ELTE LAW JOURNAL

2019/1

ELTE LJ

ELTE LAW
EÖTVÖS LORÁND UNIVERSITY

ELTE Law Journal, published twice a year under the auspices of ELTE Faculty of Law since 2013

Contact • eltelawjournal@ajk.elte.hu
Eötvös Loránd University, Faculty of Law • 1053 Budapest, Egyetem tér 1–3, Hungary
For submission check out our submission guide at www.eltelawjournal.hu

Recommended abbreviation for citations: ELTE LJ

ISSN 2064 4965

Editorial work • Eötvös University Press
18 Királyi Pál Street, Budapest, H-1053, Hungary

EÖTVÖS UNIVERSITY PRESS www.eotvoskiado.hu

Executive Publisher: the Executive Director of Eötvös University Press
Layout: Tibor Anders
Cover: Ildikó Csele Kmotrik
Printed by: Multiszolg Bt.

Contents

András Koltay*

The Freedom to Discuss Public Affairs and the Protection of Personality Rights in the Hungarian Legal System

I Introduction

For many years, the limitation of the protection of the personality rights of public figures in Hungary was not based on statutory provisions. The point of departure for distinguishing between the personality rights of public figures and those of ordinary citizens was Decision 36/1994. (VI. 24.) AB of the Constitutional Court of the Republic of Hungary, which laid down certain fundamental principles. The Constitutional Court identified two outstanding constitutional interests, the possibility to criticise the activities of bodies and persons fulfilling state and local government tasks in public and the ability of citizens to participate in political and social processes without uncertainty, compromise or fear. As such, while the constitutionality of protecting the honour and reputation of individuals in the public sphere by means of criminal law may not be excluded, the freedom of speech pertaining to such persons may only be limited to a rather narrow extent in comparison to speech concerning private persons, and then only in order to protect persons exercising state powers. Furthermore, the Constitutional Court laid down certain 'constitutionality requirements' as to the applicability of libel and defamation in criminal law:

> An expression of a value judgement capable of offending the honour of an authority, an official or a politician acting in public, and expressed with regard to his or her public capacity is not punishable under the Constitution; and an expression directly referring to such a fact is only punishable if the person who states a fact or spreads a rumour capable of offending one's honour, or uses an expression directly referring to such a fact, knew the essence of his or her statement to be false, did not know of its falsehood because of his or her failure to pay attention or exercise the caution reasonably expected of him/her pursuant to the rules applicable to his or her profession or occupation, taking the subject matter, the medium and the addressee of the expression in question into account.[1]

* András Koltay is a professor of law at the National University of Public Service (Budapest) and the Pázmány Péter Catholic University (Budapest).

[1] Decision 36/1994. (VI. 24.) AB of the Constitutional Court of the Republic of Hungary, operative part.

This test establishing the liability of the perpetrator for deliberate lies or in the event of negligence is rather similar – but not identical to – the *Sullivan* rule developed by the US Supreme Court in 1964 in the *New York Times v Sullivan* case.[2] The codification of the Civil Code and its taking effect in 2014 was a major milestone on the road to limiting the protection of the reputation and honour of public figures under civil law, as a result of which the legislator adopted statutory provisions on the limitation of the protection of personality rights of public figures and for the freedom of public affairs to be taken into account in private law disputes (Section 2:44). The following parts will provide an overview of the jurisprudence of the Constitutional Court and high courts in relation to the Civil Code, focusing exclusively on the weightiest questions of detail.

II The 'Public Affairs General Clause' in the Civil Code and its Initial Constitutional Interpretation

The original draft of the Civil Code submitted to the National Assembly also contained a general clause on the limited protection of the personality rights of public figures. However, the text finally adopted and promulgated, which differs from the proposal in several aspects, read as follows:

> Section 2:44 *[Protection of the personality rights of public figures]*
> The exercise of the fundamental rights ensuring a free discussion of public affairs in the legitimate interest of the public may limit the protection of the personality rights of public figures to an extent that is necessary and proportionate and is without prejudice to human dignity.

The adopted text, in conformity with the original proposal, leaves broad latitude for the courts as entities applying the law, but it raises several awkward issues. The question arises of exactly which personality rights are affected by the rule; in practice, beyond the protection of reputation and honour, these may include the protection of the right to private life, image, sound recording, and possibly private secret and personal data as independent personality rights and therefore, in certain cases, these rights of public figures may be enforced only to a limited degree.

