

CONTENTS

DECISION ENSURING THE UNIFORMITY OF THE LAW

Decision number 1/2021 BJE on the calculation of the deadline for the submission of the review request against the accused party 1280

COMPLAINT COUNCIL RELATED TO THE UNIFORMITY OF THE LAW

Decision number Jpe.I.60.011/2021/3 of the Curia's Complaint Council related to the Uniformity of the Law 1287

COLLEGE OPINIONS

Opinion number 1/2021 BK (of 13 May 2021)	1291
Opinion number 2/2021 BK (of 13 May 2021)	1292
Opinion number 3/2021 BK (of 13 May 2021)	1293
Opinion number 4/2021 BK (of 13 May 2021)	1293

CRIMINAL COLLEGE

246 I. The accomplice (thus the aider) does not realise but contribute to the factual action. The association of the accomplice to the perpetrator is related to the perpetrator's intent. The accomplice's intent is the same as the perpetrator's intent, it is substituted by the same or strengthened by way of performance. Thus the accomplice shall be culpable.

The accomplice's intent, thus is not subsequent but prior to the performance. This also brings about the fact that at the time of the participation of the accomplice and the performance of the action, it is possible to find out or even change the intent towards the same and the perpetrator, if however, it is not performed, thus the extent of the performance is not restricted, stepping back from performance is not communicated to the external world clearly and understandably, the continuous presence of the same strengthens performance. The basis of what was explained is factual – thus it is a consequence related to consciousness. The internal event, which is hidden from the external world and thus the accomplices, may not be the subject of a legal consequence.

II. When an experiment is performed, the point of the legal consideration behind withdrawal is that the perpetrator shall voluntarily, from his/her own decision ensure that the same may only be held liable for the already started action that can be perceived in the external world. 1295

247 Exclusion from public proceedings as an additional penalty shall not be ordered due to a negligent crime. 1296

248 When the legal provision provides for the unlimited mitigation of the punishment, section 82, subsection (5) of the Criminal Code shall or may be applicable, that is, if the law allows for an unlimited relief, the least severe punishment may be imposed.

Thus, unlimited relief is related to the punishments listed in section 33, subsection (1) of the Criminal Code, and the measures specified in section 63, subsection (1) may not be involved in this scope, thus probation specified in section 65, subsection (1) cannot be ordered.

Consequently, measures, thus ordering probation may only be applied, if the legal conditions – irrespective of the option of unlimited relief – are met. 1297

249 The statement specified in the binding acquittal (equivalent to the indictment) is related to a past activity, event, that is to where and what and with whom the accused person did something. Thus it includes the factual statement that the police commissioner made public workers scrub the stairs of the police station with toothbrushes.

This statement presented the injured party as a domineering person abusing their power, who by the nature of their police service exercises public power and gives orders, who, humiliating public workers, made them scrub the stairs of the police station with toothbrushes. If this statement is correct, the injured party may be held liable.

Thus, the binding facts of the case includes information, which in itself, is suitable for defamation. 1298

250 It is not blackmail, but robbery, if the accused party claims money from the injured party, and after the injured party refused to do so, violence is exercised, and the wallet of the injured party is taken away. 1305

251 From the factual nature of fraud (on the subject side) what matters is that the perpetrator, from the beginning, that is from the conclusion of the given transaction, did not intend to perform (repay). In case of fraud, the existing will is by what deception was exercised, as a result of which, the injured party being misinformed, disposed over their assets in a way they would not have otherwise. 1307

252 The arbitrary removal of the vehicle is realised, if the entitled party gives the vehicle to somebody else, and approves the use of the same for a specific purpose, but the accused party uses the vehicle in a manner that exceeds the provided framework. 1310

253 The fact that the court conducted proceedings related to the imposition of punishment prior to the preparation of the hearing shall not prevent the court from deciding on the transfer of the case in accordance with section 485 of the Code of Criminal Procedure. Such provisions are not specified in the Code of Criminal Procedure. 1313

254 The obligatory legal provision related to the exclusion of the defence attorney based on the conflict of interest between the accused parties shall be applicable in the review proceedings, irrespective of the fact that in the extraordinary legal remedy proceedings, evidence may not be provided, and the consideration of evidence or the facts may not be contested.

The obligation of the defence attorney in any part of the criminal proceedings, thus in the review proceedings shall be applicable, the obligation of the defence attorney may only be met by the violation of the interests of an accused party in the drafting of the review petition, possible notes, statements made by the buyer, thus subsequent to the occurrence of the conflict of interest, the defence attorney shall be excluded from the proceedings. Obviously, it would contradict the confidential situation of the defence attorney, if representing certain accused parties, his/her participation could continue in the proceedings, because in this case, the obligations would be met violating the principle of confidentiality. 1315

