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DEPENDENCE FROM CRIMINAL JUDGEMENT AS THE CIVIL COURT'S LIMIT OF FREE STATEMENT OF FACTS – THE EXAMPLE OF HUNGARIAN LEGAL PRACTICE

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Based on the free statement facts, the court acting in a civil case may freely use and evaluate the available evidence based on their conviction, without formal rules of evidence. Justified exceptions from the ground rule may be stated only in a restrained circle. For several decades Hungarian procedure law contains partial dependencefrom the judgement of a criminal court as one of these exceptions. The meeting point of two different legal areashas always had special importance. This study aims to review the challenges created by this exceptional dependence and the chief stages of the development of the law.

KEYWORDS: civil Process / civil right liability / free statement of facts / criminal judgement / Hungarian Civil Procedure Code

THE SIGNIFICANCE OF THE FREE STATEMENT OF FACTS IN A CIVIL PROCESS – THE GROUNDS

Civil trials can only fulfil their role expected by society if they are based on the full right of disposition of the parties, concerning the rights involved in the process, and the applicability of procedural tools which promote the quick finishing of a dispute.

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Free statement of facts which serves as the ground for the substantive decision is the court's most important freedom of judgement in civil trials. During the determination of the framework of the dispute the parties are obliged to state the facts supporting the head of claim or the counterclaim and to prove of the disputed facts – adjusting to the interest of proof, but based on the available case file, the court has to state the facts which determine the dispute based on the legal evaluation. No burden of proof is attached to the position of the parties in the process which may be paralleled to the presumption of innocence in criminal law, so the legislator does not expect any "beyond doubt", "beyond the bounds of probability", or any such proof. Consequently the freedom of consideration assured for the court also means considerable responsibility. To assure that is does not become arbitrary, the legislator determined the bounds as the adequacy of the logical rules. This freedom does not only appear in the field of the available tools of evidence, or the omission of formal evidence rules, but also in the free consideration of the results of the evidence. The arguments of several final judgements have argued that during the free consideration of the evidence the judiciary takes into account whether the statements of facts by the parties are supported by the evidence presented by them or not. The statement of facts is sufficient to the procedure rules if it is in accordance with the documents, is rational and is based on correct conclusions. The control of free evidence is the obligation to justify by the court, when the court gives account of what circumstances it considered when it accepted or refused the level of evidence of a certain fact. The justification has to conform the basic rules of evidence, it must not be unreasonable, irrational or against the factum.[1]

The civil court's freedom to state the facts, however, is not unlimited, as the Hungarian procedure law has included the dependence fromcriminal judgement for decades, and since 1 January 2018 also dependence from the judgement of a court acting in administrative cases.

THE HISTORY OF THE REGULATION OF DEPENDENCE FROMCRIMINAL JUDGEMENT

Dependence from the judicial decision of the court acting in a criminal case stating the criminalliability is not a new institution in Hungarian civil procedure law. Since the effectuation of Act 3 of 1952 (the 1952 procedure code) – without essential changes in the text or the regulation background – the concerning law has prescribedthat the court acting in the civil case must not re-evaluate the facts establishing the offence when considering the substantialconsequences of the offence – practically only the damage caused by the offence –, even though the court could have state the facts freely. Additionally the criminal judgement does not

[1] Debrecen Court of Justice Pf.I.20.498/2014/3., Pf.I.20.306/2014/4.

necessarily create the legal ground for the civil law liability, and the conditions of the civil law liability must be judged by the civil court.

