimed at by this legal provision is outside of the scope of cases regulated by section 618, paragraph (4).

Actually, section 590, paragraph (5), point b) of the Code of Criminal Procedure is a content falling in the scope of section 618, paragraph (1) of Code of Criminal Procedure, by way of section 617, it belongs there.

Because of all this, section 650, paragraph (1), point a) (which prohibits review due to material rights against the final binding decision of the court of third instance, or a part of it),

and section 649, paragraph (1), point a) are aligned, which ensures the material right of the review for the party entitled in accordance with section 651.

On top of all this, it is undoubted that third instance is wider than the review, as both the establishment of guilt and the examination of the punishment are provided for, and the latter is not only in case of the fault of legal qualification, but a sole material law fault. That is why the examination of the penalty is legally grounded in this case.

II. In accordance with section 79 of the Criminal Code, the purpose of the penalty is the prevention of the perpetrator from the commission of further crimes for the purpose of the prevention of society. Penalty is undoubtedly a legal disadvantage, the imposition of the penalty is thus enforcement of a legal disadvantage, thus the embodiment of the disapproval related to the perpetrator. And the committed crime is also obviously bad.

Considering this, the essence of the penalty – traditionally – is a response given to the bad (sin), in which the legal disadvantage related to the perpetrator is embodied (imprisonment, legal restriction, etc.).

Penalty, formally, is always retaliation, that is it is the compensation of the crime committed by the perpetrator by way of a proportionate legal disadvantage. The essence, or content of the penalty is on the one hand a punishment, that is imposing difficulty on the perpetrator, and on the other hand, the start of the opportunity to atonement.

For a penalty to achieve its goal, normally it is enough if the bad caused by the penalty is greater than the good arising from the sin, and the penalty is to be imposed based on the majority of the bad, and the benefit to be neutralised, which the perpetrator otherwise would receive by way of the commission of the crime. This is the case when the crime is related to the damage of other's properties.

However, loss of life means such a great loss, which can hardly be evaluated. Thus, in such cases – if allowed by the law – penalty, the term of which is indefinite due to immeasurable loss, may be examined.

In case of sentencing and imposition of penalties, the lapse of time is undoubtedly an extenuating circumstance. However, the significance of the above-mentioned may be very different depending of the crimes. With regard to the time passed from the commission of the crime – just as the time of the application of coercive measures –, the more severe a crime is, the longer the time is, which may be regarded as an extenuating circumstance. 347

**69** I. In the proceedings according to Part Twelve of the Code of Criminal Procedure, the subject of the legal remedy may only be the repeal verdict made by the court of second or third instance, and the proceedings of the court of appeal leading to the same. The purpose of the proceedings is the examination of whether the contested verdict is unlawful.

Because the contested (repealing) decision does not mean the decision or the conclusion of the case, but the restart of the proceedings. In contrast, the content of the provision repealing by way of appeals and ordering new proceedings is not why this decision is good or bad, but the reason why a substantive decision was not possible, and why the proceedings did not result in such a

situation suitable for a substantive decision. In case of a substantive decision, the relation between the decision (that is a legal consequence) and the factual grounds of the same shall be examined; when repeal is reviewed, this reference may not be examined. In this case, upon the judgement of the appeal against the repeal, what is to be examined is whether the court made a right or unjustified decision on the lack of the conditions of substantive decision – and thus the repeal (Part Twelve of the Code of Criminal Procedure).

II. Every review is adjusted to the purpose of the subject of the review – in this case, the repeal. However, the judgement of the appeal against the repeal is actually not the examination of the case or the documents, but mostly that of the decision.

When examining the repeal, thus the main question is not whether the repealed lower level decision was well founded, but that the repealing decision was thorough; thus whether there was a lawful reason, and the legal conditions of the establishment of procedural reason were met. Otherwise, the court judging the appeal would take over the authority of the court of third instance.

