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CRIMINAL CASES

96 I. The establishment of the accomplice's responsibility is lawful, if the facts of the final
decision includes the facts giving grounds to the establishment of the elements of the legal facts
of the accused person's base action and the accomplice's related responsibility.

II. Prior to the accusation, the judge taking part in the judgement of the appeal against the
decision of the tribunal single judge acting in the coercive measure is not excluded from the
proceedings succeeding the accusation in the case started before 30 November 2016.

III. At the hearing set for the announcement of the final decision, the absence of the defence
attorney shall not constitute an unconditional procedural violation.

IV. The absence of an interpreter understood by the accused shall not result in the repeal of the
judgement, if the court does not conduct substantive procedural action and the evidence
proceedings are started only after the appropriate interpreter is present. 488

97 I. The driver of the car turning left is obliged to yield to the pedestrian crossing the
junction lawfully for the lack of a pedestrian crossing, and shall have criminal responsibility
for the accident caused by failing to do so.

II. In accordance with section 649, paragraph (6) of the Code of Criminal Procedure, the final
decision entering into force subsequent to 1 July 2020, may be contested with reference to the
difference from the decision issued in the Collection of Judicial Decisions after 1 January 2012.
In such a case, the review shall be based on the pure fact of difference, while in case of
reference, which is not in compliance with the temporal conditions, the correctness of the
arguments based on other review reasons shall be judged. 492

98 I. Public distress is a legal concept. Public distress is a condition resulted from a human
behaviour, which threatens with the unforeseeable damage, dilapidation or destruction of a large
number of unforeseeable people, or material possessions by way of the inherent relative dormancy
or factors and processes in movement.

Public distress is related to a wider scope of people and things, compared to common danger (such as destructive behaviour), which cannot be defined. Its scope is not actual, but unforeseeable, which the perpetrator cannot control either (in contrast with the destructive behaviour).

There is public distress, if not only one or a more (small number) of specified persons, but one or more undefined, or large number of people, or large value of assets are in danger.

Causing flood – in contrast with arson – practically always leads to public distress.

II. The point of expectation in case of a human behaviour – exerted by way of physical force or means – is “keep it under control, and do not offend others”. This is the maximum of the whole of criminal law, and a main order of the law.

The starting point of expectability is an objective criterion, the obligation of objective care. The demarcation of this criterion is different if it is related to an occupation or a private person, or activity. In this context can the expectability related to legal facts be drafted.

Occupation shall mean the activity, which is actually performed by the perpetrator. The related expectability is that it shall be safe. And what is safe, is not dangerous to others. What is not dangerous to others is what does not impose direct danger to others.

There is direct danger, if the realistic possibility of the harm of life, bodily integrity or health comes up with regard to the situation and the person; and if there is bodily injury also, this is obviously the case.

The content of occupational rules may be determined by the written legal norms, administrative rules, regulations, orders, but also the generally accepted, unwritten rules of the trade. This shall, however not mean that violations themselves make one objectively responsible.

The criminal responsibility of the perpetrator may be established, if by way of the direct physical endangerment or bodily injury caused to others is in causal relation with his/her activity wilfully or negligently violating the employment rule, or by way of the perpetrator’s violating ignorance – although it was possible – the occurrence of the factual result is not prevented, provided that with regard to the harmful consequence, there is negligent culpability. This shall also require the examination of awareness.

III. By way of the request for exclusion, during the review of the binding decision, legally it is about that the Curia shall pass a decision in the matter of the thoroughness of the reasons for the request for exclusion, and no separate decision is made with regard to the exclusion, but obviously decides based on the legal rules of review, that is the given decision – due to the thorough reason for review (the participation of an excluded judge) – is repealed, and the court is ordered to proceed.

If the request is not thorough, the Curia is not obliged to pass a separate decision on the request for exclusion, that is a negative decision does not need to be made on the ungroundedness of a review request. In other words, in the latter case, the further performance of the review is not necessary.

99 Delivery is lawful, if the document to be delivered was received by the addressee, or an authorised representative of the same. Nevertheless, in accordance with section 132, paragraph (2), point a) the document to be delivered shall be regarded lawfully serviced on the day of the delivery attempt, if the addressee, or an authorised representative of the same declines the receipt of the delivery. Considering this, such behaviour of the accused person shall not be evaluated as a remedy statement. 518

100 I. In the proceedings of second instance, instead of holding a public hearing by the council in spite of the request submitted by the obligee, an absolute procedural violation meaning a prohibited method of the review even, if it is a result of an administrative error, is a procedural violation resulting in unconditional repeal, which may give grounds to review.