The 1952 procedure code has regulated the dependence of the civil court's decision to other courts since its effectuation. Paragraph (1) of Section 9 – effective until 31 December 1999 – declared that if the substantial consequences of an offence finally judged must be decided in a civil trial, the court must not determine in its decision that the convict did not commit the crime debited to them, while paragraph (2) expressed that the court is not bound by another court's decision or disciplinary judgement or any fact included in the above mentioned when making a judgement. One cannot, however, neglect that in contrast to the recent solutions the procedure code had seen the role of the court in judging legal disputes completely differently. Even though paragraph (1) of section 6 of the standard text effective until 31 December 1999 said that in case the law does not dispose otherwise, the court is not bound to formal evidence rules, the determined way of proof or defined tools of evidence in the civil process, thus it can freely use the presentations of the parties, and make use of any other evidence which are suitable for ascertaining the facts, the directions of section 1 of the code expressed that the intention of the law was to assure judgement based on the truth in disputes of the personal and asset rights of citizens, and of the government and legal persons in processes in front of the court. Accordingly, paragraph (1) of section 3 stated that the court is obliged to make efforts to ascertain truth in accordance with the purpose of the law. Act 110 of 1999 brought an essential change in approach. The new regulation wished to make obvious the restraining of the ex officioprinciple, and accordingly aimed to restrain the judge from continuing the evidence procedure as long as it is necessary from his aspect, contrasting efficiency, and intended to entrust the parties with presenting the process material necessary for the statement of facts. Alongside with the amendments of this law procedure regulations were not changed textually, only appeared in the reverse order, thus maintaining the former regulation in another stage, resulting that – according to paragraph (1) of section 4 – the decision of the court is not bound to another court decision or a disciplinary decision, and the statement of fact included in them does dot order so, but – according to paragraph (2) of section 4 – if the substantial consequences of a finally judged offence must be judged in a civil trial, the court must not state in its decision that the convict did not commit the offence debited to them. Accordingly, the rule in the former paragraph (1) of section 6 now inevitably supporting the system of free proof was placed in paragraph (5) of section 3.

Act 130 of 2016 about the new civil procedure code, effective since 1 January 2018, did not alter the former standard text, apart from replacing the section from the ground principles among the rules of evidence, and it stated in paragraph (2) of section 263 titled "the principle of free statement of fact" that the court is not bound in its judgement by another court's decision or a disciplinary decision, or a fact stated in them, except for the cases determined in the following section. Paragraph (1) of section 264 commandsunaltered under the headword "dependence from another court's decision" that if the asset rights involved in a finally judged criminal

offence must be judged in a civil process, the court must not state in its decision that the convict did not commit the offence debited to them.

DEVELOPING JUDICIAL PRACTICE

The long-term unaltered regulation promoted the development of a consequent and unambiguous judicial practice. Obviously, the relationship with the criminal court judgement results in an absolute dependence in the system of free evidence, namely that the court acting in a civil case must not dispute the criminal offence debited to the convict in the criminal process, neither the facts establishing it. The judgement of the criminal court, however, does not have any effect in any other aspect on the civil process, the conditions of civil right liability must be judged independently by the civil court. Thus the dependence is minimised so much that there is an approach in legal literature (József Farkas) which holds this limit unnecessary.[2]

Several exemplary court cases and the legal literature that supports their argument are typically focused around two major aspects. One aspectaims to avoid the formal approval of the dependence from criminal judgement without factual legal consequences as an incorrect interpretation, the other calls the attention of the judiciary to the necessity of the independent judging of the civil law liability independently from the dependence.

The law-developing interpretation of the judiciary practice was outstandingly important because the texting of the law is formulated grammatically taciturnly, to understand its meaning both taxonomic and logical interpretations are crucial. The inattentive interpreter may fall into two typical mistakes. Either it is the obligatory compensation for the damage ifthe liability of the party is debited to have caused the damage by any means was ascertained; or the facts grounding the judgement of the criminal court is completely ignored and consequently the different consequences of liability are applied, only avoiding to announce that the convict did not commit the offence debited to them.

Hungarian law application developed the measures of correct application by both extreme interpretations and by clarifying the relationship between the independent civil law liability and the dependence from criminal court judgement.

