

CONTENTS

DECISIONS ENSURING THE UNIFORMITY OF THE LAW

Decision number 2/2021 BJE on certain issues of the judgement of own fault
1457

Decision number 7/2021 PJE on the enforcement of the rules of the transfer of
agreements specified in Act number V of 2013 on the Civil Code 1463

COMPLAINT COUNCIL RELATED TO THE UNIFORMITY OF THE LAW

Decision number Jpe.I.60.006/2020/11 of the Curia's Complaint Council related to the
Uniformity of the Law 1474

Decision number Jpe.I.60.005/2021/5 of the Curia's Complaint Council related to the
Uniformity of the Law 1476

Decision number Jpe.I.60.012/2021/4 of the Curia's Complaint Council related to the
Uniformity of the Law 1482

Decision number Jpe.I.60.013/2021/5 of the Curia's Complaint Council related to the
Uniformity of the Law 1483

Decision number Jpe.I.60.014/2021/5 of the Curia's Complaint Council related to the
Uniformity of the Law 1484

COLLEGE OPINIONS

Opinion number 1/2021 PK (of 12 July 2021) on certain matters related to the approval
of review 1487

CRIMINAL COLLEGE

277 I. Due to reckless endangerment related to profession, the person, who act as described below shall be held liable. Violating the rules of the profession, he/her fails to prevent the technical error of the safety function of the equipment, preventing the accident, making the employee keep working on the faulty machine, even if the accident causing bodily injury is caused by way of the behaviour of the inured party that is in violation of the rules of the profession.

II. If the accused party actually performs the activity falling under the scope of the rules of the profession, with the violation, reckless endangerment related to profession may be committed. The base of criminal responsibility is not the legal relationship based on which the activity is performed, but the actual activity – falling under the rules of the profession – that is performed. 1493

278 If the accused party, without his/her own intention, opens an account for the purpose of receiving future funds of unclear origin to be expressly hidden with the condition that the

received sums are to be withdrawn in cash and given to an unknown client, the opening of the bank account, with such criteria, is capable of uncovering the origin of the funds, keeping the person of the client secret; and this was the purpose of the action. Thus, in such a case, the wilful commission of money laundering is committed by the accused party. 1500

279 I. The base of the assumption that the presence of the accused parties in the proceedings cannot be ensured in any other way is related to the significant legal threat of the crimes that are the subject of the accusation; the weight of the actions that are the subject of the accusation, the option of receiving life in prison and the burden of this threat is the actual fact, which – comparing in the case with the actual personal circumstances of the accused persons, and the objective circumstances of the case – shall give grounds to the maintenance of legal conditions.

II. The factual weight of the crime – presented in the criminal penalty – however may only have a role in the special factors of the actual case, and justify conclusions. With regard to the factual weight, the legislator’s evaluation shall not give grounds to the conclusions related to the justification of the arrest (in accordance with the General and Special Part of the Criminal Code). 1504

280 Based on the review request, the examination of the review reason shall be performed based on the action specified in the binding facts of the case, and the violation of material rights shall be judged based on these facts of the case.

In the review proceedings – by way of its unsuitability for the review of merits – the contested decision is repealed, if the facts of the case specified in the binding decision includes contradictions, due to which from the aspect of criminal liability, in significant matters (the establishment of the culpability of the accused party, acquittal of the same, termination of the proceedings, qualification of the crime and the penalty or applied measure in accordance with the material rights of the Criminal Code) the facts of the case the court based on its decisions giving grounds to the review proceeding may not be established. 1507

281 From the aspect of the provision specified in subsection (1) of Section 30 of Act number CLXXX of Act 2012 on the Cooperation with the Member States of the European Union in Criminal Matters, the relation of the rule of speciality (actions specified in the European Bench Warrant) in relation with the facts of the case specified by the court may be determined by the scope of same actions. Thus, speciality may not be violated by the court specifying the commission behaviour of the action described in the European Bench Warrant, but in the scope of same actions, the person of the injured party is different; however, the court, with regard to the place, method, means, result, reason, etc of the commission, may differ from what is specified in the European Bench Warrant without violating the principle of speciality.

1514

CIVIL COLLEGE – CIVIL CASES

282 When determining the regular place of residence, with regard to the baby, the period and frequency of time spent in the Member State shall be taken into account, just as the circumstances and reasons of the move, and the geographical relations, family roots, family and social relations of the parents. 1518

283 I. When interpreting the contested evidence agreement, the grammatical interpretation reflecting the statement principle may not exclusively be enforced. The system of the Civil Code mixes this with the principle of will, but during the determination of the real content of the agreement, other relevant circumstances shall also be taken into account (the purpose to be achieved with the agreement, purpose of the services).

