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CRIMINAL COLLEGE

156 Child pornography – even by way of acquisition, keeping and transfer – is a crime against the passive subject on the recordings, thus the age of the passive subjects shall give grounds to the obligatory application of disqualification from occupation in accordance with section 52, paragraph (3) of the Criminal Code. 813

157 I. In the scope of the differentiation between reckless endangerment and second-degree homicide, the fact that has important significance is that with regard to reckless endangerment, it is only the establishment of the situation that is wilful, while with regard to a more severe result – in this case, taking a life – there is only negligence. In case of homicide, the perpetrator has direct or possible intent with regard to the result that surpasses endangerment.

II. As the accused person shot eighteen times – partly – aimed towards the five policemen trying to catch the same for a period of fifty-five minutes, its action can be regarded as having stepped in the attempted phase of homicide. Nevertheless, as a result of the aimed shots, death, as a result did not occur, thus with regard to these aggrieved parties, homicide stays in the phase of attempt. Thus, the action is suitable for the establishment of the crime of attempted homicide against officials and several persons, and not occupational endangerment. 816

158 I. The lawyer may not exercise set-off with regard to the performance deposit. Set-off from the portion of the performance deposit that is to be returned to the depositor shall constitute unlawful appropriation and not the commission behaviour of embezzlement as own property.

II. Abuse by the lawyer and embezzlement may actually be in a real formal aggregate. For the establishment of the real formal aggregate, the realisation of all factual elements of both facts of the case shall be necessary. Therefore, the lawyer's culpability may not be established in an aggregate with the crime of embezzlement, if the purpose of causing disadvantage may not be established based on the facts of the case.

If the lawyer violates the obligation arising from his/her profession with the purpose of causing unlawful disadvantage to his/her client, but the disadvantage is not realised, only abuse by the lawyer may be established.

Should the lawyer comply with his/her obligation arising from his/her occupation not only for the purpose of causing unlawful damage to his/her client, but also acquiring the benefit arising from the unlawful damage caused to the client, but the damage and the benefit are not realised, abuse by the lawyer may be established.

The qualified case specified in section 285, paragraph (2) of the Criminal Code establishes advance criminal protection with regard to the importance of the social interest related to the uninterrupted operation of the justice system for the case, when a lawyer violates his/her obligation arising from his/her occupation for the purpose of gaining benefits.

The lawyer's culpability along with the crime of embezzlement may be established with the basic case of abuse by a lawyer specified in section 285, paragraph (1), if the client's deposited money is appropriated – for the purpose of causing damage, wilfully violating the obligations arising from his/her occupation –, if the minimum sentence of embezzlement is more severe than 5 years of imprisonment, otherwise only the qualified case of abuse by a lawyer violating section 285, paragraph (1) and specified in (2) of the Criminal Code shall be established

III. If the court of second instance establishes – by way of the change of the qualification of the crime – that the presence of the defence attorney at the hearing held by the court of first instance would have been obligatory, the verdict shall only be repelled, if the prosecution's charge was originally related to a crime, which is punished by imprisonment for five years or more, or the court of first instance established the option of a different, more severe qualification.

824

159 If renewed proceedings are ordered, Part Eleven of the Code of Criminal Procedure including the general rules of judicial proceedings, Part Thirteen related to the preparation of the hearing and Part Fourteen regulating the course of the hearing of the court of first instance are to be applied with the differences arising from the nature of the renewed proceedings.

Consequently, the rule saying that the court is to examine scope of authority and competence ex officio shall be applicable during the renewed proceedings.

If as a result of the renewed proceedings, a crime is established, which falls in the scope of a higher court (tribunal), renewal shall be conducted by such court. 832

160 I. The – possible – limitation of the criminal responsibility of the accused party itself shall not automatically exclude the acceptance of his/her confession. In such a case, however, the mental state of the accused person shall amongst others be taken into account, when examining that whether in the actual case, with regard to the actual action, the accused person understood the nature of his/her statement and the consequences of the acceptance of the same. However, the rational doubt related to the criminal responsibility of the accused person shall mean uncertainty related to the criminal responsibility of the same established in the course of the investigation and specified in the indictment.