The developmental interpretation of the expanse of the dependence from criminal judgement became necessary because any interpretation which ignores the taxonomic correspondences of the standard text may lead to a result according to which the court acting in a civil case merely has to accept the offence formally, but it is in no aspects bound to the facts which establish the offence. On the other hand, it completely conflicts the intention of the regulation if the court acting in a civil case states the facts in its power of consideration differently from the criminal court

[2] Farkas, József: *Kötöttségek a bizonyítékok szabad mérlegelésénél a polgári perben*. In.: Károly Tóth (ed.):Szilbeky-emlékkönyv. Szeged, 1987. pp. 65-74.

which would result in the exclusion of criminalliability. The final judgement of the court acting in the criminal case binds the civil court not only in the fact of committing the offence but also in the sense of the facts that substantiate the offence.[3] The opposite interpretation would result in the nullification of the dependence of the procedure, as the regulations of substantial law do not establish an independent form of tort or compensation as a result of the offence, so it cannot be supported. Even though the justification of the criminal case does not obligate the courtacting in the civil case, and based on the proofing procedure, by means of considering the evidence the civil court may state facts that are different from the criminal judgement, but it may not state the lack of offence. However, we cannot come to the conclusion that the statement of criminal liability becomes the legal ground for the civil law liability or beyond the legal ground it could determine the quantified measure of the damage. The dependence from the facts substantiating the offence always depends on factual elements of the certain offence, namely which facts cannot be reconsidered, and what measure of freedom the civil court still has in its judgement. Consequently, in case the offence is a material offence for which an asset injury must have been caused, then the civil court acting in a tort trial must accept as a matter of fact that the offender caused the aggrieved party a defined injury by which the facts stated by the criminal court were realised.

Another possible misinterpretation of the civil court's dependence from the criminal judgement could be based on the possibility if legislator made the statement of the offence evidently equal to the statement of the civil tort liability. Neither the procedure nor the substantial regulations result in such an interpretation. There is not even an independent form of liability to compensate for the "damage caused by offence", and this legal institution is significant only because of the special regulations among the procedural rules of the free statement of facts and the substantial rules of the limitation period.

Several court decisions have pointed out the requirement of the independent judgement of civil liability. Among these the most characteristic was the final judgement of the Budapest Court of Justice which we are going to examine in detail below.

The claimant of the trial claimed for tort from the respondent because the final judgement had already stated the respondent's guilt in the crime of embezzlement. According to the fact stated by the criminal judgement the defendant disposed of the assets of a company as his own, when he lent large sums of money on behalf of the company, but without the consent of the general meeting; later the debtor which ceased to function without a privy did not pay them back. According to the claim, the first-instance court of the civil case highlighted in their mainly convicting judgement that in regard to the final criminal judgement – based on paragraph 1, section 4 of the 1952 civil procedure code – in a civil process it cannot be disputed that the respondent disposed of the sum on the company's account as his own when he

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[3] Debrecen Court of Justice Pf.II.20.053/2010/6. – published:BDT 2010.2249

borrowed it, committing embezzlement. According to paragraph (1) of section 339 of Act 4 of 1959 on the Civil Code (the 1959 Civil Code) the necessary conditions for stating tort liability, the unlawful and imputable action can be stated on the ground of the convicting judgement. The eventuation of the harm is also proven, given that embezzlement is offence against property, and the damage was caused by the unlawful action of the defendant.

In the appeal against the first-instance judgement the defendant argued that the final criminal judgement proved only the unlawful and imputable action, but not the damage or the causality between the action and the damage. The second-instance court accepted this criterion of the appeal, though the court agreed with the judgement of the first-instance court, but for different legal reasons. The final judgement pointed out that the claimant based their claim on the fact that the defendant caused damage to the company. As a result of the dependence on the criminal judgement the defendant's embezzlement could not be disputed. However, the second-instance court did not agree that with the final criminal judgement the claimant proved all the necessary conditions for the tort, namely beyond the unlawful action of the defendant, the realisation of the damage and the causality. The circumstance that embezzlement is offence against property does not mean that by committing it, there is always damage: the term "offence against property" points out only the legal object of the offence, to which damage cannot automatically related. Embezzlement is committed by a person who unlawfully appropriates or disposes as his own a thing which he has been entrusted. It is obvious then that causing damage is not a factual element of embezzlement. The criminal judgement only proved the criminally unlawful action, but did not support the further legal conditions of tort. The damage was another circumstance imputable for the defendant, namely the property damage caused by the fact that the debtor ceased to exist without privy and the debt of the contract could not be collected, which is independent from the criminal liability.[4]

Tort liability cannot be stated merely because the person indicated as having caused damage was ascertained to have been liable for an offence in a certain offence: for compensating damage all the civil law liability forms of condition must be fulfilled. If damage is not a factual element of the certain offence, the examination of this condition cannot be ignored even though there is a final criminal judgement.

