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CRIMINAL COLLEGE

187 I. From the aspect of the relation between section 2 of the Criminal Code and the review, it is significant whether there are fundamental requirements, the compliance with which has significance. Such are the principles of *nullum crimen sine lege*, *nulla poena sine lege* specified in section 1 of the Criminal Code. The compliance with these is determinant in the review, that is the application of section 2 of the Criminal code may not result in the violation of section 1 of the Criminal Code.

II. If the decision of first instance is made by the local court, the legal remedy against the decision shall be judged by the court that is of a higher rank. The scope of authority of the court of second instance shall not be adjusted to the rules of competence of first instance effective upon entry to the second instance, but the court of first instance actually in session.

III. The option of a last word is a traditional and typical provision of the Criminal Code, based on which subsequent to the pleading, prior to the judgement, the accused is entitled to speak to the court. It is an existing right and option in each procedural phase – thus prior to the judgement of first instance, the judgement of second instance, and the judgement of third instance.

Nevertheless, it is undoubted that this provision is not related to within the evidence proceedings, but after that, because it can be performed subsequent to the conclusion of the evidence proceedings (section 313, sections 319–320, section 545 and section 547 of Act number XIX of 1998).

However, failure to do so – let it be either due to the will of the accused or the negligence of the court – shall not result in the invalidity of the evidence proceeding. If it is due to the court's negligence, then it shall not constitute a procedural violation resulting in unconditional

repeal, as it is not in the list of reasons for the same – serving the lawfulness of the evidence proceedings. 983

188 Premeditated commission shall require the examination of not only the nature of plans and practice but also the aspects of conscious and wilful actions – which is a nuance, but a significant difference from premeditated commission specified in the previous regulation.

989

189 Homicide is qualified to have special circumstances, if the action is performed with extraordinary inhumanity exceeding the cruelty necessary for ending a life, and the action causes bodily or psychological suffering to the aggrieved party, which significantly exceeds the suffering and torment generally going along with taking one's life.

Extremely large number of several large stabs made by the accused, causing a large number of injuries, during the suffering of which the injured party was fighting for his/her life, undoubtedly means extraordinary inhumanity, disinhibition, and caused physical and psychological suffering to the injured party exceeding the average extent.

In case of such qualifying circumstances, 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. The commission behaviour that puts the injured party at total hopelessness by way of its uninterrupted nature means obvious extra suffering for the injured party, who not only bears the horror of his/her death physically, but also lives through it.

993

190 The perpetrator of pandering does additional activities compared to the perpetrator of being a kept person; if they not only keep themselves from the income of the prostitute, but also take part in the encounter of the partners for the purpose of sexual intercourse or fornication. Such additional action shall not qualify the act as the crime of pandering. Nevertheless, in the review proceeding, in the course of the establishment of the correct qualification, the facts not provided in the binding facts of the case shall be ignored. 995

191 The intent of the accused of fourth degree was the acquisition of the proprietary rights of the property constituting the subject of the case – crop land – while the accused of second and third degree only wanted to sell the crop lands to the accused of fourth degree. The accused parties knew about the fact that the party entitled to the right of pre-emption made a legal statement according to which they wish to exercise their right of pre-emption.

For the purpose of the aversion of the legal provision related to the enforcement of the right of pre-emption, a perpetuity agreement was made by the accused parties so that the accused of fourth degree can acquire the proprietary rights of the crop lands. They did not actually want to enter into a perpetuity agreement, but regarding the effective statement on the right of pre-emption, the accused of fourth degree could have acquired the proprietary rights of the crop lands only by way of a perpetuity agreement.

The accused of second, third and fourth degree masked the sale and purchase agreement as a perpetuity agreement with the purpose of play off the legal restrictions. The accused parties wanted to play off the rule of order and gain unlawful benefits. Unlawfulness in this case does

not mean the lack of the acquisition of proprietary rights, but playing off the rules on order.
1001

192 In case of depredation, the misuse of documents shall constitute a separate crime – in contrast with theft. 1004

193 The performance of the court's obligation to give reasons is an obligation arising from the rules of public law and litigation law, which is not discretionary, but legally regulated. The existence of the reasoning of the judicial decision is a legally exact obligation, maybe its way might be deliberated; the latter falls in the category of relative procedural violation.

In accordance with Article XXIV, paragraph (1), second expression of the Fundamental Law “authorities shall be obliged to justify their decisions in accordance with the law”.

Section 13, subsection (1) of Act number CLXI of 2011 on the Organisation and Management of Courts says that the court's decision – unless there is a legal exemption – is to be justified.