II. Criminal responsibility shall be examined with regard to the action judged in the actual case; nor the closeness of the action in time, neither the similar nature of the same shall not give grounds to the court establishing the existence or the lack of the criminal responsibility of the accused person based on an expert opinion given in a different case, for a different action. Such expert opinion shall bring up the option of the fact that the criminal responsibility of the accused person was limited also with regard to the action to be judged in a coming case. And this is such a doubt that excludes the acceptance of the confession in the actual case and the judgement of the case in the preparatory session. 834

161 If the new evidence means specified in the application for renewal is not directly related to the crime attributed to the accused person, but the authenticity of one of the proofs grounding the sentence – and the legal qualification of the actions – the renewal of the proceedings shall be decided not in accordance with section 637, paragraph (1), point a), but point b), and only if the conditions specified in paragraph (3) are met, may be approved. 838

162 From the aspect of the realisation of the reason for renewed proceedings specified in section 637, paragraph (1), point a), subpoint ab), the punishment imposed by the definitive decision is of fundamental significance, and considering this, the question whether the new evidence is predicted to result in the imposition of a more severe punishment shall be examined.

Renewed proceedings shall not be regarded as a critique of the imposed punishment, but only by way of the mediation of the new definitive fact, such factor may be considered.

Nevertheless, it is doubtless that, if it is a mild or severe punishment to start with, then the conclusive fact shall have a different effect on the new qualification.

The fact that the new qualification may bring about a different type of punishment may also have significance. However, the fact that the imposition of a greater extent of punishment within the same type becomes also possible.

Mathematical or numerical measures or mandatory moral standards cannot be applied in this regard, and are not specified by the law either. 840

163 In accordance with the changed competence rules of the Act on the Execution of Criminal Sanctions (section 75/J), for the judgement of the claim for damages, if submitted during the custody of the convict, the tribunal competent in the area of the registered office of the law enforcement institute shall have jurisdiction even, if the convict was released, except if subsequent to the release, the convict or the defence attorney (authorised legal representative) fails to submit a petition requesting that the law enforcement judge competent in the area of the convict's residential address or actual place of residence should preside.

If the petition was submitted subsequent to the release of the convict, the law enforcement judge competent in the area of the registered office of the law enforcement institute, where the convict was released, shall have competence with regard to the judgement of the petition, except, if the convict or the defence attorney (authorised legal representative) submits a petition requesting that the law enforcement judge competent in the area of the convict's residential address or actual place of residence should preside. 842

164 In the criminal proceedings for enforcement related to the circumstances of placing violating fundamental rights, the court having passed a decision on repeal shall be entitled and obliged to conduct the renewed proceedings subsequent to the repeal of the definitive decision. In the repeated proceedings, even if the competence reasons giving ground to the original competence, there shall be no transfer in accordance with the general competence reasons included in section 50, paragraph (2) of the Act on the Execution of Criminal Sanctions and the special competence reasons included in section 75/J of the same. 843

CIVIL COLLEGE – CIVIL CASES

165 If the decision contested with the review does not include legal interpretation in the legal matter, related to which the authorisation reason is based by the party requesting the review, the Curia may not examine the difference from its own disclosed decision. 845

166 Disturbance regarded unnecessary by the owner of the property, is not the same as the situation related to the termination of the servitude, when the servitude is unnecessary for the proper use of the dominant property. 847

167 The clear invalidity of the formal or content-related deficiency of the document used as the basis of the registration giving rise to the refusal of the application for registration of the change in the property in the land registry shall be recognisable from the content of the document by the land registry authority without separate examination, and further legal interpretation. If an entry to the land registry is performed failing this, the property management authority shall not be held liable. 849

168 The evaluation of the behaviour based on due diligence is not a part of the facts, not a matter of fact, but a legal consequence drawn from the facts, a matter of substantive law, which may be examined in the scope of the violation of substantive law. Due diligence from the persons involved in health care is a legal category, and the related compliance shall be judged by the court, however – depending on the circumstances of the actual case – for the establishment or judgement of the facts or circumstances giving grounds to the decision, such special expertise may be necessary, which the court does not have. 853

169 The agreements on the transfer of the area made by the litigious local governments in 1991 shall not be qualified as a public administration agreement regulated by the Code of Administrative Litigation, nor a public relationship, and the judgement of the accounting claims arising from the same – as private agreements – shall fall in the scope of the civil court. 857

170 If the member of the water supply body requests the review of the contribution established for the same in the claim, the claim may not be judged as another establishment claim specified in section 172, paragraph (3). 862