The independent consideration of the conditions of civil law tort liability was highlighted in the guidance final judgement of the Debrecen Court of Justice, too.

According to the statement of facts which served as the basis of the process, the claimant made leasing contracts for different valuable machines, but the leasers did not pay the leases. The respondent of the trial contributed to the leasing contracts by presenting representative of the claimer the machines which were

[4] Budapest Court of Justice 17. Pf.20. 136/2011/3. – published: BDT. 2012. 2872

going to be the subjects of the future contracts and which were to be transported by the company to which the respondent belonged to then. For this action the final criminal judgement stated his liability as it found him guilty – among others – of fraud causing damage to the claimer of considerable value, committed in criminal association on a commercial scale as accomplice.

In its judgment the first-instance court convicted the defendant for fraud causing damage of considerable value in criminal association by his action related to the leasing contracts as accomplice. The judgement pointed out that if the property law consequences of a finally judged offence must be judged in a civil process, the civil court must not state that the convict did not commit the offence imputed on him. Causing damage is a factual element of the crime of fraud committed by the defendant, as regulated in Act 4 of 1978 about the Criminal Code (the 1978 Criminal Code). If the court refused the claimant's claim for the compensation for the damage caused by the defendant's offence, it would – according to the court's approach – mean the revision of the final criminal judgement by the civil court, which is not allowed by the law. Not only the provisioning part of the judgement must not be disputed in the civil process, but also the statement of facts which found the guiltiness of the convict, since the different or opposing statement of facts would affect the question of guiltiness, too.

The final judgement, however,could not establish the defendant's civil tort liability. It accentuated that the judicial practice is consequent and unambiguous as the final judgement of the criminal court does not only restrains the civil court from the aspect of committing the offence but also from the one of the facts establishing the offence. Damage is a legal factual element of fraud, consequently the civil court must not establish facts that differ from the final criminal judgement referring to the injury debited to the defendant, the fact of the damage, the causality and the action causing damage. So the existence of the facts which the criminal court established on the debit of the defendant cannot be disputed in a civil process, namely that the defendant agreed on the transaction with his accomplices, made plans that they lease the presented machines which their company had sold to the claimant, but they would not pay the complete lease, rather they would sell the machines and share the price.

Altogether the final judgement highlighted that the binding force of the criminal judgement does not exclude the substantive examination of civil liability. In its final judgement stating guiltiness in the offence of fraud the criminal court examined damage as the factual element of fraud, but did not / could not decide in terms of the tort liability of the person committing fraud. Consequently the court acting in the civil trial had to decide independently about the question whether the person committing offence has a civil law liability for the damage which he caused, however, the civil court could not state that the action of the defendant did not cause damage to the claimant. If the very same action of any person exhausts the legal circumstance of an offence and at the same time the action is against civil law, from the aspect of civil law sanctions the regulations of civil law must be applied. In the process the defendant was a member of the company at the time of the offence

debited to him, and he was also employed by the company. The effectual law at the period of the offence, the guidance law, paragraph (1) of section 121 of Act 145 of 1997 on business organisations excluded the liability of the member, while paragraph (1) of section 348 of the 1959 civil code excluded the direct tort liability of the employee. Civil substantial law norms do not deal with delictual liability fact of "damage caused by offence", hence the civil law consequences concerning the action of the member or employee of the company do not change themselves only because the action exhausts the legal fact of the offence at the same time. The civil law consequences cannot directly be applied even if the member or employee – legal person in his circle of action, with his membership relation, or acting in his employment – committed offence. The civil law liability concerns the legal person and the employee. As a result, the second-instance court revised the judgement of the first-instance court, and refused the claim against the defendant.[5]

The obligatory approval of the offence and the independent consideration of the civil law liability challenges greatly the judiciary when they have to decide not about the property consequences of the offence, but the effects of another offensive action. This challenge is clearly indicated in the judgement of the Supreme Court, the predecessor of the Curia.