Obviously, if the procedural violation related to the obligation of justification comes with the violation of an express law, and cannot be involved in the scope of deliberation, the procedural damage may not be a relative violation, but a procedural violation leading to unconditional repeal, that is an absolute procedural violation.

Clearly, if the fact related to the provision on the statement of guilt is such, that is the factual basis of this provision is totally missing.

The justification of the judgement made by the court of first instance by way of the missing facts of the case is in violation of the operative part, thus a procedural violation specified in section 608, subsection (1), point f) of the Code of Criminal Procedure, thus there is a reason for review specified in section 649, subsection (2), point d). 1007

194 If the court of second instance – without the change of the facts of the case – provides the acquitting provision missed by the court of first instance, in the matter of criminal responsibility, a decision contracting that of the court of first instance is not made, thus the option for secondary or third appeal is not open. 1009

195 An audio recording attached to the appeal against the decision declining renewed proceedings shall be regarded as a new piece of evidence, as it was not known (played) during the main proceedings.

If the evidence is new, and its probable content is related to a conclusive fact, then without knowing its actual content, the matter of renewed proceedings may not be decided. This would mean the comparison with the existing pieces of evidence, which may not be performed with regard to the possibility of renewed proceedings.

Thus in order to decide whether this new piece of evidence is really suitable for the presumption of the option of different evaluation from the given fact, thus the ordering of renewed proceedings, or the refusal of the petition for the same, may only be performed knowing the content of the audio recording.

Consequently, the exact content of the audio presented in the renewed proceedings shall be clarified, which is nothing but the order of a renewed proceeding investigation in accordance with section 643, subsection (8) of the Code of Criminal Procedure. 1011

CIVIL COLLEGE – CIVIL CASES

196 The contribution of the damaged person shall decrease the level of responsibility, irrespective of the element that the damaged person uses for the claim. In an indemnification case, the level of responsibility is a part of the enforced right, thus the interim judgement shall judge the same, subsequent to which division of damage is prohibited between the party causing and the party suffering the damage.

Offset in the lawsuit is the enforcement of the defendant's counterclaim. The defendant's reference – who is responsible for the damage – to the fact that due to the prohibition of receiving benefits from the damage, the amount of indemnification paid by the insurance companies is to be established in the scope of the amount of the indemnification shall not be considered as an offset by its content. 1015

197 I. In the proceedings related to personality rights, the objective legal consequences of the legal violation shall be decided, which is not the same as the decision to be made in the civil proceedings from the side of the material consequences of the legally judged crime.

II. In case of statements made in an election campaign, the freedom of expression and the limits of the same shall be interpreted and judged in the context of the exchange between public players, with regard to the statement, the type of the communication, the occasion of the communication, and the reactions as well as the role of the given statement in the process are to be examined. 1019

198 If the supporter withdraws from the subsidy contract as a legal consequence of the establishment of an irregularity, the beneficiary may contest the lawfulness of withdrawal in civil proceedings. In such a case, the examination of whether there were any irregularities, the supporter is entitled to the right of withdrawal, and whether this legal consequence is adjusted to the weight of the irregularity may be the subject of the civil proceedings. 1023

199 The fact of knowing the beginning of the term specified in section 6:223, subsection (2) of the Civil Code may be established for the enforcement of the claim arising from the violation of the right of pre-emption, based on the occurrence of the same may be different by case, the judgement of the same may depend on the actual facts of the case, the evaluation and deliberation of the pieces of evidence individually and jointly. The party entitled to the right of pre-emption "becoming aware" may be based on any fact, from which the fact that the seller ignored the acceptance statement related to the exercise of the right of pre-emption, and the parties to the agreement take further legally relevant steps in order to perform the agreement, can clearly and rationally be seen. 1028

200 I. The court's judgement shall cover the right stated in the lawsuit even, if it is submitted not by the plaintiff, but the defendant by way of his/her material objection. The omission of the judgement of the material objection hindering the enforceability of the right enforced by the plaintiff is a significant procedural violation affecting the substance of the case.

