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## DECISION OF THE COUNCIL OF COMPLAINTS RELATED TO THE UNIFORMITY OF THE LAW



## CRIMINAL COLLEGE

the firearm is not permitted. Keeping the acquired firearm outside of this scope is prohibited, thus shall constitute misuse of firearms. 664

**130** I. Depreciation of the asset shall not only mean that the value of somebody's asset decreases, but also that the property owned by the same is taken away from the same by somebody. Numerous legal facts are realised by the fact that the funds or other things sent to the addressee are acquired by somebody else by way of unlawful acquisition so that the delivery is not received by the addressee.

II. Arising from the principle of judicial independence, judicial leaders, with regard to the substance of the case, and in professional matters, may not give orders to the acting judge, and this person shall not become biased by the fact that a relative of the court's chairperson acted as a defence attorney in the given case. 667

**131** I. The well founded facts of the case gives the foundation of the lawful qualification of the action, which is the subject of the case, and consequently the decision made in the subject of the criminal responsibility of the accused person. Thus, the court's proceedings shall be related to the entirety of the action included in the indictment and all criminally relevant facts.

II. However, in the proceedings of third instance, the acceptance of proof is not possible, thus the court of third instance - for the court of second instance availing of the option specified in section 593, paragraph (1), point c) of the Code of Criminal Procedure, – may not weigh the proofs and establish different facts for the case than those established by the court of second instance neither by way of the content of the documents to which the evidence is related, nor by way of factual conclusion, and the culpability of the accused party acquitted by the court of second instance may not be established.

A further significant difference is that the court of third instance – in contrast with the legal requirement applicable to the court of second instance – may decide on repeal, even in case of partial unfoundedness, if unfoundedness can only be avoided by way of providing evidence. 671

**132** Even with the application of special procedural rules related to the emergency situation, the appeal cannot be judged at the council meeting, if the prosecution, the suspect or the defence attorney requested a public hearing. 681

## CIVIL COLLEGE – CIVIL CASES

**133** The written voting on the approval of the amendment of the Organisational and Operational Rules of the condominium is suspended by the motion of amendment made by the group of the co-owners representing at least one-tenth of the property, and the general assembly shall be summoned for the approval or the amendment of the said rules. 684

**134** The testator using block letters partly or entirely, when signing, shall be in line with the requirements related to the signature of the testator. 686

**135** Section 4, paragraph (2) of the Code of Civil Procedure shall generally regulate the relationship between the lawfully judged crime and the civil proceedings. In case of a lawfully

judged crime, thus, the court acting in the civil proceedings may not establish that the convict did not commit the said crime. 688

**136** Review may not be allowed based on a reference, which cannot be reviewed in the scope of substantial review. 691

**137** If the agreement made in accordance with the former Civil Code is void, considering the temporary provisions of the Act on Certain Transitional Provisions related to the Entry into Force of the new Civil Code, the claim related to invalidity shall be judged based on the former Civil Code in effect upon the establishment of the legal relationship. 693

**138** I. The severity of the contractual violation specified in section 58, paragraph (1) of the Act on Certain Transitional Provisions related to the Entry into Force of the Land Transactions Act, is based on the fact that it is continued in spite of the actual expectation related to the cultural obligation expressed by the lessor, and the note including the deadline necessary for the performance of the same.

II. The deadline specified in the note shall be suitable for the performance of the expected behaviour and termination of the failure, that is real. Whether the specified deadline is suitable, shall be specified based on the nature of the activity and the consideration of actual circumstances. 696

**139** I. The owner without a legal title shall be obliged to pay, to the entitled party, as a usage fee, the savings acquired with the use without the payment of any lawful counter value, as a financial benefit.

II. The co-owner may not be the owner of the co-owned property without any legal title irrespective of what the actual use is related to.

III. In case of a co-owned property, one co-owner may only claim extra usage fee from the other co-owner for the use exceeding the owned rate, if the order of use is regulated.

IV. The conclusion of leasehold agreements related to certain ownership shares of the co-owned property shall not mean the split of the use, because they do not bind the co-owners, who did not enter into the agreement. 701

**140** I. The rules of private law, thus the provisions of the former Civil Code, may only be applicable to the higher education student agreement and legal relationship, if it is allowed for by the special legal norm regulating the legal relationship.