Based on all this, in case of unfoundedness, the examination shall be based on whether the unfoundedness realised by the court of third instance actually results in repeal as a legal consequence, or it may be eliminated in the appeal procedure. 354

**70** The principal of indirectness, and the right of the defence to know the evidence of the prosecution before the court, and have the same examined, is undoubtedly a procedural rule, however – for the lack of the violation of an obligatory legal provision related to presence – may not be included in the legal frames of the review, because it does actually aim at the factual revision of the contested decisions, and the acceptance of the fact that sentencing may not be grounded only on indirect evidence. Based on the Code of Criminal Procedure, however, neither is legally grounded. 357

**71** When judging the possibility of renewed proceedings, the (suitability of the) offered evidence shall itself be examined. The prohibition of evaluation (revaluation) shall be related both the party submitting the claim and the court acting in the matter of admissibility, and the new evidence and those included in the main proceedings.

The examination of the possibility of the petition related to renewed proceedings is not aimed at security, but only the possibility. This, however, in the content of the application related to renewed proceedings means the comparison with the legal conditions of renewed proceedings and the purpose of renewed proceedings, and not the deliberation with other evidence (of the evidence included in the same). 358

## CIVIL CASES

**72** Acquisition in commercial trade is an objective criterion independent from the buyer's evaluation. The seller's good faith related to its trader quality, itself shall not give grounds to the fact that acquisition is made in trade, as the related contract shall actually be made in the scope of a lawfully conducted, business-like economic activity – irrespective of the buyer's condition. 362

**73** The enforcement of claims based on section 6:528, paragraphs (3) and (4) is not optional for the party, based on paragraph (4), the loss of revenue of the damaged party may be established, if based on paragraph (3), average income cannot be established due to a reason not attributed to the injured party. 365

**74** I. The negligence giving grounds to liability for damages may not only be the failure of the presentation of the actual behaviour specified by the law; the action generally expected from the party causing the damage in the given situation shall be examined in the scope of imputability.

II. When a relative is deceased, upon the determination of the amount of tort the fact that due to the worsening health condition of the deceased relative, he/she did not take part in family life as previously, may not be taken into consideration. The unity of family, belonging, and previously formed close connection cannot be broken by the worsening of the health condition of a relative. 366

**75** I. With reference to extraordinary work performance – called extraordinary effort – independent allowance may not be claimed.

II. From the aspect of the enforcement of lost advantages, the private person and the person of the private entrepreneur are not different, thus the court shall take into account not only the income taken out from the business as a private person, but the lost income from the private entrepreneurship, when examining the loss of income. 369

**76** The 30-day term specified in section 495, paragraph (1) of the Code of Civil Procedure, which is for the submission of the preliminary correction application, is of substantive law, thus the preliminary correction request shall be received by the media outlet until the last day of the term. 371

**77** The termination of the agreement without explanation may bring about the related legal effect, that is the termination of the agreement. Nevertheless, the lack of a good reason – such as the exercise of the right to terminate – results in liability for damages, with which the law sanctions the arbitrary exercise of the client's right of unlimited disposal. The indemnification fact specified in section 483, paragraph (3) of the old Civil Code may not be evaluated as an indemnification obligation, because unlawfulness arises from the damage. 372

**78** The limitation of the extent of the insurance coverage is not in violation with the principle of unilateral cogency, because there is no legal provision, which would specify the scope of events the insurance company is obliged to take risks. The contractual condition including the exclusion, due to its role in the determination of the insurance event is a fundamental element of the insurance contract, thus it is qualified as a condition specifying the primary subject of the contract. The condition of the credit protection insurance establishing the main service is clear and understandable, if it clearly shows the relation between the exemption and the service obligation of the insurance, also, conclusion can be made to the consequence of the limitation of the insurance protection outside of the insurance agreement that the insurance does not give exemptions from the payment obligations arising from the loan agreement. 376

**79** Each co-owner may exercise the partial rights arising from the ownership with regard to the parts of the jointly owned property in exclusive use: may use, utilise and collect the benefits of the same. The unity of these may not be broken up by the court. This may not be possible due to the fact that along a divided order of use, the benefits of the entirety of the property are divided amongst the co-owners in accordance with the general rules of joint ownership – based on ownership proportions. 381