The 1959 Civil Code did not regulate the validity of the fiduciary credit guarantees, so several resultive problems had to be judged by the judiciary. The majority's point of view did not find discrepancy between substantial right established as fiduciary assurance and the prohibition of *lexcomissoria*, provided that the parties did not foreclose the obligation of accountability.[6] At the same time, however, judiciary judging examined the action of the persons regularly lending money this way typically as the fact of fraud. By these judgements a special antagonism came forth between the under civil law valid contract and the criminal evaluation of the action also involving property damage leading to the same contract. According to the facts founding the quoted revisionary judgement a collaborator involved in the transactions but not in the trial regularly borrowed money from private persons for himself by means of offering other persons' real properties as guarantee, and in return he passed 10 % of the loan to the owners of the properties. The loans were not payed back, so the property owners involved lost their properties. The claimant of the trial also made business with him as the collaborator lent him the money he got from the defendant of the trial, and as the guarantee of the loan, the claimant made a purchase contract with the defendant for the property owned by the claimant. The contract included the amount of the loan increased with the loan interest equal to the price by assuring the debtor's right to repurchase the property until the expiry of

[5] see: SupremeCourtPfvPfv.VI.20.823/2008/6., BH 1999.452, major concerningliterature:Gárdos, István – Gárdos, Péter: *Van-e a fiduciárius biztosítékoknak helyük a magyar jogban?* Polgári Jogi Kodifikáció. 2004.1.-2.,pp. 33-47, Layer, Zsolt – Leszkoven. László: A *bizalmi (fiduciárius) biztosítékokról.* Polgári Jogi Kodifikáció. 2004.1.-2.,pp. 23-33
[6] Debrecen Court of Justice Pf.II.20 206/2011/6.

the loan. Later the final criminal judgement convicted the collaborator for fraud and embezzlement committed on a commercial scale.

In the civil trial the claimant claimed for the statement of the annulation of the purchase contract on his property. The final judgement refused his claim – definitely as a result of the revision with regard to the criminal process – stating that the contract was not pretence, as the claimant was aware of the fact that if he did not pay back the loan, the defendant would acquire the property serving as guarantee, and there is no legal objection for the parties to make a purchase contract to secure the loan.

The claimant contested in the revision claim against the final judgement that the civil court could not have stated a fact different from the criminal judgement, if it could, it would question the lawfulness of the criminal judgement. The Curia, however, did not agree with the statement of the revision. It pointed out: if the legal consequences of the finally judged offence must be decided in a civil trial, the court must not come to the conclusion that the convict did not commit the offence debited to him. According to the regulation, the civil court is not bound by the fact stated by the criminal court. It can merely not state that the named persons did not commit the offence of fraud and embezzlement. The criminal court decides about the legal consequences of the examined offence. The civil court does not have to examine a civil contract from a legal point of view, especially not to state the validity or invalidity of a certain contract. Judicial practice developed in the actual effective legal circumstances was unequivocal, it did not prohibit the citizens from offering their property as guarantee, consequently the nullity of the purchase contract could not be stated even against the final criminal judgement.[7]

As a summary: the dependence discussed in detail above – which cannot be extensively interpreted – means that the acting court cannot dispute the offence debited to the convict in a criminal procedure, neither the facts substantiating the judgement. It cannot be neither intensively nor extensively interpreted, but the judgementof the criminal court does not affect the civil process in other aspects, and the conditions of civil liability must be judged independently.

