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Decision number Jpe.I.60.010/2021/2 of the Curia's Complaint Council related to the Uniformity of the Law 1146

### CRIMINAL COLLEGE

**217** I. If a qualification included in the justification is the same as the one specified in the operative part, the procedural violation that could give grounds to the review is not realised even, if the court of first instance does not give a detailed explanation in the legal justification about the reason for qualifying the judged action based on the content of the operative part.

II. The establishment of commission of organised crime itself, shall not unconditionally result in the imposition of an unlawful penalty, if it does not go beyond the upper limit of the penalty related to the given facts.

Thus, if the establishment of commission of organised crime is unlawful, but it did not result in the imposition of unlawful penalty - that is the legal disadvantage was established within the legal frames -, then review shall not be performed with regard to the decision related to the exclusion of conditional release and the establishment of the implantation rate, because they themselves do not realise independent reasons for review. 1147

**218** The penalty is unlawful, if the court imposed the penalty of definite content without the specification of the content of the same. Nevertheless, when avoiding the violation of the law, the imposition issue based on the court's right of deliberation cannot be overruled. 1163

**219** I. Lethal traffic endangerment is realised, if the cause and effect relation, the traffic violation can be related to the emergency and the death of the injured party.

II. It is not imputable, if the accused party fails to comply with the obligation of stopping and offering aid because there is a well-grounded risk of them and the passenger also getting hurt or dying. However, there shall be liability for the failure of offering aid, if when the

dangerous situation is gone, they still fail to inform the injured party about the available, recognisable assistance. 1164

**220** A lawyer, who is not registered in the Hungarian Bar Association as a European community attorney, did not report their activity at the Association, did not attach a cooperation agreement made with an attorney or a lawyer's office for the defence, operating in another country of the European Union is not entitled to operate as an attorney in Hungary, and may not act as a defence attorney in criminal proceedings. 1169

**221** If the district attorney's office does not take over the representation of prosecution, there is no legal obstacle of public prosecution, and the unification of private cases, if the public and the private proceedings do not include the same accused party. In such a case, joint judgement may be possible, and for the purpose of the establishment of the real facts, joint judgement is advisable. 1170

**222** The compliance with the rules of a restraining order, itself shall not neutralise the justification of the coerced measure, the law subjects procedural sanctions to the violation of behavioural rules. The accused party is obliged to comply with these rules, which in itself shall not affect the legal conditions of its application. 1173

**223** Section 271, point 98 of Act number XLIII of 2020 clarified on 1 January 2021 that if the court, based on the circumstances, subsequent to the announcement of the definitive decision of first instance, deems the application of a coerced measure necessary in consideration of the content of the imprisonment imposed in the verdict, not only the arrest, but also all forms of coerced measures related to personal freedom approved by the judge may be ordered and may be maintained for this reason. 1174

**224** The same entitled person shall mean the persons in the same procedural position, thus, if the defence attorney of the accused party had previously submitted a review motion, a new review motion may not be submitted by the defence attorney even, if there is a change in the person of the same, and a new defence attorney is assigned. The submission of a review request is related to the procedural position, and not a person, otherwise, the legal prohibition would not be enforced, and if a new defence attorney is assigned, or the change of the person of the prosecutor or the prosecution submitting the previous review request would result in a repeated submission of a review request against the legal prohibition. 1176

**225** The regulation of the Law Decree on the Execution of Criminal Sanctions related to the establishment of competence in the penitentiary proceedings related to indemnification due to circumstances of placement, which violate fundamental rights was amended on 1 January 2021.

In accordance with section 436, subsection (1) supplemented by section 21 of Act number CL of 2020 enacting section 75/J of the Law Decree on the Execution of Criminal Sanctions, Chapter III/A amended by the above act shall be applied in the procedures in progress upon the entry into effect of the same.