The Commissioner for Fundamental Rights contested the wording 'legitimate public interest', stipulated as one of the preconditions for reducing the protection of personality rights, prior to the entry into force of the provision via a motion to the Constitutional Court. However, following this, the Constitutional Court deleted the text concerned in decision 7/2014. (III. 7.) AB. The decision stated that the protection of human dignity may constitute a limitation to the freedom of speech; nevertheless, no violation of human dignity 'can justify the restriction of the freedom of speech. If it could, the very content of the freedom of speech

[2] *New York Times v Sullivan* 376 US 254 (1964).

would become void. […] The right to the protection of human dignity is unrestrictable, but only as a legal determinant of human status.'[3]

The constitutional problem and the quite narrow latitude available to the Constitutional Court can easily be identified. Both the Fundamental Law and the Civil Code expressly protect human dignity, the former also declaring its inviolability, which does not mean unrestrictability at the same time.[4] The freedom of speech, similarly to human dignity, is a constitutional right,[5] albeit not an unrestrictable one, although its restriction is admissible only within a limited scope, similarly to all other fundamental rights.[6] The constitutional collision of human dignity and freedom of speech is, in itself, not an insoluble issue when applying the law. Neither can this collision be considered a recent problem.

However, Section 2:44 of the Civil Code seeks to provide extra protection for the freedom of speech (by ensuring a wider freedom for discussing public affairs), *inter alia*, by prohibiting the publication of opinions violating human dignity, as one of the objective limitations to a wider protection. Accordingly, if we assume that the latter provision does not render exercising the freedom of speech impossible (since any injurious opinion may necessarily violate human dignity at the same time, so it could be sanctioned), then a constitutional interpretation, which can provide guidance for those applying the law in terms of the application of the examined provision, must be assigned to the protection of human dignity.[7]

The Constitutional Court chose that solution and expressly drew the attention of the courts to their responsibility to interpret it in a manner which complies with the constitution.[8] The decision makes it clear that 'the unrestrictable aspect of human dignity constitutes the absolute limit of the freedom of speech only with respect to that extremely narrow range of expressions of speech which deny the very foundations of the human status.'[9] As a general rule, opinions and value judgements cannot be grounds for either criminal or civil law prosecution; in this respect, the decision of 2014 referred to one of the most important elements of Decision 36/1994. (VI. 24.) AB, namely the total impunity of opinions. However, in contrast to the decision of 1994, in 2014 the Constitutional Court did not consider value judgements to be constitutionally protected all the time; ensuring that the freedom of debating public affairs in public:

---

3 Decision 7/2014. (III. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 1994, 219–237, Statement of Reasons, [43].

4 Article II of the Fundamental Law.

5 Article IX of the Fundamental Law.

6 Article I(3) of the Fundamental Law.

7 See Koltay András, 'Az „általános személyiségi jog" azonosítása felé. Alkotmányjogi, magánjogi és büntetőjogi vizsgálódás' in Koltay András, Török Bernát (eds), *Sajtószabadság és médiajog a 21. század elején* 4. (Wolters Kluwer 2017, Budapest).

8 Decision 7/2014. (III. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 1994, 219, Statement of Reasons, [60].

9 Ibid [61].

> […] does not result in the protection of human dignity, privacy and good reputation of the parties concerned […] becoming void. The persons exercising state powers and politicians acting in public are entitled to the protection of their personality rights if the given value judgement relating to their person does not concern their public affairs-related activity, within the scope of a discussion of public affairs, but their private or family life. Hence, civil law prosecution might be justified in that narrow context when the expressed opinion, being a total, explicit and severely disparaging negation of the human status of the person concerned, does not violate the personality rights named under Section 2:43 of the new Civil Code, but the unrestrictable aspect of human dignity specified under Section 2:42. Taking into account the arguments expressed above, even public figures can demand legal protection against false statements of fact.[10]

The decision highlights certain persons exercising state powers, such as judges, who, due to their special position, in line with the case law of the European Court of Human Rights (ECtHR), can be granted extra protection in terms of their personality rights as compared to other public figures, although this is still below the level of general personality rights protection.[11] In this way, the body also responds to the question of the constitutional interpretation of Article IX(4) of the Fundamental Law, according to which 'the exercise of the freedom of expression may not aim to violate the human dignity of others'. Based on the interpretation of the Constitutional Court summarised above, this constitutional provision cannot be considered an absolute limit on the freedom of speech.