CIVIL COLLEGE – CIVIL CASES

255 In the lawsuit related to the termination of execution and not connected with the invalidity motion, the court – for the lack of a relevant petition – in the operative part of the judgement, may not express its opinion on the invalidity of the agreement; even if the reason for the termination of the execution is the invalidity of the agreement on which the execution is based. In the lawsuit related to invalidity, the reasons of the binding verdict in the lawsuit related to invalidity shall not themselves exclude the examination of the invalidity of the agreement on which the execution is based. 1318

256 Private unlawfulness is not the same as public administration legal violation. Private unlawfulness comes from the fact of causing damage, because the behaviour violates the general prohibition of causing damage. 1321

257 When a work contract is made, the client shall be regarded as a non-professional and the entrepreneur shall be regarded as a professional legal subject during the performance of the legal or contractual obligations applicable to the subjects of the legal relationship. The non-professional client shall not be held liable due to the errors in the plans, nevertheless the contractor shall be obliged to examine the plans and notify the client about the recognisable errors and deficiencies of the plan. Failing this, the same shall be held liable. 1323

258 I. In the course of the review, the Curia – in principle – shall examine the unlawful nature of the binding verdict based on the limits of the review and the related review request with a view to the legal provisions specified therein The legal violations referred to in the review counter-claim cannot be examined.

II. The conditions of the legal warranty due to the limitation of the acquisition of rights.

III. When enforcing claim for damages related to consequential damage, the entitled party shall be obliged to prove that the damage, as a possible consequence of the contractual violation was foreseeable upon the conclusion of the agreement. 1327

259 (Contractual) liability for damages for contractual violation is an objective form of responsibility based on the division of risk between the contracting parties, in the scope of which the attributable nature of the damaging behaviour shall have no significance, differing from the rule of tort. In the scope of the exemption, the term “outside of the scope of control” shall be interpreted as a content element of vis major, and may not be measured by the rate of “careful control” or attributable nature. 1332

260 In connection with the legal relationship of motor vehicle insurance, the obligation of mitigation of risks shall not be related to the authorised workshops conducting the car repair, if they perform the claim settlement on behalf of the damaged parties. However, requiring the damaged parties to repair the motor vehicle that was damaged in an accident, in an authorised workshop, which procures the car parts from a part dealership designated by the liability insurer – with only 10 percent price difference – may bring about additional obligations and burdens, which may not be expected from the damaged party. And the failure to behave in a way, which would result in a burden that exceeds the expected extent for the damaged party may not be evaluated as the violation of the obligation to mitigate damages. 1337

261 The insurance company shall not only be obliged to guarantee the payment of costs actually arising in connection with the aversion of the damage, but the reasonably expected costs necessary for restoration. The insurance company may only be reimbursing the counter-value of the service actually used for the aversion of the consequences of insurance events based on the invoice including the counter-value of the service and the applicable rate of value added tax. This shall not be applicable to the insurance services, which are not related to the payment of the counter-value of the actual damage control works, but the calculated amount based on agreement. 1339

262 Section 341 of the former Civil Code – for the lack of the result (damage), as a provision including specially enforced sanction – is one of the general rules specified in Chapter number XXIX of the Civil Code. Both in the scope of tort and contractual responsibility, it is possible for the party, which is threatened by the danger of damage, to turn to the court even prior to when the damage is made, and enforce measures preventing the damage from the endangering party. The legal institution serves prevention; a precondition of its application is the realisation of endangering behaviour, and its purpose is the prevention of the reasonably threatening damage. Thus, the purpose of the legal provision is not the prevention of the behaviour causing damage – that is the contractual violation –, but the prevention of the damage as result. As the emergency – meaning the potential damage – may be caused by the contractual violation, behaviour including steps of such intent shall not result in a real threat of damage, but only the option of the same. 1342

CIVIL COLLEGE – ECONOMIC CASES

263 I. For the review request to be judged on the merits, the party submitting the request shall submit the request, including the necessary elements in time.

II. The efficient enforcement of consumer rights may not cover the fact that the court ignores the frames of the legal dispute, exceeds the same, and for the sake of the examination of their possible nature, analyse the contractual terms one by one, for the invalidity of which the motion of the plaintiff consumer is not related. 1347

264 When applying section 408, subsection (2) of Act number CXXX of 2016, the Curia shall be entitled to judge whether the court of second instance granted the decision of first instance related to the same legal provision, with the same legal justification. 1351

265 In the judicial proceeding started under the liquidation proceedings by the liquidator, the discount of the right of fee note may be enforced in accordance with section 62, subsection

(1), point i) of Act number XCIII of 1990, if the given proceedings are started by the liquidator in the name of the debtor being liquidated. If the liquidator is the subject of the proceedings, there shall be no right to fee note. 1352

CIVIL COLLEGE – LABOUR CASES

266 The employer's behaviour leads to the violation of a rightful interest, if the salary is decided based on other factors than the qualification specified in the law or the performance evaluation.