II. In accordance with section 82, paragraph (1) of Government Decree number 74/2020 (of 31 March 2020) on certain procedural law measures during the period of emergency, if the court of second instance needs to hold an open hearing based on section 599, paragraph (1) of the Code of Criminal Procedure, in order to handle an appeal, but the data necessary for the judgement may be gathered based on the statement of those affected by the appeal, the relevant measures shall be taken by the head of the council. In accordance with section 82, paragraph (2) of this Government Decree, in the cases specified in paragraph (1), the court of second instance shall decide on the appeal in a council hearing, if based on the gathered data, holding a hearing is not necessary, or if based on the available information, the judgement of the case at the council hearing is possible, and the accused person, the defence attorney, the prosecutor or the appellant do not request an open hearing. Consequently, if there is a relevant request, an open hearing is to be held in accordance with the Government Decree too. 518

CIVIL CASES

101 Freedom of assembly may be exercised on a private property with the approval given by the owner (possessor), but the exercise of this right shall be limited by the right of the owner related to the asset (possession) protected by the Fundamental Law. If someone enters a space, which is partly open to the public with a different purpose, and fails to leave in spite of an order, this person commits trespassing even, if he/she wanted to exercise his/her right of assembly. 521

102 If prior to the lawsuit, the correction request is verifiably received by the media outlet (editorial office) within a 30-day limitation period, the failure to meet the deadline cannot be established due to the fact that the request was actually received by the media outlet only subsequent to the lapse of the deadline. 528

103 Section 26, paragraph (1) of the Apartment Act related to the termination of apartment lease is a cogent rule, and neither the agreement made by the parties nor the legal provision (that of the local government or a ministerial decree) may deviate from the same. 531

104 The fact that the seller is exempt from the obligation of the communication of the purchase offer in accordance with section 6:222, paragraph (1) of the Civil Code does not terminate the right of pre-emption of the one entitled to the same, and the right to exercise the same. 535

105 I. The insurance agreement is not terminated, if the beneficiary is the party causing the damage by way of assignment. In such a case, the party entitled to insurance service and the party obliged to the insurance service are not the same.

II. The insurance company shall only be entitled to a regressive claim, if the claimed amount was paid: the rights of the insured party shall be assigned to the insurance company to the extent of the amount of the paid sum upon the performance of the insurance agreement made with the party responsible for the damage. 538

106 In the General Terms of Business related to the travel agreement – when a travel package is sold –, the participation fee shall be specified in one amount in order for consumers to be able to compare the prices of the businesses offering travel services. The condition of the General Terms of Business, according to which the consumer is obliged to pay a participation fee as well as a reservation fee, is in violation of section 4, paragraph (1), point h) and section 1, point c), subpoint ca) of Government Decree number 281/2008 (of 28 November 2008) As the travel agreement may be performed without a reservation fee, travel agreements are invalid only with regard to the part related to the reservation fee. As a legal result of the partial invalidity, the consumers are entitled to the financial compensation of the service that is left without a counter service. In the proceedings related to an action of public interest, the court shall pass a decision and order the issue of an announcement, based on which the consumers can realise their entitlement related to the claim of the performance, as well as for the lack of voluntary performance, in order for judicial performance, the verification of the entitlement is possible for them, which the court can judge. The judicial verdict ordering performance has to be suitable for the court to order performance based on the same. 544

107 In the proceedings related to the establishment based on the liability insurance of the insured party against the insurance company, lodged by those damaged, it is a fundamental question, whether the insured party has a claim from the insurance company, or the insurance company has an obligation of liability towards the insured party, which is related to the legal interests of the persons suing as victims. The plaintiffs do not only need to specify the material rights they are entitled to as a result of the statement, but also the way the it is endangered by the defendant. 549

ECONOMIC CASES

108 I. In the course of the information given related to exchange rate risk, the general knowledge of an average consumer, who is reasonably careful and generally informed shall be taken into account, and the specification of the same was not expected for the lack of a related special consumer claim.