A notable merit of the decision is that it tried to provide an independent interpretation of the personality right of human dignity, which so far has only been used in the application of the law in a very fragmentary manner. In this respect, the following conclusions can be drawn from the decision of the Constitutional Court: (1) opinions and value judgements concerning public affairs and public figures are to be granted special protection; (2) however, this shall not include value judgements concerning the private or family life of public figures (if those are not related to public affairs); (3) furthermore, the protection does not include those opinions which represent an obvious and seriously disparaging negation of the human status of the concerned person (i.e. opinions which question or doubt that the person concerned is a human being, or disparages or reviles the person concerned in their human quality, and not in relation to public affairs). In the latter case, it is not the right to honour as per Section 2:45 of the Civil Code that is violated (the protection granted for opinions relating to public affairs under Section 2:44 may also totally exclude the possibility of violating this right to honour with regard to outstanding public figures, such as politicians and persons exercising state powers) but the right to human dignity [Section 2:42(2) of the Civil Code]. In other words, based on the decision of the Constitutional Court – contrary to the former approach of civil law courts – human dignity has a unique and independently applicable content above and beyond the right to honour and good reputation. At the same time, this means supplementing and rejecting the stipulations of the decision of 1994, as far as the comprehensive and total protection and unrestrictability of opinions are concerned.

[10] Ibid [62].
[11] Ibid [61].

Regarding statements of fact, the decision stipulated that 'demonstrably false facts in themselves are not protected by the constitution',[12] thereby hinting that in certain cases, even false statements of facts can receive protection under freedom of speech. Later, the decision establishes that 'even for those facts having no constitutional value which later turn out to be false, it is justified to take into account the interest of ensuring as free conditions for discussion of public affairs as possible when determining the extent of imputability (attribution of liability) and the possible penalties in the course of the legal proceedings.'[13]

In connection with the 'necessary and proportionate extent', the decision established that the 'restricted nature of the protection of the personality rights of persons exercising state powers and public figure politicians is deemed "necessary and proportionate" over a much wider scope than for anyone else.'[14] However, this condition, which is specified in the Civil Code, is not unconstitutional since 'although it is linked to general terms used not in private law but in constitutional law, it nevertheless ensures the necessary and sufficient latitude for the application of the law to specify the tests used for the limits of the expression of political opinion.'[15] The decision categorises different groups of persons concerned and sets the level of protection afforded to criticism of each group, which comprise (1) public figures involved in public affairs, consciously undertaking public life, including persons exercising state powers and politicians with public standing; (2) 'non-ex officio' public figures involved in public affairs; and (3) persons exercising state powers who are not able to protect themselves publicly due to the nature of their service, such as judges. As we go down this list, the level of protection afforded to personality rights increases, whereas the extent of protection given to freedom of speech decreases.[16]

The expression 'legitimate public interest' would seem to be an unnecessary restriction of the freedom of speech and freedom of the press:

> As far as the discussion of public affairs is concerned, the restriction of the protection of the personality rights of public figures for the purpose of guaranteeing freedom of opinion is a constitutional interest and requirement in all cases. Hence, there is no need to justify the existence of a 'public interest', which may not be specified more precisely, not to mention the justification of the 'legitimate nature' of this public interest. […] This condition of the new Civil Code would narrow the scope of free expression of opinion to an unjustified extent since, in addition to the ever-present social interest in the discussion of public affairs, it would only allow a wider criticism of public figures if further public interest could be ascertained.[17]

The decision highlights the necessity to assess three important questions of detail, of which we will make an overview, drawing on a body of jurisprudence that has been growing since

[12] Ibid [49].
[13] Ibid [50].
[14] Ibid [57].
[15] Ibid [56].
[16] Ibid [57] and [58].
[17] Ibid [65].

2014. The first question is whether identifying someone's status as a public figure is the most suitable point of departure when establishing the scope of the protection of their personality rights, or it could be more important to establish whether the matter in hand is of a 'public' nature (Chapter III, infra). The second question is how to differentiate between statements of fact and statements of opinion when the distinction is not clear (Chapter IV, infra) The third question is how much narrower the scope should be if we think that the special rule is to be applied to an expression, i.e. as the scope in which the protection of personality rights needs to be applied becomes narrower: at what point is the limit of tolerance of those concerned in such cases (Point V, below)?

III Public Affairs and/or Public Figures?

The operative part of Decision 36/1994. (VI. 24.) AB refers to authorities, officials and politicians acting in public. However, the justification for the decision also mentions public figures, entrusting the courts to define the scope of this latter category. Decision 57/2001. (XII. 5.) AB – describing the ECtHR case law on this issue – also refers to the category of 'persons acting in public'. It is not primarily a lower level of protection of the reputation of public figures that the ECtHR prescribes but rather the broadest protection of debates on public issues, i.e. the decisive factor is not the status of the person who is the subject of an allegation, but the extent to which the debate serves the public interest. Naturally, the ECtHR soon extended the principle of permitting higher levels of criticism of politicians to all authorities.