II. Acting in order to terminate the damage subsequent to the occurrence of the damage is normally not in the scope of the obligations expected in accordance with section 340, paragraph (1) of the former Civil Code. 706

## CIVIL COLLEGE – ECONOMIC CASES

**141** Information on exchange risk is unfair, if the essence of the exchange rate risk and the related economic consequences cannot clearly and understandably be seen. The realisation of the requirements specified by the legal practice of the Court of the European Union shall be

examined all in all when judging the unfairness of the information provided, and the statements included in the justification of certain judgements may not be regarded as restrictive lists, certain elements specified there may not be evaluated separately, but the fact whether the provided service was in line with the requirements related to the information shall be taken into account in consideration of the other provisions of the agreement. 710

**142** The condition of the consideration of making an interim decision is met, if the party obliged to provide evidence presents, at least conditionally, the evidence application necessary. 715

## CIVIL COLLEGE – LABOUR CASES

**143** The establishment in the court expert's opinion that the plaintiff may be employed in certain eased positions, shall be jointly evaluated with the complex opinion related to medical, employment and social rehabilitation. If with regard to the employee's circumstances (age, mobility, load, training), work could only be performed with disproportionate effort, the employee shall not be requested to perform such work even in the scope of the related obligation of the mitigation of damages. The purpose of this legal institute is not the mitigation of the employer's payment obligation at fault, at the expense of the damaged party. 717

**144** I. The application related to the establishment of a sufficient service shall be judged based on the laws existent upon the submission of the application, and may not be refused with reference to the circumstances and laws that have changed in the meantime.

II. The parties shall be entitled to and also obliged to make a serious and professionally grounded offer in non-litigious proceedings related to the establishment of a sufficient service. The offer may not be related to the prevention of the strike by making an offer rendering the purpose of the strike impossible.

III. In the scope of the establishment of a sufficient service, the existence of the limit specified in section 3, paragraph (3) of the Strike Act cannot be evaluated, because it is not related to the scope of sufficient services, but excludes the option of the application of strike in a given case. 722

**145** If the agreement of the parties does not clearly specify that they agreed, with the full representation of their respective wills, on the counter-value of the limitation of the prohibition of competition, the legal consequences of invalidity shall not be applicable to the same. 727

## PUBLIC ADMINISTRATION COLLEGE

**146** In the course of the establishment of the subject of the building tax, the primarily the provisions of section 52, point 5 of the Local Tax Act shall be applicable. In the scope of the interpretation of the concept of building, it is only possible to consider the provisions of other acts, such as the Built Environment Act, if the local tax law especially provides for the same. The tax authority shall also examine whether the part of the building constituting the subject of the building tax, due to its nature and construction, is suitable only for storage, or in the meantime, lost its supplementary building nature. 733

**147** The pure fact of a large number of co-owners entitled to the right of pre-emption shall not exempt the owner from the obligation of the communication of the bid with the co-owners entitled to the right of pre-emption. In the course of communication, the behaviour shall be as generally expected. When there are many co-owners, in the given situation, what is generally expected is that the co-owners, who reside in Hungary, the notification is sent via a registered letter or any other verifiable way, provided that the related costs added to the normally occurring transactional expenses are not extremely disproportionate in comparison with the purchase price of the property (extraordinary difficulty). In other cases, what is expected is that the seller takes a step, which does not constitute any extraordinary difficulty or result in significant delay, and which can easily be done in the give circumstances so that those entitled to the right of pre-emption have the option to get to know the offer. 736

**148** Data management related to the health care of civilians not related to national defence - performed in *Honvéd Kórház* - shall not be qualified as data management for the reasons of national defence. The health care institute managing health care data specified in Article 9 of the GDPR in the scope of its main activity shall have an internal data management regulation, which regulates the order of procedures in case of a data protection case. 740

**149** The data entered in the records of civil organisations are authentic, the change of entered circumstances may only be effective towards third persons, if the change was entered in the records. The lawfulness of the authorisation of the representative of the civil organisation entered in the records cannot be contested in public administration proceedings. 744

**150** If the public administration body complied with the procedural obligation, the application was judged on the substances, a relevant decision was made, there is no default, and no default decision is to be made.

