

Communication concerning the decision of the Curia of Hungary  
in criminal case n° Bhar.I.1018/2017

The 52-year-old accused person had been sexually abusing, for about six months, an 8-year-old child, who had been periodically accommodated and looked after by him, by way of committing and having his victim carry out sexual acts for the satisfaction of his sexual desire and by forcing his victim, on one occasion, to watch an adult erotic movie with him.

The court of first instance, hence, found the accused guilty of sexual violence committed continuously against a person in his care and under the age of twelve years [section 197, subsection (2), subsection (3) and subsection (4), point a), part II of the Criminal Code] and imposed a seven years imprisonment on him.

The court of second instance modified the first instance judgement and found the accused also guilty of the crime of abuse of a minor [section 208, subsection (1) of the Criminal Code], and consequently aggravated his punishment by cumulatively sentencing him to an eight years and six months imprisonment. On the other hand, the appellate court prescribed the type of incarceration one degree down.

Since the court of second instance found the accused guilty of a criminal offence that had not been previously examined by the court of first instance, the provisions of section 386, subsection (1), point b) of the Code of Criminal Procedure opened the way for third instance appellate proceedings.

Proceeding upon the third instance appeals submitted by the accused and his defence attorney, the Curia modified the second instance judgement and, based on the pieces of evidence correctly assessed by the lower instance courts, decided to abandon the factual elements referring to the accused person's aggressive conduct. With regard to the above and the fact that, as a result of the Constitutional Court's decision (decision no. 19/2017 AB of 18 July 2017) to declare the Curia's uniformity decision no. 2/2016 BJE unconstitutional, the Curia quashed the latter by uniformity decision no. 1/2017 BJE, the supreme judicial forum re-qualified the crime of sexual violence committed by the accused to make it fall under the less severe provisions of section 197, subsection (2) of the Criminal Code. The Curia, however, established that there was no possibility for the alleviation of the criminal sanctions imposed on the accused, as the re-qualification had no impact on the applicable legal framework of imprisonment.

Budapest, the 10<sup>th</sup> of January 2018

Criminal Department of the Curia of Hungary