In *Thorgeirson v Iceland,*[18] the complainant, an Icelandic journalist, turned to Strasbourg because, after publishing several articles on the brutal practices of the Reykjavík police – without mentioning the names of any actual policemen – he had been sentenced for defamation. In its reasoning in favour of the complainant, the Court stated that the statements made in all cases of relevance to public debate are to be awarded special protection, rather than just 'political cases'. This principle has since become generally accepted. In *Nilsen and Johnsen v Norway,*[19] the complainants were two police officers who had criticised a university professor acting as the chairman of a committee investigating police brutality, and who had voiced offensive statements about him after he had sharply criticised the actions of the Police several times. The Norwegian court sentenced the police officers to a fine: According to the ECHR, however, public and at times heated replies to public criticism may be legitimate, and in the circumstances, both the two complainants and the professor qualified as public figures. The sharp criticism formulated by the police officers had not transgressed the limits of freedom of speech. In *Bladet Tromsø and Stensaas v Norway,*[20] statements on the cruel

[18] *Thorgeirson v Iceland,* no. 47/1991/299/370, 28 May 1992.
[19] *Nilsen and Johnsen v Norway,* no. 23118/93, 27 February 2001.
[20] *Bladet Tromsø and Stensaas v Norway,* no. 21980/93, 20 May 1999.

practices of seal hunters and the violation of fishing rules qualified as pertaining to issues of public interest, so the mandatory threshold of the tolerance of individuals concerned in the case was raised. In *Bergens Tidende v Norway,*[21] the ECtHR ruled that statements on the inappropriate treatment methods of a plastic surgeon were in the public interest.

The ECtHR case law seems reasonable, in that it is not the status of public figures – meaning the personal scope – that should be defined clearly and in advance in order to decide these legal disputes. The exact personal scope is impossible to define exhaustively; its boundaries are uncertain, it is in a permanent state of flux and depends on the context. A further important consideration is that, except when they are acting in public and engaged in debates on public affairs, the personality rights of public figures are also granted full protection. As such, even in indisputable cases – with regard to a political figure – it is not clear which test must be applied and when, because it has to be decided on a case-by-case basis whether the debated affair qualifies as a 'public affair' or not. Defining the situations in which reduced protection is to be granted to personality rights is a more reasonable approach than drawing up a list of the persons concerned. In other words, the fact of appearing publicly ('public matter') is of primary importance, not the public figure (the person) him- or herself. The scope of activities and information about public figures, persons exercising state powers and persons carrying out public functions that may be disclosed to the public may be defined. The protection of the personality rights of such persons may be limited occasionally, even beyond the scope of carrying out their public functions and public appearances. For example, the family life of a Member of Parliament may be regarded as information of public interest if it may influence the decisions of voters.

On the question of public affairs and public figures, the jurisprudence of the Constitutional Court in recent years and the ensuing case law have produced some important positions, which predominantly confirm the interpretation according to which the primary consideration when defining the reduced protection of personality rights is that the affair affected by the expression of opinion is deemed a 'public affair'. However, the practice is not free from contradictions, which may introduce an element of uncertainty.

Decision 7/2014. (III. 7.) AB stipulates the primacy of identifying public affairs; nevertheless, it also indicates that the status of the public figure is also important, though it is secondary to ascertaining whether an affair is public in nature when establishing the scope of the protection of personality rights. Public affairs have an impact on the enforcement of the personality rights of those concerned, and if, in addition to that, the actors also qualify as public figures, their rights might be reduced even further; the scope of this limitation depends on the nature of their status as public figures (from politicians to celebrities).[22]

[21] *Bergens Tidende v Norway,* no. 26132/95, 2 May 2000.

[22] As for the attempt to identify the category of public affairs on the basis of Hungarian constitutional practice, see Bernát Török, *Szabadon szólni, demokráciában* (HVG-ORAC 2018, Budapest) 49–82.

> The judiciary must take into account first and foremost the fact that, since it is public affairs themselves and not the public figures that can be found in the focus of the freedom of political speech, all speeches related to public affairs are under extra protection, which restricts the protection of the personality rights of those affected by them. It means that the restricted character of the protection of personality rights applies not only to those who are professionally engaged in appearing in public, as debating public matters can affect a wider scope of individuals in the framework of a concrete debate in a society. However, the status of the person affected by the speech must also be taken into account: in the case of persons exercising state powers and politicians acting in public, the restricted nature of the protection of their personality rights is considered 'necessary and proportionate' to a wider extent than with regard to any other person.[23]