Employer's abusive behaviour shall be evaluated in the relation of the party entitled to material right and the party exercising the right, and not based on the fact that in a different case, what disadvantage another person would have experienced. 1355

267 Qualification according to the justification of termination with an immediate effect shall not bind the court. Several minor violations of obligations, thus disrespectful behaviour may lead to the loss of trust. 1358

268 Besides material organisation of procedure, formal organisation of procedure shall also fall in the court's contribution activities, which is not exclusively related to the substance of the proceedings. One of the most significant elements of material organisation of procedure is the provision of missing documents, however from the independent regulation of the same, it shall not only be interpreted based on material organisation of procedure. 1360

PUBLIC ADMINISTRATION COLLEGE

269 In order to avoid the qualification of income as salary, the tax payer shall be obliged to provide evidence in the previous public administration proceedings, and new pieces of evidence not presented and referred to in the public administration proceedings with regard to the prohibition rules of section 78, subsection (4) of the Code of Administrative Litigation, may not be submitted.

Estimate proceedings may be conducted not only against the suspect, but his/her relatives. From the fact of being a relative, without the violation of reasonability, the justified conclusion can be drawn that the financial gain possibly arising from the crime may be at the plaintiff. 1364

270 The appeal against the verdict of first instance made by the tribunal in the matter of the revocation of the execution sheet issued based on the decision made in the public administration proceedings shall be judged by the High Court. 1370

271 I. A new notification of fine applied in the proceedings set up and repeated in official competition proceedings, subsequent to the court having made its decision giving instructions for new proceedings violates section 109, subsection (4) of the former Code of Administrative Proceedings, the right to efficient legal remedy, and the requirement of fair proceedings. The right to efficient legal remedy shall not exclusively mean the option to use legal remedy forums, but it shall also mean the exercise of the binding verdict, and also that the courts shall verify the performance of the requirements specified for the repeated proceedings. The plaintiffs can rightfully expect that the defendant, in the repeated proceedings, will act in accordance with the

content of the previous judicial verdict (principle of trust). There is no aggravation prohibition in public administration proceedings.

II. Arising from section 109, subsection (4) of the former Code of Administrative Proceedings, the findings in the decision, which were not contested by the plaintiffs in the previous litigious proceedings, and thus in which the court did not take a stand, are recorded as facts in the repeated proceedings, and the defendant is bound to them in the repeated proceedings.

III. When judging the petitions submitted against the fine imposed due to a behaviour restricting competition, the plaintiffs may not be universally obliged to pay legal fees.

1371

272 Section 94, subsection (2), point f) of the Act number I of 2007 on the entry of the persons having the right of free movement and residence may not be related to a minor, considering the provisions of the Fundamental Law protecting the legal institution of family and defining family as the relationship of parent and child. 1391

273 Data supply and information provision are not appropriate, if they are provided not in line with the official legal aspects, including the data included therein. The guideline of the public administration court related to new proceedings shall be obligatory for the authority based on the main rule. This rule may be deviated from, if the facts grounding this decision changed in the meantime, or there was a legislative change, which can be applied in the repeated public administration proceedings. When specifying the procedural court, the fact, if several factual elements, which may be sanctioned with fine were independently realised in the very same proceedings shall be evaluated as an aggravating circumstance. 1394

274 The court shall justify the refusal of the request related to preliminary decision proceedings by no later than in the verdict. The failure to do so shall constitute procedural violation affecting the substance of the case. 1401

275 The client quality based on the legal provision shall be provided to the client only to the point, where the circumstance giving grounds to the legal standing of the client is still applicable. If the petitioner is no longer a client in accordance with the law, but still wishes to exercise the rights of a client, the same shall be obliged to prove direct relation with the right or rightful interest of the given public administration case. 1405

276 I. In accordance with section 91, point b) of the Labour Code, a condition for the standby position to be established is that the performance of the work – especially with regard to the special nature of the job, regarding the conditions of the work – comes with significantly less strain compared to the average.

II. The concept of “significantly less strain compared to the average” can normally be given by judicial deliberation (without an expert) subsequent to the thorough, detailed examination of all circumstances, in the course of which, the employee’s physical and mental strain shall be taken into account provided that the position may only be qualified as a standby position, if the level of strain is significantly less, as strain that is less than average cannot justify this. 1408

277 The relationship related to the use of public space is an official relationship, thus the local government may not settle this case as a civil relationship. The official agreement is a public administration agreement. The conclusion of the official agreement shall not change the type of the legal relationship between the parties, and it does not become a private legal relationship. The official agreement shall be made by the authority with the client and not the owner. Thus, the local government, as owner – in this quality – shall not be entitled to use an agent to perform this duty. 1413

DECISIONS OF THE COURT OF THE EUROPEAN UNION

I. Judgement of the Court of 10 July 2021 in case C-303/20, Ultimo Portfolio Investment (Luxembourg) S.A. versus KM 1418

II. Judgement of the Court of 22 June 2021 in case C-439/19, B 1421

III. Judgement of the Court of 15 June 2021 in case C-645/19, Facebook Ireland Limited and co. versus Gegevensbeschermingsautoriteit 1431

FORUM

Péter Bordás, The limit of the civil legal relationship in certain agricultural aid cases based on the legal practice of the Curia 1442