II. The Curia, not in an abstract way, but in the scope examined by the court of second instance, based on the structure of arguments issued in the final decision with regard to those affected by the review request, may examine whether the provided information is in line with the structure of requirements set against fair information provision. 553

109 If the information related to exchange rate risk was justifiably provided, the failure to sign the risk disclosure statement shall not result in the failure of the loan agreement. The

information does not necessarily need to be made in the agreement, or in the general terms and conditions included in the same. 555

110 If the court of second instance tells the party that the value of the lawsuit was specified differently from that given by the party, or that written in the decision of the court of first instance in the decision made on the substance of the case shall constitute a violation of the right to fair proceedings, and due to this much higher fee is payable for the proceedings of first and second instance. 557

LABOUR CASES

111 The general rules of the Labour Code shall be applicable for the termination of the employment related to hired labour, nevertheless considering the atypical nature of the employment, section 220, paragraph (1) of the Labour Code qualifies the termination of the hire as a reason related to the operation of the employer, out of the summary reasons of the termination. Thus, this legal provision names a reason related to the unilateral legal declaration of the company providing hired labour, which itself gives grounds to the termination of the employment with notice. 560

112 The verbal information related to the termination of the legal relationship shall not constitute a unilateral legal declaration as specified in section 15, paragraph (1) of the Labour Code, if it is directly related to an effective measure of the employer. Thus, an independent claim may not be based on this verbal information. 564

113 I. Legal declaration may be made in writing, in words and by implication. In the two latter cases, however the termination of the employment shall be clear and unconditional in order for it to be suitable for the exertion of the legal effect, irrespective of the fact that in this case arising from section 22, paragraph (3) and section 44 of the Labour Code, the termination of the employment is unlawful.

II. With the regular communication of a written legal declaration (termination with an immediate effect), the will (the termination of the employment) included in the same may come about as a legal effect. 566

114 The termination of the employment by the employer may qualify as abusive legal practice based on the uncovered facts of the case, if the employment could legally be terminated. 569

PUBLIC ADMINISTRATION CASES

115 In the course of the examination of improper legal practice, legal transactions shall be examined with the application of a three-step test applied in the practice of the Hungarian national courts worked out by the Court of the European Union. 572

116 The amount of fee payable for the acquisition of property by the licensed property fund shall be established based on section 23/A, paragraph (2) of the Fees Act, not considering the upper limit of HUF 200 million specified in section 19, paragraph (1). 575

117 In the scope of the establishment of the competence of the court, the time of the submission of the petition shall be relevant. The rules of competence, which entered into effect on 1 April 2020 shall be applicable in cases, which were submitted subsequent to the entry into effect Community accommodation shall not fall under the category of residential address or temporary residency, and the competence reason specified in section 13, paragraph (1), point c) of the Code of Administrative Litigation may not be based on the same. 580

118 Accessibility shall be provided considering the special needs of different disability groups and not the individual special needs of certain persons within such disability groups. 583

119 Learning the Hungarian language is not qualified as a circumstance giving grounds to study residence. 586

120 The right to participate in environmental issues, and in this matter, the right to justice are not unconditional or unlimited, that is they may not be unrelated from the applicable laws, thus the rights the legislator gave to associations and social organisations established for the representation of environment rights. 588

121 In public administration cases, when doubts arise with regard to the joint compliance with the expectation included in the documentation, the provision of missing documents and the request of information shall be performed by the contracting authority in accordance with the legal limits. With regard to unclear matters, the court may not take a stand on the acceptability of the offer. Legal violation may not be based on the options of a situation violating competition, and the bid close to the assessed value itself is actual, however does not prove actual conflict of interest, thus section 25, paragraph (8) of the Public Procurement Act cannot be applied – for the lack of the identity of the budgetary items of the plan and the offer. 592

122 In accordance with the interpretation of section 152, paragraph (2a) and section 197, paragraph (10) of the Public Procurement Act arising from Article 28 of the Fundamental Laws, if until 1 January 2019, the 60-day subjective deadline specified in section 152, paragraph (2) of the Public Procurement Act, the new provision specified in section 152, paragraph (2a) of the Public Procurement Act shall be applied by the defendant, nevertheless the plaintiff is entitled to counter proof in the judicial proceedings as remedy proceedings against the legal protection. 602

123 I. The same employer may order Sunday work due to several reasons specified in section 101, paragraph (1) of the Labour Code. If, during work audit, the employer refers to the fact that not only based on section 101, paragraph (1), point i) but also section 101, paragraph (1), point a), the order of normal Sunday work was possible, the labour authority is obliged to examine the content of this.