### **ECONOMIC CASES**

**80** The proceedings related to the judicial review of the decision of the member's meeting authorising the order of additional payments and actual order of additional payments, may not be terminated with reference to the termination of locus standi without the court examining whether the membership was actually terminated by law. Neither the company's decision establishing the termination of the membership, nor the entry of the change of members in the company registry may remedy the possible legal violation of the decision of the member's meeting authorising the order of additional payments and actual order of additional payments. 386

**81** The rules of deposit do not apply to the advance payment of the liquidation auction. 390

**82** If the assignment of the legal representative is terminated in case of mandatory legal representation, the party shall be called upon the substitution of the legal representation by way of the notification of the legal consequence. Until the deadline for the submission of missing documents is not expired, the court may not exercise further actual procedural actions. 393

### **LABOUR CASES**

**83** The employee, who is an officer in the trade union may not violate the reputation and integrity of others in the course of his/her expression of opinion. The expression of the opinion is not unlawful based on the pure fact that not everyone agrees with the statements made in the same. 395

**84** Section 362/E, paragraph (7) of the Act on the Service Relationship of Law Enforcement Officials includes special provisions compared to the general rules for the exemption of the public servant employed by the law and order body, if his/her legal relationship is not transformed – for the lack of approval – into a service relationship. 400

**85** Section 20, paragraph (3) of the Labour Code provides for the invalidity reason due to a legal statement made by an unauthorised person to be remedied by the employer so that the legal statement made by the false representative is approved retrospectively by the person entitled to proceed. There is no deadline in the Labour Code for such statement, thus it may be made without any time limits by those entitled to do so in compliance with the relevant procedural rules. 402

**86** I. With regard to the reference to the violation of equal treatment, the employee's indefinite employment itself shall not be regarded as a "protected feature".

II. The acknowledged and proven decrease of the employee's performance may give grounds to the termination of the employment with notice.

III. The employer may withdraw from the agreement on the prohibition of competition until the termination of the employment. Subsequent to the employee having started the performance of the contract, this shall not be possible by way of a unilateral legal declaration.

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## **PUBLIC ADMINISTRATION CASES**

**87** When one single purchase price is set in a crop land sale and purchase agreement, belonging to the same agricultural facility, as the compliance with the relevant laws, shall be evaluated and examined with regard to the seller.

One single purchase price may not be specified for properties, which belongs to the crop land facility of a third party, who is not a party in the sale and purchase agreement.

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**88** The land registry map may only be corrected, if there are verifiable measuring, mapping and area calculation errors related to the properties in question. If the documents necessary for the determination of the measuring, mapping and area calculation errors are not complete, or are not available, the authority may not base its decision on such documents. Prior to the decision, the matter whether the boundaries of the properties are in line with the map and the natural conditions shall also be clarified. In case of differences, the boundaries may not be corrected without the acquisition of the statements of the owners of all properties in question, for the lack of the exact determination of the mapping and area calculation errors. 413

**89** The final decision shall be applicable for the participants of the proceedings and the court acting in the case at a later point of time in the scope of the personal and material scope of the matter. 418

**90** The appropriateness of the subsidy application to be submitted annually by young agricultural producers is based also on the direct application of EU law. 422

**91** In the proceedings related to retention licensing started by way of a petition, the authority is not obliged to give expert advice to the builder related to how the building built differently from the licence can be made lawful, neither in the call to provide missing documents, nor in any other form. 426

**92** If a document was not made in the official case under the scope of the Code of Administrative Proceedings, and the related sectoral law does not provide for the application of the Code of Administrative Proceedings, the request to view documents may not be judged based on the rules of the Code of Administrative Proceedings. 430

**93** There is no legal provision with regard to whether the employee is obliged to accept a workplace promotion in accordance with section 97, paragraph (2) of the Defence Employees Act, with regard to the fact that in this case, it is not an actual promotion, but only the entry of the legal relationship based on the new legal status. The Defence Employees Act does not include any reason for termination, which in accordance with section 97, paragraph (2) of the

Defence Employees Act, would sanction the lack of signing the promotion document with the termination of the legal relationship required by law. 432

**94** The time of the receipt of the application is the time, of which the court's information system sent a receipt confirmation.