Thus, in accordance with section 75/J, subsection (1) of the Law Decree on the Execution of Criminal Sanctions, the proceedings related to the indemnification request shall be conducted by the penitentiary judge competent in the area of the seat of the penal institution,

which forwarded the request even in the case, when the accused party was transferred subsequently. If the accused party was released, the proceedings shall be conducted by the penitentiary judge competent in the area of the seat of the penal institution performing the release. 1177

### **CIVIL COLLEGE – CIVIL CASES**

**226** The original situation may be restored as a legal consequence of the invalidity of the maintenance agreement. 1179

**227** If appropriation can only be performed by way of the division of the land, by adding the appropriated land to the appropriating neighbouring land, then the appropriation claim may only be enforced by the owner of the neighbouring land, thus, if the appropriating party sells the property after the period for appropriation is lapsed, litigious legitimacy is not available, and the claim may be enforced by the new owner based on the agreement. 1182

**228** The nature of the relation based on legal provisions of framework character shall not authorise the court to regulate the same in any way for any period of time. The judicial verdict may not violate the practice of parental supervision without the care-taking parent's agreement and approval with reference to the child's interests. 1183

**229** Collection commission and general lump sum costs may only be paid if the execution - performance or collection - is successful. When judging the performance of expectable behaviour, the individual circumstances of the party as well as the objective expectability from society shall be taken into consideration. Material organisation of procedure shall be applied, if the party - arising from the circumstances of the case - instead of definitive, actual (historic) facts, states only the legal factual element, however no statement is made with regard to the probability and verification specified as the condition of the emergency circumstances. 1188

**230** Withdrawal from a grant contract shall be based on the establishment of an irregularity violating the financial interests of Hungary and the European Union and the violation of the obligation undertaken in the grant contract. 1193

### **CIVIL COLLEGE – ECONOMIC CASES**

**231** When applying section 6:50, subsection (2) of Act number V of 2013 (Civil Code), the financial claim issued in a public document specified by way of an agreement, shall be regarded as the financial claim specified by way of executive agreement, included in a private document, based on which with regard to the given financial claim, direct execution may be performed. 1198

**232** Review shall not be performed with regard to the verdict of registry on the second instance (registry of change). The substantive examination of the legal violation of the binding decision is not possible, if the legal provisions violated in the review request are not coherent with the legal violation presented in its content. 1200

**233** A not lawful procedure, which is in line with a long-term practice is performed in the course of the voting of a decision by the member's meeting, shall not prevent the court from

establishing only the unlawfulness of the decision in case of other circumstances. If such a decision is made, the plaintiff wins the case, and may not be obliged to pay legal fees.

1202

### **CIVIL COLLEGE – LABOUR CASES**

**234** I. The plaintiff's employment was terminated based on the decision of the same made in accordance with section 85/A, subsection (2), point e) of the Public Education Act, thus the enforcement of the employment claim (absence fee for the period when work was not performed, severance payment), shall not be governed by the legal succession of labour law.

II. When the operator of the public education institution is changed, the rules of the Public Education Act related to the operator and the legal status of the public education institution shall be interpreted so that the education district centre can be interpreted as the receiving budgetary organ, as the public education institution has restricted personality and employer rights as a part of the education district, and the rights deciding employment as well as related to salary management and budget shall be exercised by the education district centre.

1205

**235** With regard to the exercise of the right to strike, the individual strike claims shall be examined. If a claim is related to the provision of the economic and social interests of those participating in the strike, and the strike is not expressly prohibited by the law, employees shall be entitled to the right to strike.

1209

### **PUBLIC ADMINISTRATION COLLEGE**

**236** The court may not make a decision first on the thoroughness of the amendment of the motion request submitted with regard to the European Court of Justice's decision made in the course of the litigious proceedings and the changes of the laws of the member state, as it would act instead of the authority. The authority may examine in the scope of a new proceedings, the thoroughness of the plaintiff's request taking into account the changed legal requirements.

1215

**237** In accordance with section 4, subsection (7), point 1, subpoint e) of the Code of Administrative Litigation, however generally an organ may be qualified as a public administration organ due to the concept of functional public administration organ, due to the nature of the activity, but with regard to another power branch, a separate and definite authorisation is necessary from the legislator in order to fall under the category specified in section 4, subsection (7), point 1, subpoint e).

