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### CRIMINAL COLLEGE

**298** I. The police officer, as law enforcement officer, shall act based on a legal mandate. The (discretionary) mandates of his/her measures shall not mean that he/she can act out of the scope of his/her legal mandate, for personal reasons. The legal facts of abuse of official power clearly state that the crime is committed by the officer with the purpose of gaining unlawful benefits, or causing unlawful disadvantages. Based on a consistent judicial practice, every benefit is unlawful, which means any kind of ease to the beneficiary (that is loss), and any kind of difficulty for the one burdened by the same.

II. Double conviction – when realised – could be a reason for repeated proceedings in accordance with section 637, subsection (1), point b). The reason or justification for the review would be the suspension of the proceedings, when establishing the unlawful nature of the double conviction. 1617

**299** I. From the aspect of establishing the so-called business-like nature, the action taken for the purpose of gaining benefits, previously judged in another proceeding lawfully, and also the action, during which the accused party was aiming at gaining benefits, but culpability was terminated by way of voluntary withdrawal.

II. Budgetary fraud and the use of a private document for the purpose of the same are in a real aggregate. 1624

**300** If appeal may not be lodged against the definitive decision of second instance, appeal is not permitted by the law, and appeal may not be lodged against the operative part of such decision either. 1631

**301** The reason for appeal specified in section 615, subsection (2), point c) giving grounds to secondary appeal may only be realised, if the court of second instance establishes the criminal responsibility of the accused party in the action included in the facts of the case but not judged by the court.

Thus, proceedings of third instance shall not take place, if the court of second instance does not establish culpability in another crime, but (re)qualifies the action established by the court of first instance and evaluated based on criminal law differently. 1632

**302** In criminal proceedings against several accused parties, the reason for renewed proceedings specified in section 637, subsection (1), point g) of the Code of Criminal Procedure, may only be applied with regard to the accused party, against which the court conducted the proceedings in accordance with Chapters CI-CII of the Code of Criminal Procedure. With regard to other accused parties, the appearance of the same residing in an unknown place, and ordering renewed proceedings is not a new piece of evidence, thus shall not give grounds to renewed proceedings under such legal title. 1636

**303** A penalty, which can be imposed for the given crime – even applying mitigating circumstances – shall not itself be regarded as unlawful. Thus, such penalty may not be aggravated in the review proceeding even if the mistaken qualification was realised and

corrected by the court of second instance, but the content of the penalty could not be increased due to the prohibition of aggravation. The justification of the application of the mitigating circumstances shall not constitute a reason for review. 1638

**304** The accused party's spouse or partner shall only be entitled to submit a special remedy request against the order of involuntary hospitalisation. The review request, submitted by an unentitled party, shall be rejected by the Curia even, if submitted with reference to a real but different reason specified by the law. 1643

**305** Section 662, subsection (2) of the Code of Criminal Procedure is very clear of the fact that the Curia may amend the decision contested with the review. But this shall also bring about the fact that the procedural nature of the criminal decision contested with the special remedy is not changed based on the Curia's decision; that is the legal prohibition related to the imprisonment is realised in the review proceeding. A lawful decision, thus may only be made in a repeated proceeding subsequent to the repeal of the contested decision. 1646

**306** 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. 1648

### **CIVIL COLLEGE – CIVIL CASES**

**307** I. Real, valuable chance may not be subjected to a percentage. In each case, the special circumstances shall be taken into account, and taking into account all circumstances, can a statement be made in the matter whether in a given case, the patient had a real chance to recover or get better.

II. A chance qualified as small by the expert, but which cannot be quantified, the rate of which is adversely affected by severe factors such as the patient's natural severe diseases, and lifestyle habits, shall not be regarded as factors, which would mean the option of healing to be adjusted to reality should a therapy be begun in due course of time.

The health care provider's liability to pay damages may not be based on the fact that, in case of the right treatment begun in due course of time considering rationality and common sense, the healing or bettering of the patient may not be realistically expected. 1657

**308** The separate claim for damages from the aspect of lapse may only be based on a health damage occurring at a later point of time, which can be separated from previous ones, which arises in a rational relation to the damaging behaviour (Act number IV of 1959). 1660

309 I. If the author and the user enter into an agreement on the creation of a work, because the user was assigned by a third person previously to perform developments related to the work, of which the author is also aware, for the lack of a separate provision, it is clear that the author's contractual statement related to unlimited right of use is inclusive of the assignment of the right of use to third parties. II. For the purpose of the usage agreement to be realised, when defining the indispensably necessary method of usage and its rate – for the lack of the statement of the parties put in the agreement –, the interpretation, which is more favourable to the author shall be accepted. 1666

310 I. The independent ownership of the building separated from the ownership of the land results in a divided ownership, which means legal unity between parts of the property between the owner of the land and the owner of the building. The building may be acknowledged as the subject of an independent ownership, if registered in the land registry as a separate property.