**95** The Built Environment Act provides for the application of the prohibition of change in pending cases, determining the scope of buildings and the scope of construction activities, which may be executed in spite of the prohibition. 437

## **DECISIONS OF THE COURT OF THE EUROPEAN UNION**

**I.** Judgement of 24 November 2020 in joint cases C-225/19 and C-226/19 – R.N.N.S. and K. A. versus Minister van Buitenlandse Zaken

Article 32(2) and (3) of Regulation number 810/2009/EC of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation number 610/2013/EU of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning, first, that a Member State which has adopted a final decision refusing to issue a visa on the basis of Article 32(1)(a)(vi) of Regulation number 810/2009, as amended by Regulation number 610/2013, because another Member State objected to the issuing of that visa is required to indicate, in that decision, the identity of the Member State which raised that objection, the specific ground for refusal based on that objection, accompanied, where appropriate, by the essence of the reasons for that objection, and the authority which the visa applicant may contact in order to ascertain the remedies available in that other Member State and, secondly, that, where an appeal is lodged against that decision on the basis of Article 32(3) of Regulation number 810/2009, as amended by Regulation number 610/2013, the courts of the Member State which adopted that decision cannot examine the substantive legality of the objection raised by another Member State to the issuing of the visa. 439

**II.** Judgement of the court of 11 November 2020 in case C-287/19 – DenizBank AG versus Verein für Konsumenteninformation

1. Article 52(6)(a) of Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation number 1093/2010/EU, and repealing Directive 2007/64/EC, read in conjunction with Article 54(1) thereof, must be interpreted to the effect that it governs the information and conditions to be provided by a payment service provider wishing to agree, with a user of its services, on tacit consent with regard to changes, in accordance with the detailed rules laid down in those provisions, of the framework contract that they have concluded, but does not lay down restrictions regarding the status of the user or the type of contractual terms that may be the subject of such tacit consent, without prejudice, however, where the user is a consumer, to a possible review of the unfairness of those terms in the light of the provisions of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.



2. Article 4(14) of Directive 2015/2366 must be interpreted as meaning that the near-field communication (NFC) functionality of a personalised multifunctional bank card, by means of which low-value payments are debited from the associated bank account, constitutes a ‘payment instrument’, as defined in that provision.

3. Article 63(1)(b) of Directive 2015/2366 must be interpreted as meaning that a contactless low-value payment using the near-field communication (NFC) functionality of a personalised multifunctional bank card constitutes ‘anonymous’ use of the payment instrument in question, within the meaning of that derogation provision.

4. Article 63(1)(a) of Directive 2015/2366 must be interpreted as meaning that a payment service provider who intends to rely on the derogation provided for in that provision may not simply assert that it is impossible to block the payment instrument concerned or to prevent its continued use, where, in the light of the objective state of available technical knowledge, that impossibility cannot be established. 433

### III. Judgement of 24 November 2020 in case C-510/19 – Criminal proceedings against AZ

1. The concept of ‘executing judicial authority’ within the meaning of Article 6(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, constitutes an autonomous concept of EU law which must be interpreted to the effect that it covers the authorities of a Member State which, without necessarily being judges or courts, participate in the administration of criminal justice in that Member State, acting independently in the exercise of the responsibilities inherent in the execution of a European arrest warrant and which exercise their responsibilities under a procedure which complies with the requirements inherent in effective judicial protection.

2. Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive, does not constitute an ‘executing judicial authority’ within the meaning of those provisions. 451

### IV. Judgement of 8 December 2020 in case C-584/19 – Criminal proceedings against A and Others

Article 1(1) and Article 2(c) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters must be interpreted as meaning that the concepts of ‘judicial authority’ and ‘issuing authority’, within the meaning of those provisions, include the public prosecutor of a Member State or, more generally, the public prosecutor’s office of a Member State, regardless of any relationship of legal subordination that might exist between that public prosecutor or public prosecutor’s office and the executive of that Member State and of the exposure of that public prosecutor or public prosecutor’s office to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting a European investigation order. 456