II. The extent of insurance protection shall be determined by the contracting Parties by the mutual expression of their respective wills. If the insured party needs special consideration in a certain matter, for the purpose of the enforcement of his/her contractual interest – in the scope of the cooperation and information obligation – the insurance company shall be notified of the same. Failing this, the purpose to be achieved by the party with the agreement may not be taken into account when interpreting the insurance agreement. 1522

CIVIL COLLEGE – ECONOMIC CASES

284 The failure of the members meeting to pass a decision declining the enforcement of the claim against the general manager, and in spite of a regular motion, the failure to make a decision in the matter, shall result in the lack of the right to initiate proceedings by the represented company. The court shall pass a verdict and refuse the motion submitted by the plaintiff represented by the party not entitled to the right to initiate proceedings. If, in the course of the proceedings, the circumstances justifying the right to initiate proceedings represented by the minority are met, and within the limitation period, the condemnation of the general manager is still requested – when a decision is made after this, the motion may not be refused due to the lack of the right to initiate proceedings. 1528

285 The diplomats of the association may not be legally summoned in the matter, which the invitation does not include in detail. The legal violation is not remedied by the fact that the content of the invitation was made clear by the association after the legally set deadline applicable for the sending of the invitations, and also the fact, if at the session of the decision-making body, the proper percentage of diplomats does not approve the discussion of the legally specified matter. 1531

286 The judicial review of the decision made by the organs of the association may be requested by an application submitted before the deadline specified in subsection (1) of section 3:36 of Act number V of 2013 on the Civil Code. The deadline specified in subsection (2) of section 46/A of Act number CLXXXI of 2011 shall not be applicable for such legal action. 1534

CIVIL COLLEGE – LABOUR CASES

287 The reality and justification of the justification of a notice by an employee with an immediate effect shall be proven by the party making the statement. The examination of the employee with a breathalyser, notification about the labour consequences of the positive result shall not be qualified as a behaviour, which would render the maintenance of the employment impossible. 1536

288 The trade union may enforce its claim arising from the Labour Code or the collective agreement before the court. The option to submit this application shall not be the same as the

option to turn to the court specified in subsection (1) of section 289 of the Labour Code.
1539

289 If the employee works abroad – in the event of a dispute – first of all, the matter of applicable law shall be decided. 1541

PUBLIC ADMINISTRATION COLLEGE

290 Representation right can be examined with regard to its content. The examination shall also relate to whether there is any legal obstacle connected to the authorised procedure, and based on the examination of this, legal consequences related to the representation of the parties in the proceedings shall be drawn.

The Curia may not conduct evidence proceedings for the correction and supplement of the hearing minutes of first instance, and the same may not be ordered in the scope of review proceedings. 1544

291 In the course of the central higher education entrance exam proceedings, the rules of the Code of Administrative Proceedings shall only be applicable, if the act on national higher education specifies the same clearly and expressly. In the central higher education entrance exam proceedings, the principles of the Code of Administrative Proceedings shall be applied.

The legal provisions on the higher education entrance exam proceedings shall be interpreted taking into account the fundamental requirements of fair official proceedings and a proper legal practice. 1550

292 The decision made in the scope of deliberation may only be terminated or changed in case of legal violations. Deliberation is unlawful, if the authority evaluated factors, which cannot be taken into account in the course of deliberation – considering the closed list specified by the law. When there is unlawful deliberation, the public administration court shall not be entitled to review, as that would take away the scope of authority of the public administration authority. 1553

293 Vaccinations protect the health of the individual and the other members of society as specified in subsection (1) of section 57 of Act number CLIV of 1997. Immunity shall constitute the purpose of the law. 1556

294 In the request for new proceedings, it is not sufficient to refer to the reasons of renewed proceedings specified in the law, but actual specification shall be included with regard to based on what type of renewed proceedings in light of the given decision the plaintiff tries to submit the request for renewed proceedings. 1560

295 I. Financial supervisory measures may not only be based on a previous supervisory decision, but the violation of a specific legal provision.

II. The insurance company is in a stressed position, if for the coverage of a minimal capital need, the basic guarantee coverage is not sufficient, or it falls under the specified limit, or if in the scope of the activity, another especially severe emergency situation arises, which threatens the safety of the insurance services.

III. The stressed insurance position, itself shall justify the order of a supervisory commissioner for the purpose of the protection of the interests of those insured.

IV. The rights and obligations of the member of the Board of Directors specified in the law and the articles of association shall be exercised by the supervisory commissioner.
1561

296 With regard to the time taken in account with regard to the discounted pension of women, the period cannot be included, during which the applicant performed the gained activity in another structure than insured or similar legal relationship, because the entitlement period specified in subsection (2b) of section 18 of the Social Security Pension Benefits Act shall be qualified as the service period acquired by way of the legal relationship of insurance or other similar kind related to the gainful activity. 1565

297 Local governments shall provide for the freedom of electronic telecommunication services from applied technology and equipment. The establishment of electronic telecommunication buildings may be limited due to reasons related to public order, public safety and public health. The construction of such buildings may be subject to licences, at buildings or places of historical or natural importance. The construction of such buildings may not be prohibited from entire parts of settlements, and the development of electronic telecommunication equipment for the purpose of a specific technology. 1569

DECISIONS OF THE COURT OF THE EUROPEAN UNION

I. Judgement of 22 June 2021 in joint cases C-682/18 and C-683/18, Frank Peterson and Elsevier Inc. versus Google LLC and Co 1573

II. Judgement of the Court of 17 June 2021 in case C-800/19, Mittelbayerischer Verlag KG versus SM 1588

III. Judgement of 22 June 2021 in case C-718/19, Ordre des barreaux francophones et germanophone and Co versus Conseil des ministres 1591

FORUM

Róbert Muzsalyi, Matrix of jurisdiction in civil and trade cases 1599