II. Limited finality shall not be established based on formal aspects, but the applied material law.

III. For tenancy made and existing prior 1 January 1994, and the claim arising from the same shall be governed by the temporary provisions of the Apartment Act. 1033

CIVIL COLLEGE – ECONOMIC CASES

201 Contractual provision related to factual certificate is not unfair. The validity of the agreement, including unfairness shall be judged in light of the facts upon contracting and the laws in effect. 1037

202 For the validity of the agreement related to the transfer of the proprietary rights of a property and the amendment of the same, their significant content shall be put in writing. This requirement is also met by putting it into a simple private document. 1041

203 In the liquidation proceeding, the right of cost registration approved by the court shall not cover the fee of the court of first instance, but the fee of the appeal. 1043

CIVIL COLLEGE – LABOUR CASES

204 With regard to a special notice, the employer shall be obliged to prove that the public servant with his/her slight intoxication – for the lack of an express regulation related to zero tolerance – violated the requirement of availability in a state suitable for work, this violation was significant, and the public servant acted wilfully or by gross negligence. 1045

205 If the employer did not employ the employee, who reported the party in charge of exercising employer rights, in his/her original position, but repeatedly terminated his/her position, reference to the abuse of right and employer retortion may be grounded. 1051

206 Significant circumstance necessary for the determination of the will to contract may be the non-existence of a fact, if the parties are aware of the same upon contracting. For the lack of this, they may not be on the same page, thus the agreement may not be contested with reference to a mistake. 1055

PUBLIC ADMINISTRATION COLLEGE

207 Group VAT payment obligation shall be borne jointly and severally by the group members after the termination of the group, and the condition of the enforcement of responsibility against a member is that the tax payer rights need to be exercised from the beginning of the tax audit. 1058

208 The provisions of section 1, first and second sentences of the Taxation Act may not be separately interpreted, as the two sentences form a unity, and they jointly establish the requirement of the general principle of purposeful use. When judging the reclaim need in a VAT case, the actual content may be established with the analogue application of the three-way test specified in relation with the right of deduction. 1063

209 Appropriation may be ordered for a purpose of public interest realised in the future. The acquisition of a property from a private person several years ahead by the Hungarian state that „uses” the property – for the purpose of the development of realised traffic infrastructure –, may not be performed by way of appropriation. 1067

210 Nature protection and environment protection official scopes of authority – in spite of their several relations – are separate scopes of authorities, and may not be mixed.

Environment protection operating licence shall not include the nature protection official licence for timber extraction. 1070

211 If certain elements of the statement of claim can be judged in a general litigious proceeding, while other elements are to be judged in a negligence lawsuit, the public administration court shall separate the petition related to the negligence case, and judge the same in a proceeding in accordance with section 127 of the Code of Administrative Litigation.

If the case is not an official case of a local government, or the public administration body is not authorised to exercise the official scope of authority by the law, government decree or a decision by a local government, the body performing the duties of the local government shall not be regarded as an authority, and may not conduct proceedings specified in the Code of Administrative Proceedings. 1074

212 Waste burning in an equipment closed from three sides, but not in line with the law shall be regarded as open air burning. The failure to prevent the burning and lighting of the waste and the failure to put out the fire shall constitute a misdemeanour of air protection giving grounds to a fine of air protection violation, irrespective of the intent and imputability of the owner of the waste. With regard to open air burning of waste under 10 m³ the exact determination of the quantity of the waste is not necessary. 1077

213 An obvious mistake in accordance with section 9, subsection (1), point 23 of the Procedural Law, is related to the data indicated in the petition, which may be corrected (supplied) without a call for remedy a deficiency. The correction of the client’s statement used as the grounds of the plaintiff’s petition in accordance with section 40, subsection (1) is prohibited, because it would mean the client’s right of disposal, procedural and content disposal related to the petition.

The Code of Administrative Litigation with regard to the defence statement, does not specify requirements related to form and content, and the failure to provide the statement related to legal violation specified in the statement of claim shall not prevent the judgement of the petition, because the lawfulness of public administration activities is examined in the scope of the limits of the petition, and the plaintiff is not in a lawsuit with the defence statement.

1081

214 The establishment of the subsidy based on the normative rules is not unlawful due to the pure fact that the calculation and determination of the amount of provided budgetary funds is not based on institutions, but the number of those serviced. 1085

215 The party requesting immediate legal protection shall not be obliged to provide proof or data. However, the consequences, if the court is not convinced of the fact that in this case, the conditions of the given legal provision are met, shall be borne by the same. 1089

216 I. With regard to a property, the possible lack of demand shall not exclude sale, as it is not the same as unmarketability.

II. The rate of tax is not unlawful due to the mere fact that the land tax imposed on the taxable lands are to be paid by a small number of tax-payers.

III. Land tax of a very low rate, equal to 1% of the value of the land shall not be regarded as confiscating, because it does not consume the value of the property even on the long run.

1091

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