In accordance with section 16, subsection (1) of the Code of Administrative Litigation, to be applied based on section 68, subsection (3) of the Code of Civil Procedure, - for the lack of a special condition - the authorisation for litigation shall also cover the review proceedings. The authorisation attached later to the review request shall be related to the submission of the review request - with a retrospective effect as a retroactive approval - in accordance with section 6:14, subsection (1) of the Civil Code.

1218

**238** The justification of the verdict given by the Court of Justice of the European Union ordering the suspension of the proceedings ordered with regard to the preliminary decision proceedings initiated in a different case shall include the facts, which are the same in the two cases and also the issues necessary for the substantive justification of the case. 1223

**239** The exercise of the right of viewing documents may only be restricted due to a well-founded reason even with regard to those of restricted viewing. This shall be decided by the competition authority considering the interest of the party requesting to view documents related to the knowledge of data and the interest of the party wanting to keep such data secret.

The request of the attorney representing the client and the expert assigned by the client to view documents may only be refused, if knowing such data may directly and irrevocably damage the interest of the party entitled to the data to keeping such data secret. Besides the approval of the viewing of the documents by the attorney, separate deliberation and justification shall be given for the refusal of the viewing of documents by the expert assigned by the client. 1226

**240** Prior to the application of irritating gas, the protesting crowd shall clearly, audibly, understandably and directly be notified about the fact that a coercive measure is about to be taken. 1229

**241** With regard to the petition submitted against the decision refusing the request related to the viewing of documents, the court shall have all the information necessary to decide the founded or unfounded nature of the petition, including the documents, from which possible conclusions may be drawn with regard to the person to which the closed data management is related. The public administration court shall verify that with regard to the documents to which the document review is related, the defendant lawfully referred to the restriction specified in section 55/A, subsection (1), point a) of the Competition Act. The performance of this verification shall be reported along with the provision of the protection of the disclosed secret so that it is in line with the requirement of efficient legal protection and the compliance with the right to defence. 1233

**242** Co-owner shall not have a right of pre-emption against another co-owner in the legal relationship regulated by the Land Traffic Act. If the buyer and the party entitled to the right of pre-emption are both co-owners, the order of pre-emption shall be based on section 18, subsections (3) and (4) of the Land Traffic Act. If the ranking specified in section 18, subsection (4) of the Land Traffic Act cannot be specified in either case, the agriculture administration body may pass a decision as specified by the law with regard to the party for which the sale and purchase agreement is approved. 1236

**243** The failure to specify the legal violation giving grounds to the appeal, is such a deficiency of the appeal, with regard to which the call to provide missing documents may not be issued, and this deficiency may not voluntarily be remedied after the lapse of the appeal period. 1239

**244** I. Government officer serving abroad in the scope of a long-term delegation may receive health care services in the place of residence (work) without a preliminary approval procedure.

II. With regard to the special situation of those serving abroad, only health care service received rightfully shall be reimbursed in the member state.

III. For the reimbursement of health care services received abroad, the agreement made by the Office of the Prime Minister and the defendant may not regulate the rights and obligations arising from the insurance relationship of the insured party, it may not violate any legal provisions and may not restrict the rights of the natural person. 1239

**245** Deviation from the call to provide missing documents specified in section 44 of the Code of Administrative Proceedings - in any way - may only be made by the law or a government decree. The body of representatives of the local government, in its regulation on the appearance of the locality, may not legally regulate, in case of deficient reports on the negligence of the call to provide missing documents. The purpose of the institute of lawful silence is not the difference from section 44 of the Code of Administrative Proceedings, but the protection of the rights of the client in the public administration proceeding. 1245

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

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**III.** Judgement of the Court of 12 May 2021 in case C-844/19, CS and Finanzamt Österreich, formerly Finanzamt Graz-Stadt versus Finanzamt Österreich, formerly Finanzamt Judenburg Liezen and technoRent International GmbH 1257

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