This approach is confirmed in Decision 14/2017. (VI. 30.) AB: '[t]aking all these into account […] the activity which is the basis of the labour dispute, i.e. the content of the Internet portal and the texts published there, is predominantly of a professional nature and does not show any link to public affairs, which would render this activity clearly as one that belongs to the freedom of discussing public affairs.'[24] This aspect is reflected in a similar way in regular judicial practice: '[w]hen deciding whether the person concerned has the obligation to tolerate the opinion and/or criticism, in the first place it has to be established whether the contested expression was related to a debate of public affairs.'[25] Important additional information on the concept of 'public affair' is provided by the statement of reasons in Decision 3030/2019. (II. 13.) AB. In the criminal proceedings relating to the main case, the accused person repeated and indeed extended his opinion on the complainant before the court, expressing new, strongly critical value judgements ('heap of shit', 'shame, blight on civilisation', 'public ghoul'). In the main case, he was sentenced for defamation, but in the new case launched due to the publication by the accused of the expressions he used at the trial – on his own social media surfaces – he was acquitted by the Court. The Constitutional Court rejected the relating constitutional complaint on the grounds that information on criminal proceedings qualifies as a public affair:

> Based on the constitutional criteria drawn up, the Constitutional Court takes the position that the public nature of the debate can be established because the accused provides information on criminal proceedings that makes the public aware of the criminal law boundaries of the judgments of a television presenter due to his personal and professional conduct during his interviews. The status of the complainant as a public figure may not be disputed, since he makes his living as a television journalist. Compared to the previous case, in which the accused was found guilty of defamation, the current situation is different in terms of the purpose of the speech and the absence of the self-serving nature of it, compared to the previous, protected expression of opinion.[26]

---

[23] Decision 7/2014. (III. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 1994, 219, Statement of Reasons, [57].

[24] Decision 14/2017. (VI. 30.) AB of the Constitutional Court of the Republic of Hungary, ABH 2017, 952, Statement of Reasons, [40].

[25] BDT 2017. 3776.

[26] Decision 3030/2019. (II. 13.) AB of the Constitutional Court of the Republic of Hungary, Statement of Reasons, [38].

At this point, it is worth making a short detour and discussing issues of the protection of an individual's image, which also is also illuminating in respect of judging the protection of good reputation and honour, as well as for the interpretation of Section 2:44. Pursuant to Section 2:48 of the Civil Code, '(1) Recording a person's image or voice and using such a recording shall require the consent of the person concerned. (2) The consent of the person concerned shall not be required for recording his image or voice and for the use of such a recording if the recording was made of a crowd or of an appearance in public life.' From the text, it seems that it is not the identification of public affairs but public figures, more precisely acting in public life, that is the only important consideration and, outside the context of a public appearance, it is not possible to apply a reduced protection of the personality rights and here the application of Section 2:44 might be of some assistance. In contrast, the practice of the Constitutional Court in the 'images of policemen' cases[27] disregarded Section 2:44 when concluding that the freedom of speech and the right to information also provide guidance in the interpretation of Section 2:48. Therefore, images of policemen may be published freely, '[an] image taken in a public area and showing the subject in a non-offending and objective manner may generally be published without consent, if it relates to a news report of high interest to the public and forms part of free information provision on current affairs.'[28]

The Curia, after lengthy deliberations, finally accepted this approach: '[if] the person exercising state powers acts in the course of events influencing the public sphere, the exercise of his personality rights relating to his image and their restrictability might be subjected to rules that are different from those pertaining to the general protection of the personality rights of private persons solely participating in public events.'[29] Hence, although the policeman taking action is not yet a public figure, however, his activity is related to public affairs – and there is a strong assumption that the policeman discharges his tasks as the representative of public authority – the interpretation of the Civil Code must then take constitutional criteria into account, which is a step towards recognising the horizontal scope of fundamental rights.[30] In individual cases, the consideration given to this criterion by the Constitutional Court and the Curia is not completely uniform, as shown by more recent Constitutional Court decisions handed down after specific constitutional complaints, which repeatedly confirm the significance of taking the aspect of public interest into account.[31]

---

[27] Szeghalmi Veronika, Papp János Tamás, 'A rendőr képmásának védelme – a vita jelenlegi állása' (2015) 11 (4) Iustum Aequum Salutare 95–110.

[28] Decision 28/2014. (IX. 29.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 1288, Statement of Reasons, [44].

[29] BKMPJE Decision 1/2015, item IV.3.

[30] Gárdos-Orosz Fruzsina, *Alkotmányos polgári jog? Az alapvető jogok alkalmazása a magánjogi jogvitákban* (Dialóg Campus 2011, Budapest–Pécs); Gárdos-Orosz Fruzsina, Bedő Renáta, 'Az alapvető jogok érvényesítése a magánjogi jogviták során – az újabb alkotmánybírósági gyakorlat (2014–2018)' (2018) (1) Alkotmánybírósági Szemle.