171 The sale and purchase pre-agreement made by the plaintiff, who is a private entrepreneur engaged in business-like apartment sales, and the consumer defendant is clearly contrary to the accepted principles of morality due to the fact that if the final agreement is not made in 5 calendar days, which is an extremely short notice in contractual practice, unusually severe legal consequences are specified, a deposit of more than 50 percent of the value of the property, and penalty for failure. 866

CIVIL COLLEGE – ECONOMIC CASES

172 The member of the business organisation may not enforce claim for damages, in its own name, from a third person causing damage to the company by way of violation of an agreement or outside of an agreement, with reference to the fact that the damage caused to the company

also means the loss of value in the company's business shares, identifying his/her own damage as the company's damage. 870

CIVIL COLLEGE – LABOUR CASES

173 The labour contract establishing the employment shall be created upon the agreement of the obligatory elements specified in section 45, paragraph (1) of the Labour Code. If, from the aspect of work protection, employment is not lawful, the labour contract shall not be terminated. The unlawfulness of the employment shall not result in the invalidity of the labour contract. 879

174 Section 229, paragraph (7) of the Labour Code shall give rise to the right of the termination of the study contract, and also the option to reclaim the amount of subsidies. The decision, whether the employer enforces the rights specified in the law related to the reclaim of the pro-rata subsidy provided by the same is a discretionary scope of rights, the review of which and the change of the decision by the court are not provided by the law. 882

175 The failure to provide or the insufficient provision of specialised management, organisation, coordination and monitoring may result in the withdrawal of the higher executive position as a legal consequence. All this, however, shall not mean that the public servant did not perform his/her duties as a specialised pedagogue. 885

PUBLIC ADMINISTRATION COLLEGE

176 Considering the change of legal regulations, the judicial practice related to the payment obligation of the universal excise fine, previously established, cannot be sustained. 890

177 Obligation related to the averting of the unlawful consequences of the activity specified in section 89, paragraph (3) of the Code of Administrative Litigation is a legal institute that may only be applied in case of a judgement upholding the application.

The costs specified in section 88, paragraph (2) of the Code of Administrative Litigation, may only be regarded along with the costs – unnecessarily – caused by the action (legal costs). 892

178 If the authority bases its decision on a resolution that includes qualified data, the court, subsequent to the review of the documents, shall examine whether the facts specified in the opinion and the data are sufficient enough for the measures specified in the aliens policing decision.

The court may not override the rational and logical official conclusion based on the data suitable for the verification of national defence risks. 895

179 In case of a property in the capital, *Pest Megyei Kormányhivatal* shall have the authority to conduct the approval proceedings related to the acquisition of the property of land. 899

180 The management service fee shall be qualified as a procedural cost in the system of the Competition Act.

The official decision related to the payment of the procedural fees may be remedied.
901

181 The obligation related to the payment of the amount of indemnification specified in Article 7, paragraph (1) of Regulation number 261/2004/EC of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation number 295/91/EEC, is an imperative norm specified in a consumer protection regulation, which cannot be regarded as same as the payment of the damages based on civil law, arising from the delay of the air passenger. While the latter is especially considered as damages caused in the scope of the performance of the agreement, thus a civil claim, the consumer protection provision is an objective legal consequence promoting a more careful and precise procedure by the airline, ensuring a greater level of protection to consumers. The consumer protection authority is entitled to oblige the air carrier to pay such indemnification and may also order the payment of consumer protection fine in the scope of the measure necessary for the purpose of the provision of the rights of passengers. 904

182 If the decision made in the registration procedure related to the appearance of the locality is violated, the mayor of the local government is entitled to issue an obligation for the sake of the performance of the requirements related to the appearance of the locality upon the deadline specified in the notification related to the termination of the violation of the law. 909

183 The public administration body making the decision of first instance may not contest the decision of the supervisory body in a public administration action. 913

184 If the public administration decision contested by the action does not include implementing provisions (obligation related to behaviour, action, tolerance), then in the scope of immediate legal protection, there shall be no suspension. 915

185 The judge, who previously, based on his/her own decision, took discounted old-age pension, meaning that compulsory retirement was not ordered, for the lack of a relevant law, he/she shall not be entitled to have the old-age pension recalculated, re-established or “changed”. 916

186 Article 28 of the Fundamental Law – amongst others orders courts to take into account the purpose of the law, when interpreting the same. Thus Article 28 of the Fundamental Law also assumes that during legislation – such as the passing of a regulation by the local government – the legislator’s purpose has to be clear and understandable for all from the rules.
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