OUTLOOK: DEPENDENCE FROM A COURT DECISION IN AN ADMINISTRATIVE CASE

The Civil Procedure Code introduced another dependence besides the decade-old dependence assigned in the scope of the consequences of an offence by a court acting in a criminal case: Paragraph (1) of section 264 regulates that the final decision of a court acting in an administrative case on the lawfulness of an administrative action binds the court acting under the scope of the law. As an exception from the free statement of facts the civil court depends on both the criminal and the

[7] SupremeCourt Pfv.VI.21 539/2009/6.

administrative courts' judgement, under circumscribed conditions. Between the two procedure dependences, however, there are significant conceptual and practical differences – resulting from their role, duty and aim in the legal system.

One of the major differences is that concerning criminal judgement the law definitely provisions that the criminal judgment creates dependence only in one direction, in case of establishing guiltiness, so avoidance to state criminal liability does not bind the civil court, even for the same action the civil court may state civil liability, for which action the criminal court acquitted the offender. Dependence from administrative judgement is, however, relevant involving both the lawfulness and the unlawfulness of an administrative action, according to the law. Consequently, only the court acting in administrative case can judge the legality of an administrative action – if the law assures the administrative judicial channel –, and if the civil court has to decide on the civil law consequences based on the legality or illegality of the action, it cannot measure whether the action conforms to common law regulations.

An even more important, crucial difference between the two legal institutions is that while it is neither a legal nor a procedural condition of the compensation for a damage caused by an offence to take the judicial channel, on the other hand dependence from administrative judgement can be interpreted only together with the substantial and procedural law conditions of damage caused in administrative legal position as defined in the administrative judicial channel. The reason for the conceptual difference is that in the previous case there is no special tort liability form, but in the latter case there is. Processes on compensation for damages caused in administrative power belong to civil courts, with the exception of one element of the tort liability form which the law referred to the administrative judicial channel. Consequently the (common law) illegality must be stated by an administrative court. A substantial precondition to recognise the civil claim for the compensation of injury caused in administrative power is to take the administrative judicial channel ("obligatory legal injury elimination"), and the procedural precondition is that the administrative court – if the administrative judicial channel is assured – has to establish the offence finally. Without it the claim cannot be accepted, the civil court must refuse it. As the legal literature evaluating the new legal institution pointed out, the general procedural precondition results in the administrative judicial channel, while the assured administrative judicial channel results in the obligatory unconditional use of it.[8]

SUMMARY

The Hungarian Procedure Code represents an unequivocal approach in the sense that – alongside with the professional process conduct and the necessary action of

[8] Jójárt Eszter, Gelencsér Dániel*: Közigazgatási jogkörben okozott kár érvényesíthetőségének változása az új eljárásjogi szabályok hatálybalépésével*. Magyar Jog. 2017/5.,pp. 298-304.

the court – it imagines the effective judgement of private law disputes based on the right of disposition and the priority of the concentrated process. To conform this aim it wishes to create rules that suit the previous requirements by codifying the correct judicial practice and avoiding inaccurate definitions. Among these it regulates dependence from the judgement of the criminal and the administrative court. The meeting point of the two legal areas based on different criteria always raisesseveral questions of legislation. However, one can suppose that consequent judicial practice and the related literature handles these difficulties well.

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ZAVISNOST OD KRVIČNIH PRESUDA KAO OGRANIČENJE GRAĐANSKIH SUDOVA U SLOBODNOM UTVRĐIVANJU ČINJENICA – PRIMER MAĐARSKE PRAVNE PRAKSE

Utemeljen na činjenicama dobijenim slobodnim izjavama, sud u građanskim parnicama ima i mogućnost da slobodno koristi i ocenjuje dostupne podatke proistekle iz prethodnih presuda, bez formalnih pravila evidencije. Opravdani izuzeci od ove procedure mogu biti izneti samo u ograničenim slučajevima. Već nekoliko decenija mađarsko procesno pravo sadrži delimičnu zavisnost od presuda krivičnih sudova kao jedan od takvih izuzetaka. Tačka susreta dve različite pravne oblasti je oduvek imala poseban značaj. Ova studija ima za cilj da razmotri izazove nastale usled ove posebne zavisnosti i osnovnih stupnjeva razvoja prava.

KLJUČNE REČI: građanski proces / odgovornost u građanskom pravu / podnesak / krivične presude / mađarsko procesno građansko pravo