[31] Decisions 16/2016. (X. 20.) AB of the Constitutional Court of the Republic of Hungary, ABH 2016, 356; 17/2016. (X. 20.) AB of the Constitutional Court of the Republic of Hungary, ABH 2016, 370; 3/2017. (II. 25.) AB of the Constitutional Court of the Republic of Hungary, ABH 2017, 190.

In the meantime, the case law of regular courts in relation to the protection of one's image has applied this principle appropriately in several different situations and restricted the exercise of the right to one's image accordingly:

> If somebody accompanying a public figure participates in an event that is financed from public funds, he might expect the media to report on that, even using his image.[32]

> I. If the representatives of the press are not granted access to an event with limited access to the press and the related prohibition is communicated by the designated person representing the press department of the public authority in the lobby of the building, the press reporting on this by publishing audio and video recordings shall not be obliged to pixelate the face of the civil servant speaking on behalf of the public authority.
> II. The pixilation of the face may essentially impact on the credibility of the news report worthy of public attention of the event, therefore it would disproportionately restrict information on current events and the freedom of the press.
> III. The civil servant performing communication-related tasks shall be obliged to tolerate the publication of his image and recorded voice with respect to an event worthy of public attention in order to ensure the freedom of discussing public affairs. The fundamental right of the press to the freedom of expression may restrict – to the necessary and proportionate degree – the personality rights of the representative of the public authority to his image and recorded voice.[33]

At the same time, the public sphere and the interests of the media may not restrict the enforcement of personality rights disproportionately. Recordings made with hidden cameras may be legitimate only in exceptionally justified cases, and public figures may be subjects of recordings only 'in situations that are of high interest to the public'.

> I. The information obligation of the press does not give rise to excess rights; linear media services are obliged to conform to legislative provisions in the course of meeting this obligation and, as a main rule, their activities may not infringe upon others' personality rights. In the case of a video or audio recording made of a public figure without his consent in a public place, the collision between the freedom of opinion and the protection of personality rights needs to be resolved by weighing up interests, even if the statement or publication otherwise contributes to informing the public of an affair which is of high interest to them.
> II. The usage of a recording made with a hidden camera violates the right of the public figure to his image and recorded voice if the statements recorded do not contribute to the debate of the affair of high interest to the public, or if they are not informative in a way that would stimulate this debate.[34]

[32] BH 2017. 86.
[33] IH 2018. 52.
[34] BDT 2017. 3760.

> I. The publication of a recording made of a public figure may restrict the right of the public figure to his image protected by law only to the degree necessary and proportionate in order to debate public affairs.
> II. An image of a public figure taken in a situation which is not of interest to the public may only be published with the consent of the person concerned. In the absence of such consent, the image taken of him and published violates the right of the person concerned to his image, in the protection of which the injured person may file a lawsuit to enforce this right expressly.[35]

Similarly to the protection of an individual's image, the protection of private life as a personality right newly specified in the Civil Code [Section 2:43.*b)*] is also to be interpreted through the interest linked to the public debate of public affairs.

> I. The right of politicians acting in public to a private life may also be restricted on the grounds of a legitimate public interest and only if the interference is related to the public activities, ideas spread, acts and statements of the person concerned who has an impact on public life.
> II. The rebuttal of a statement made in relation to an insignificant element of a public event of high interest to the public does not constitute adequate grounds for the press to publish an event of the most intimate private sphere of the public figure, an artificial intrusion into the private sphere: Exercising the freedom of the press in such a manner is not proportionate to the violation of the personality rights of the public figure concerned in terms of privacy.[36]

So far, a more or less harmonious picture has emerged, which provides adequate grounds for making proper judgments in issues relating to public affairs and public figures and which will also spare the interpreter of an issue the obligation to define or make a list of public figures. In this context, the Civil Code is more of a pretext than the real reason for the developments in recent years; the introduction of a constitutional complaint in 2012 is of higher significance in this respect than the new provisions of the Civil Code. Similarly, an image taken of a political figure in the courtroom as an accused person, even if he was acquitted in subsequent proceedings, may be of high interest to the public and is related to the status of the accused as a public figure. The media may objectively – visually – also report on the state of play of criminal proceedings, providing the news coverage reflects the current state of play of the given proceedings and respects the assumption of innocence as a fundamental constitutional principle.[37] If the image shown in the news report does not depict the complainant in a humiliating situation, which would violate an essential aspect of their human dignity, its publication shall not be considered an abuse of the freedom of the press.[38]

---

[35] BDT 2017. 3693.
[36] BDT 2018. 3847.
[37] Decision 3313/2017. (XI. 30.) AB of the Constitutional Court of the Republic of Hungary, ABH 2017, 1877, Statement of Reasons, [56].
[38] Decision 3348/2018. (XI. 12.) AB of the Constitutional Court of the Republic of Hungary, Statement of Reasons, [37] and [38].