II. If the fact that Sunday ordinary work could have been ordered for the employer in accordance with section 101, paragraph (1), points a) and b), the employee may not receive Sunday allowance. 608

124 The order of the substitution of the mayor is regulated by the Act on Local Governments, and the organisational and operational regulations of the organisation may not deviate from the same. The mayor may decide in special cases on his/her substitution under the law, which the body of representatives may not withdraw by its decision. 611

DECISIONS OF THE COURT OF THE EUROPEAN UNION

I. Judgement of 27 January 2021 in joint cases C-229/19 and C-289/19 – Dexia Nederland BV versus XXX and Z

1. The provisions of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a term in a risk-weighted contract concluded between a seller or supplier and a consumer, such as share leasing agreements, must be regarded as unfair, since, having regard to the circumstances surrounding the conclusion of the contract in question and by reference to the date of its conclusion, that term may create a significant imbalance between the rights and obligations of the parties during the performance of the contract, even though that imbalance could occur only if certain circumstances were to arise and, in other circumstances, that term could even benefit the consumer. In those circumstances, it is for the referring court to ascertain, in the light of the circumstances attending the conclusion of the contract, whether a term fixing in advance the advantage which the seller or supplier is to enjoy in the event of premature termination of the contract was, from the time that contract was concluded, liable to create such an imbalance.

2. The provisions of Directive 93/13 must be interpreted as meaning that a seller or supplier which has imposed on a consumer a term declared unfair and, consequently, void by the national court cannot claim the statutory compensation provided for by a supplementary provision of national law which would have been applicable in the absence of that term where the contract is capable of continuing in existence without that term. 614

II. Judgement of 26 January 2021 in case C-16/19 – VL versus Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie

Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:

the practice adopted by an employer and consisting in the payment of an allowance to workers with disabilities who have submitted their disability certificates after a date chosen by that employer, and not to workers with disabilities who have submitted those certificates before that date, may constitute direct discrimination if it is established that that practice is based on a criterion that is inextricably linked to disability, inasmuch as it is such as to make it impossible for a clearly identified group of workers, consisting of all the workers with disabilities whose disabled status was necessarily known to the employer when that practice was introduced, to satisfy that temporal condition;

that practice, although apparently neutral, may constitute discrimination indirectly based on disability if it is established that, without being objectively justified by a legitimate aim and without the means of achieving that aim being appropriate and necessary, it puts workers with

disabilities at a particular disadvantage depending on the nature of their disabilities, including whether they are visible or require reasonable adjustments to be made to working conditions

619

III. Judgement of 3 February 2021 made in joint cases C-155/19 and C-156/19 – Federazione Italiana Giuoco Calcio (FIGC) and Consorzio Ge.Se.Av. S. c. arl versus De Vellis Servizi Globali Srl and Consorzio Ge.Se.Av. S. c. arl

1. Article 2(1)(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that an entity entrusted with tasks of a public nature exhaustively defined by national law may be regarded as having been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, within the meaning of that provision, even though it was established not in the form of a public authority but of an association governed by private law and some of its activities, for which it enjoys a self-financing capacity, are not public in nature.

2. The second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24 must be interpreted as meaning that where a national sports federation has management autonomy under national law, that federation may be regarded as being subject to management supervision by a public authority only if it emerges from an overall analysis of the powers which that authority has in relation to that federation that there is active management control which, in practice, calls into question that autonomy to such an extent as to allow the authority to influence the federation's decisions with regard to public contracts. The circumstance that the various national sports federations exert an influence over the activity of the public authority concerned on account of their majority participation in that authority's main deliberative and collegiate bodies is relevant only if it can be established that each federation, considered individually, is in a position to exert a significant influence over the public supervision exercised by that authority over it with the result that that supervision would be offset and such a national sports federation would thus regain control over its management, notwithstanding the influence of the other national sports federations in a similar situation. 624

IV. Judgement of 2 February 2021 in case C-481/19 – DB versus Commissione Nazionale per le Società e la Borsa (Consob)

Article 14(3) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and Article 30(1)(b) of Regulation number 596/2014/EU of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6 and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, read in the light of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as allowing Member States not to penalise natural persons who, in an investigation carried out in respect of them by the competent authority under that directive or that regulation, refuse to provide that authority with answers that are capable of establishing their liability for an offence that is punishable by administrative sanctions of a criminal nature, or their criminal liability. 630