

Communication concerning the decision of the Curia of Hungary in  
criminal case number Bfv.II.505/2021

In the apartment he occupied, the accused person kept 146.2 grams net weight of cannabis (with a total THC-content of 6.84 grams) and 13 pills of pentedrone (with a net weight of 6.66 grams), a digital scale contaminated with delta-9-THC and a Chinese pressing machine marked TDP 1.5 t. The pentedrone pills found on the accused person were made by a person who remained unknown during the proceedings by way of using the pressing machine seized from the accused person. The latter consumed a small quantity of the cannabis he had obtained.

The court of first instance sentenced the accused person to three years' imprisonment and three years of prohibition from public affairs for the crime of drug abuse [section 282, subsection (1) of the former Criminal Code] as a multiple recidivist, with the proviso that the accused person could not be released on parole from the sentence imposed. Acting upon an appeal submitted by the accused person and his defence attorney, the court of second instance overturned the judgment of the court of first instance and reduced the sentence to one year and 10 months' imprisonment. The remainder of the first instance judgment was upheld by the court of second instance.

The accused person filed a petition for judicial review against the final on-the-merits decision, arguing that the impugned judgment had convicted him of drug trafficking in violation of the speciality rule set out in section 30, subsection (1) of Act number CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union (hereinafter referred to as the EU Criminal Cooperation Act).

The Curia of Hungary found the petition for judicial review to be unfounded. In fact, the accused person's objections formulated in his petition for judicial review could be considered to meet the grounds for judicial review under section 649, subsection (2), point f) of the currently applicable Code of Criminal Procedure.

The judicial review procedure is governed by the provisions of the currently applicable Code of Criminal Procedure (Court Decisions number 2019.103). Section 30, subsection (1) of the EU Criminal Cooperation Act has already stipulated with temporal effect for the entire duration of the main proceedings that the transferred person may not be prosecuted, convicted or otherwise deprived of his or her liberty for an offence committed before the transfer other than the offence on the basis of which the transfer was made, with the exceptions listed in subsection (2). However, the statutory provisions on international cooperation in criminal matters and on criminal cooperation with the Member States of the European Union do not fall within the scope of the rules of substantive criminal law and within the scope of procedural infringements that give rise to the unconditional quashing of the impugned criminal court decision (Court Decisions of Principle number 2013.B.4).

Section 721/A of the Code of Criminal Procedure contains the relevant provisions governing the exemption based on the speciality rule with effect from 1 January 2021. However, they can be interpreted only in accordance with the other provisions governing the judicial review procedure, such as section 659, subsection (2) of the Code of Criminal Procedure.

The Code of Criminal Procedure in force at the time of the delivery of the final judgment at second instance did not provide for the unconditional quashing of the impugned judgment as a legal consequence of the infringement of the rule of speciality. Accordingly, under the criminal procedural law in force at the time of the delivery of the impugned judgment, the alleged breach of the law could be assessed as a so-called relative procedural infringement under section 609, subsection (1) of the Code of Criminal Procedure, which could not result in an unconditional quashing, and therefore could not be remedied in the judicial review proceedings.

The rules of section 721/A of the Code of Criminal Procedure in force as of 1 January 2021 only in accordance with section 659, subsection (2) thereof were not applicable in the judicial review proceedings at hand. Factual and legal changes that occurred after the contested decisions became final cannot be taken into account in the judicial review procedure, even if they are in favour of the accused (Court Decisions of Principle number 2011.2305).

For the reasons set out above, the Curia of Hungary dismissed the petition for judicial review and upheld the impugned court decision.

Budapest, 27 April 2022

Criminal Department of the Curia of Hungary