

Communication concerning the decision of the Curia of Hungary  
in the criminal case n° Bfv.I.229/2013

In its judgement n° 6.B.488/2009/158 delivered on 10 February 2011, the County Court of Jász-Nagykun-Szolnok condemned the sixth accused for committing, as a co-perpetrator, the crimes of trafficking in human beings [Article 175/B, paragraph (1) and paragraph (2), points a) and d) of the Criminal Code] and living on earnings of prostitution [Article 206 of the Criminal Code]; consequently imposed a term of imprisonment of three years on the sixth accused and deprived him of his civil rights for an additional three years. The term of imprisonment was reduced by the accused person's pre-trial detention period, in addition, he was obliged to pay the criminal costs. With its judgement n° Bf.II.428/2011/35 rendered on 12 December 2011, the Regional Appellate Court of Debrecen modified the first instance court decision, partially re-qualified the imputed acts of the sixth accused as regards the crime of trafficking in human beings [Article 175/B, paragraph (2), points a) and d), and paragraph (4), point a) of the Criminal Code], and further reduced the imposed term of imprisonment by the accused person's pre-trial detention time elapsed between the delivery of the first and second instance judgements.

According to the facts of the case, the second and fifth accused sold the victim to the sixth accused, enabling him to obtain earnings from the victim's prostitution activities. In November 2001, the victim had sexual intercourse with men on a regular basis in the apartment of the sixth accused, the prostitution-related earnings were given to the sixth accused who used them for personal purposes. As a sign of their failed business agreement, the first and second accused demanded money from the sixth accused who shortly after the conclusion of the "sales agreement" changed his mind and, on the basis of the victim's behaviour, no longer wished to employ the victim for prostitution purposes. The defence attorney of the sixth accused submitted a petition for judicial review against the final court decision, arguing that the lower instance courts had violated substantive criminal law and had acted without lawful indictment. The defence attorney pointed out that the findings according to which the sixth accused had purchased the victim from the second and fifth accused and those according to which the first and second accused had demanded money from the sixth accused due to the failure of their business agreement were contradictory, and this contradiction could lead to the conclusion that the sixth accused had not committed the crime of trafficking in human beings. Since the victim's testimony did not contain any relevant information and no evidence was gathered to prove the existence of the "sales agreement", the defence attorney emphasised that the sixth accused had only been given a mandate to take care of the victim, but could not handle her, and decided to give her back to the second accused; therefore due to the lack of mutual will no "sales agreement" had been concluded between the parties. Pursuant to Article 2, paragraph (2) of the Code of Criminal Procedure, the indictment shall be considered lawful if, in order to initiate court proceedings, the prosecution submits its accusatory instrument to the court against a particular person for the alleged commission of precisely determined acts that violate the provisions of the Criminal Code. In its criminal departmental opinion n° BKv 4, the Curia stressed that, with regard to Article 2, paragraph (4) of the Code of Criminal Procedure, the courts are not bound by the qualification of the imputed acts given by the prosecution, and are entitled at their discretion to re-qualify them; the indictment can be considered lawful even if it contains no specific reference to the violated provisions of the Criminal Code. If as a result of the taking of evidence the court deems that the aggravated case of the imputed criminal act can be established, it is entitled to examine the aggravated case – by respecting the principle of the identity of the imputed acts and the rules of competency – even in the absence of the

modification of the indictment by the prosecution. Furthermore, the indictment included that the victim had been under the age of eighteen at the time the criminal acts had been committed, and it also precisely determined the victim's age. Consequently, the indictment judged by the impugned court decisions was completely lawful. The facts of the case demonstrate that the accused person undoubtedly committed the crimes of trafficking in human beings and living on earnings of prostitution, and his criminal liability for these two acts was established in accordance with the relevant provisions of substantive criminal law. Hence, in its court order n° Bfv.I.229/2013/6 delivered at its public hearing held on 11 June 2013, the Curia examined the petition for judicial review submitted by the defence attorney of the sixth accused, and upheld the first and second instance judgements as regards the sixth accused.

Budapest, the 3<sup>rd</sup> of July 2013

Criminal Department of the Curia of Hungary