The lawful delivery of the decision is a procedural action, and shall not qualify as a public administration action specified in section 4, paragraph (3) of the Code of Administrative Litigation. The failure to perform lawful delivery shall not give grounds to the establishment of the failure. 748

**151** The decision made in the matter of the refusal of the subsidy provided from EU funds is a public administration action, and may be the subject of a public administration legal dispute. 751

**152** The legislator did not separately name the submission made to a wrong location, as a reason for rejection, but this circumstance shall be examined by the court of first instance in connection with the related deadline, because the deadline for bringing an action and the place of the same are two related conditions, and the rejection of either conditions results in the same legal consequence. The submission of the application to a wrong place and after the deadline constitute reasons for rejection, that is the application of section 48, paragraph (1), point i) of the Code of Administrative Litigation.

If the plaintiff represented by a legal representative submits the application (also) at the place specified by the law, the keeping of the deadline shall be examined, and if it is missed, section 48, paragraph (1), point i) of the Code of Administrative Litigation shall be applicable. If the plaintiff represented by a legal representative, submits the application only to a place,

which is not specified by the law, the court shall primarily examine the exemptions from the place of submission [section 41, paragraphs (3) and (5), section 39, paragraph (3a)], and if the reason for exemption cannot be applied, the application shall be rejected in accordance with section 48, paragraph (1), point i) of the Code of Administrative Litigation, and in such a case, keeping the deadline is not even an issue. 753

**153** In the lawsuit related to the judicial review of the expropriation decision related to the establishment of extra indemnification, the expert evidence shall not be ordered *ex officio*, and the evidence shall be provided by the party, who states the unfoundedness of the expert opinion acquired in the official expropriation proceedings, thus the ordered expert shall specify his/her fee, related to which, the hourly fee shall be indicated in the schedule of fees. 756

**154** When judging the clarity of the reason for exemption, it is not the words, but the entirety of the justification and the text that has significance. If, from the justification, it is clear that the reason for the termination of the legal relationship is that the Government ordered staff reduction, which is related to the plaintiff's scope of work, the reason of the exemption is clear.
758

**155** The requirement of norm clarity is violated, if the provisions of the regulation of the local government are inaccurate, contradictory with each other and are related to null provisions. In accordance with the itemised provisions of the National Urban Planning and Construction Requirements, it is legally not prohibited that the local legislator allows for in the construction regulation – along with the appropriate protection – the construction of retail, service, hospitality and sport facilities in a vacation area, provided that they are in line with the purpose of the area, and are constructed for local residents and tourists. 762

## DECISIONS OF THE COURT OF THE EUROPEAN UNION

**I.** Judgement of the Court of 4 March 2021 in case C-581/19 – Frenetikexito – Unipessoal Lda vs Autoridade Tributária e Aduaneira.

Council Directive 2006/112 of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, subject to verification by the referring court, a nutrition monitoring service provided by a certified and authorised professional in sports facilities, potentially in the context of programmes that also include physical well-being and fitness services, constitutes a separate and independent supply of services and is not capable of falling under the exemption laid down in Article 132(1)(c) of that directive. 767

**II.** Judgement of the Court of 25 February 2021 in case C-804/19 – BU versus Markt24 GmbH.

1. The provisions set out in section 5 of Chapter II of Regulation number 1215/2012/EU of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and

provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.

2. The provisions set out in section 5 of Chapter II of Regulation number 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in point 1 of the operative part of the present judgment, irrespective of whether those rules are more beneficial to the employee.

3. Article 21(1)(b)(i) of Regulation number 1215/2012 must be interpreted as meaning that an action such as that referred to in point 1 of the operative part of the present judgment may be brought before the court of the place where or from where the employee was required, pursuant to the contract of employment, to discharge the essential part of his or her obligations towards his or her employer, without prejudice to point 5 of Article 7 of that regulation. 771

**III.** Judgement of the Court of 2 March 2021 in case C-824/18 – A.B. versus Krajowa Rada Sądownictwa and Co.

1. Where amendments are made to the national legal system which, first, deprive a national court of its jurisdiction to rule in the first and last instance on appeals lodged by candidates for positions as judges at a court such as the *Sąd Najwyższy* (Supreme Court, Poland) against decisions of a body such as the *Krajowa Rada Sądownictwa* (National Council of the Judiciary, Poland) not to put forward their application, but to put forward that of other candidates to the President of the Republic of Poland for appointment to such positions, which, secondly, declare such appeals to be discontinued by operation of law while they are still pending, ruling out the possibility of their being continued or lodged again, and which, thirdly, in so doing, deprive such a national court of the possibility of obtaining an answer to the questions that it has referred to the Court for a preliminary ruling:

– Article 267 of the Treaty on the Functioning of the European Union and Article of 4(3) of the Treaty on the European Union must be interpreted as precluding such amendments where it is apparent – a matter which it is for the referring court to assess on the basis of all the relevant factors – that those amendments have had the specific effects of preventing the Court from ruling on questions referred for a preliminary ruling such as those put to it by that court and of precluding any possibility of a national court repeating in the future questions similar to those questions;

– the second subparagraph of Article 19(1) of the Treaty on the European Union must be interpreted as precluding such amendments where it is apparent – a matter which it is for the referring court to assess on the basis of all the relevant factors – that those amendments are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges appointed, by the President of the Republic of Poland, on the basis of those decisions of the *Krajowa Rada Sądownictwa* (National Council of the Judiciary), to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that those articles have been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply the amendments at issue, whether they are of a legislative or constitutional origin, and, consequently, to continue to assume the jurisdiction previously vested in it to hear disputes referred to it before those amendments were made.

2. The second subparagraph of Article 19(1) of the Treaty on the European Union must be interpreted as precluding provisions amending the state of national law in force under which:

– notwithstanding the fact that a candidate for a position as judge at a court such as the *Sąd Najwyższy* (Supreme Court) lodges an appeal against the decision of a body such as the *Krajowa Rada Sądownictwa* (National Council of the Judiciary) not to accept his or her application, but to put forward that of other candidates to the President of the Republic of Poland, that decision is final inasmuch as it puts forward those other candidates, with the result that that appeal does not preclude the appointment of those other candidates by the President of the Republic of Poland and that any annulment of that decision inasmuch as it did not put forward the appellant for appointment may not lead to a fresh assessment of the appellant's situation for the purposes of any assignment of the position concerned, and

– moreover, such an appeal may not be based on an allegation that there was an incorrect assessment of the candidates' fulfilment of the criteria taken into account when a decision on the presentation of the proposal for appointment was made, where it is apparent – a matter which it is for the referring court to assess on the basis of all the relevant factors – that those provisions are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges thus appointed, by the President of the Republic of Poland, on the basis of the decisions of the *Krajowa Rada Sądownictwa* (National Council of the Judiciary), to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that the second subparagraph of Article 19(1) of the Treaty on the European Union has been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply those provisions and to apply instead the national provisions previously in force while itself exercising the judicial review envisaged by those latter provisions. 775

**IV.** Judgement of the Court of 25 February 2021 in case C-857/19 – Slovak Telekom a.s. versus Protimonopolný úrad Slovenskej republiky.

1. The first sentence of Article 11(6) of Council Regulation number 1/2003/EC of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 of the Treaty on the Functioning of the European Union] must be interpreted as meaning that the competition authorities of the Member States are relieved of their competence to apply Articles 101 and 102 of the Treaty on the Functioning of the European Union in the case where the European Commission initiates proceedings for the purposes of adopting a decision finding an infringement of those provisions in so far as that formal act relates to the

same alleged infringements of Articles 101 and 102 of the Treaty on the Functioning of the European Union, committed by the same undertaking or undertakings on the same product market or markets and the same geographical market or markets during the same period or periods as those concerned by the proceeding or proceedings previously brought by those authorities.

2. The principle *ne bis in idem*, as enshrined in Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it applies to infringements of competition law, such as the abuse of a dominant position referred to in Article 102 of the Treaty on the Functioning of the European Union, and precludes an undertaking from being found liable or proceedings from being brought against it afresh on the grounds of anticompetitive conduct for which it has been penalised or declared not liable by an earlier decision that can no longer be challenged. By contrast, that principle does not apply where proceedings are brought against or sanctions imposed on an undertaking separately and independently by a competition authority of a Member State and the European Commission for infringements of Article 102 of the Treaty on the Functioning of the European Union relating to separate product markets or separate geographical markets, or where a competition authority of a Member State is relieved of its competence pursuant to the first sentence of Article 11(6) of Regulation number 1/2003. 790