II. From the purpose of the lease agreement between the builder and the land owner, the conclusion that the agreement of the contracting parties was related to the establishment of a divided ownership may not be drawn.

III. The right to use the land related to divided ownership shall be registered with reference to the owner of the building at all times in the land registry.

IV. When deciding on the type of relationship between the building and the land, not only their physical connection, but the function of the building, the period of its existence and the purpose of the unification of the things shall also have significance. As a temporary part of the building made based on the lease, it may be the subject of a separate sale, as an asset.

1672

311 Section 556, subsection (2) of the former Civil Code prohibits that the insurance company, in its own regulation, can establish the personal scope more freely than as specified in the law, the behaviour of those in this scope may justify the exemption of the insurance company. However, the law itself states that the behaviour of the leaders or those in charge of the management of the assets shall result in the exemption of the insurance company in accordance with section 556, subsection (1), points c) and d) of the former Civil Code. If in spite of the method of storing pallets in the factory and the express prohibition, regular smoking near flammable materials contributed to the fire, due to the extraordinary irresponsible behaviour of the insured legal entity, the insurance company shall be exempt from the payment obligation. 1678

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

312 I. Only the references submitted in accordance with the requirements and named in the review request may be examined (Act number CXXX of 2016 on the Code of Civil Procedure, section 423).

II. The members meeting summoned lawfully, initiated by the minority member may lawfully decide not to discuss the proposed items on the agenda. 1684

313 If the parties agree in the agreement that they would keep in contact with each other electronically, sending the invoices electronically, when establishing insolvency, electronically sent invoices shall be regarded delivered. 1688

314 The obliger of the claim given to the creditor – but not yet collected – shall not be entitled to submit an appeal against the decision made on the completion of the liquidation proceeding. 1690

### **CIVIL COLLEGE – LABOUR CASES**

315 The study agreement may be terminated by way of withdrawal after the period specified therein by way of termination by the employee with an immediate effect, and with the joint agreement of the parties. In such cases, the given subsidies may be reclaimed. 1692

316 Due to legal violation uncovered based on the trustworthiness examination, disciplinary proceeding may not be conducted arising from the prohibition rule based on section 7/A, subsection (1) of the Police Act.

Nevertheless, it is lawful to order, if in the course of the trustworthiness examination, there is a suspicion of crime, and based on the report, the commission of the crime is established by the court legally. 1697

### **PUBLIC ADMINISTRATION COLLEGE**

317 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 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. 1701

318 In accordance with section 30, subsection (6) of the former Taxation Act, the tax authority shall take measures ex officio with regard to the establishment and transfer of the tax difference specified for the tax payer. Failing this, the interest on arrears shall be payable. 1706

319 When a decision formed by the law is made, the specification of further laws and justifications is accepted. In such a case, however, the prohibition of changing the lawsuit shall not be applicable.

Failing to recognise the provable facts and imposing the burden of proof shall result in an insufficient proof.

From the aspect of the proof of the given facts, in the event of the attached inappropriate proof or offered evidence, the court has the obligation of proof. 1710

320 The Infocommunications Act provides 120 days for administration in the proceeding of the data protection authority, if this deadline is missed by the authority by more than twofold, fine may not be imposed. 1713

321 The reporting of marching events, which is demonstrative, is actually capable of causing fear in minorities, and those in this category by way of their belonging in that group, and shall give grounds to the limitation of the freedom of assembly. If the assembly authority orders a personal hearing, the parties are expected to mutually and really cooperate with each other when setting the appropriate date and time. 1716

322 The court shall be entitled to examine, when applying section 13, subsection (1), point c) of the Code of Administrative Litigation, the real residential address or permanent address of the plaintiff. 1718

323 In the reference period, income from the United Kingdom shall not constitute the basis of the calculation necessary for the specification of the average monthly salary specified in the Disabled Workers' Act, if it is not qualified as salary included in the financial health insurance contribution under the Taxation Act. In such a case, when establishing waiver – for the lack of a monthly average salary specified in the Disabled Workers' Act – the base amount specified in section 12 of the Disabled Workers' Act shall be taken into account. 1719

324 The decision of the local government may not violate the law. Regulation related to the same or similar life relations may not be unjustifiably parallel or multilevel. The horizontal separation of the regulation is in violation of section 3 of the Act on Legislation. The requirement of clear norms also includes that the regulation shall not be faulty from the aspect of regulation methodology. 1723

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