However, as two decisions make clear, the case law of the Constitutional Court is not free from contradictions. In the case preceding Decision 1/2015. (I. 16.) AB, the contested opinions were expressed in a private debate, i.e. the test applicable to discussing public affairs did not have to be applied in this case. This is one more reason that it is disturbing to see that the Constitutional Court did not examine the context of the contested opinion in the first place but the status of the injured person. With respect to the injured party working as a lawyer, the Constitutional Court concluded that '[the] person acting as a lawyer may not be considered as a person exercising state powers only due to his status as a lawyer, neither does he qualify as a public figure politician.'[39] Indirectly, it follows that the Constitutional Court had returned to the more narrow definition of a public figure included in Decision 36/1994. (VI. 24.) AB, though it is not primarily the status of the person but the nature of the affair that needs to be examined in order to see whether or not the contested opinion is related to a 'public affair' – as the concurring opinion of Péter Paczolay pointed out.

The statement of reasons of Decision 3145/2018. (V. 7.) AB to some extent mixes up the relationship and sequence of considerations relating to public affairs and the public figure. On the one hand, the decision – in line with Decision 7/2014. (III. 7.) AB – stipulates that:

> [41] […] when qualifying a public statement, the point of departure shall typically not be the persons concerned, but it needs to be examined whether the statement is related to the debate of public affairs and issues of public interest. Essentially, this circumstance, i.e. debating public affairs – to the extent of the specific debate – is the consideration which typically determines how the persons concerned are to be classified. Therefore, the status of a public figure is linked to the fact of acting in the public sphere, which goes together with the debate of public affairs, which always needs to be evaluated in a specific situation and based on the criteria laid down in Decision 13/2014. (IV. 18.) AB. [42] The Constitutional Court therefore underlines that, in democratic decision-making processes, public debates of public affairs are indispensable and so are the surfacing of diverging positions, and discussing them driven by the values of a pluralist democracy. This is valid even if the debate concerned is a heated one and the persons concerned in the debate are exposed to sharp attacks, criticism or judgement. Therefore, the essential feature of the status of a public figure emerging from one's acting in the public sphere is that, depending on the specific situation, it covers all and every person who appears in a public debate of public affairs as a person shaping opinions. Taking these considerations into account, the Constitutional Court underlined that the protection of the freedom of opinion in the context of the debate of public affairs does not focus primarily on the status of the persons concerned, but on whether the speaker expressed his views on a social or political issue [Decision 7/2014. (III. 7.) AB, Statement of Reasons, Paragraph 47].[40]

[39] Decision 1/2015. (I. 16.) AB of the Constitutional Court of the Republic of Hungary, ABH 2015, 3, Statement of Reasons, [39].

[40] Decision 3145/2018. (V. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 745, Statement of Reasons, [41] and [42].

According to the logic of previous decisions, the body should have analysed the individual's 'public figure status', not as a necessary precondition for restricting the scope of the protection of personality rights, but – taking this restriction as a given, due to the public affairs being discussed – as a circumstance with a bearing on the degree of the restriction of this protection. However, the statement of reasons identified public figure status as an equally necessary precondition, in addition to public affairs being discussed. What follows from this is that it is not sufficient for a media report or expression of opinion to concern a public affair: to reduce the scope of the protection of their personality rights, it is also necessary for the persons concerned to qualify as public figures.

> [44] 2.2. If the public speech affects the freedom of debating public affairs, it is necessary to further examine whether or not the person affected by the speech is a public figure in the given situation and only after this examination can the constitutional test be applied. The fact that a public speech is related to public affairs per se shall not automatically lead to a reduced protection of the personality rights of the persons concerned. Establishing the public figure's status is always up to a case-by-case evaluation. […]
> [48] However, the subject-matter of the speech (public affair) is not the only criterion when judging the status of those affected by the public statement or speech. It is also indispensable to examine whether the person concerned decided in a voluntary manner to become someone who has an influence on public affairs. The enforcement of the right to free expression may exclusively be justified in cases in which participants became more active shapers of public affairs based on their own decisions, and thereby undertaking their exposure to evaluations and judgements in front of the public eye in the community concerned. Therefore, they are obliged to have an increased threshold of tolerance in respect of speeches and opinions in the context of the debate of public affairs that concern them, or classify them or might be offensive towards them. […]
> [50] The due consideration of the above criteria is indispensable in deciding the extent to which the debate of public affairs determines the personal status of those participating in this public debate on public affairs. The Constitutional Court therefore underlines that, when establishing public figure status, the status of the person concerned is not of decisive importance. What is of decisive importance is whether those participating in the public debate of public affairs have become shapers of public life, making regular or occasional public appearances based on their own decisions.[41]

The statement of reasons, beyond making an erroneous judgment regarding the relationship between a public affair and public figure criteria, identifies with the approach taken by the Curia in the cases concerning the images of policemen, according to which 'based on the definition of jurisprudence and legal literature, appearance, more specifically public appearance, shall be any political, social or artistic activity based on the voluntary decision and autonomous decision of the individual for a specific purpose, wishing to influence the life of the local community or society, in a narrower or broader sense.'[42] In the decisions taken in the

[41] Ibid [44], [48] and [50].
[42] BKMPJE Decision 1/2012, item III.

cases concerning the images of policemen, the Constitutional Court avoided, finally, rebutting the necessarily voluntary nature of appearance in public, and did not consider the reduced right of policemen to the protection of their images as justified pursuant to Section 2:48(2) of the Civil Code describing an appearance in public life, but it based these decisions on the constitutional consideration of public interest. This does not mean that this approach, according to which appearance in public is always based on a voluntary decision, is right; this approach is overly restrictive as is clearly justified in the concurring opinion of Judge Schanda, who refers to an illuminating example from the case law of the European Court of Human Rights as an illustration.

> [103] Therefore, when deciding whether the expression of an opinion belongs to the sphere of discussing public affairs, i.e. it is to be granted increased constitutional protection, it is important to judge what role the consideration of public appearance plays. The statement of reasons of the current decision at some points refers to the fact that, in order to provide strong protection to the freedom of speech, following the decision on whether a statement belongs to the category of public affairs, we also need to decide whether the person concerned was a 'public figure' voluntarily affected by the statement. However, this logic of the constitutional law evaluation would not be in line with either domestic jurisprudence or the interpretation provided by the ECtHR.
> [104] The status of public figure is one of the criteria within the constitutional law evaluation of whether the speech concerned belongs to the sphere of the debate of public affairs. This evaluation is based on various considerations, as shown by Decision 13/2014. (IV. 18.) AB (Statement of Reasons, [39]). The complexity of the test elaborated there in detail – which in reality is an appeal to give due consideration to all the factors of the individual case – very well illustrates that whether a statement qualifies as a public affair depends much more on individual social circumstances than on normative definitions. The basic theory mentioned earlier, namely that the question focuses on the nature of public affairs rather than the status of those concerned, shows that the public figure (and exercising state powers) qualification is one of the important but not, by itself, decisive elements of this categorisation. […]
> [105] The logic of the evaluation is relevant. According to the statement of reasons of the decision, after the categorisation, the public figure status needs to be decided upon in the subsequent process, because the enforcement of free expression may be justified "exclusively in those instances in which participants became active influencers of public affairs based on their own decisions, thereby undertaking their exposure to evaluations and judgements in front of the public eye in the community concerned." (Statement of Reasons [48]). This, however, is not so. It has already been confirmed by domestic case law that the increased protection of the freedom of speech is applicable to a broader spectrum than 'official public figures' only [see Decision 7/2014. (III. 7.) AB]. The guidance of the Strasbourg case law sheds light upon the fact that, in certain cases, specific standards may be applied without having to identify any condition or circumstance which would render those concerned at least an ad hoc voluntary public figure: The Norwegian seal hunters in the case previously referred to did not have the faintest intention of voluntarily making a public appearance or becoming affected in a public debate; nevertheless, the protection of their personality rights in the legitimate social debate on the cruelty of seal hunting became more restricted [ECtHR,

> Bladet Tromsø and Stensaas v Norway (21980/93), 20 May 1999]. Whether the protection of personality rights may be restricted to a varying degree depending on those concerned is a different question but this is already the question regarding tests within the realm of the debate of public affairs and it is not an evaluation to delineate area of the freedom of speech that is to be granted increased protection.
>
> [106] In summary, those applying the law need to take a decision based on all the circumstances of the given case – including those concerned, if they exercise public authority or have (official or ad hoc) public figure status – whether the expression of opinion to be judged falls under the category of public debate of public affairs or not. If the answer to this question is yes, the constitutional considerations of the freedom of speech will be amplified and the protection of the personality rights of those affected by the expression of opinion will by all means – i.e. irrespective of factors referring to the voluntary appearance in public – be more restricted. In the case of politicians who appear in public or media personalities permanently seeking the limelight, it will of course be of a much greater extent than for the seal hunters, but this is already the question of fine-tuned tests within the realm of the debate of public affairs and not an issue of the initial categorisation.[43]

The concurring opinion, as opposed to the opinion adopted by the majority, is so far fully aligned with the jurisprudence of the Constitutional Court. Placing primary emphasis on the 'public affair' category, accompanied by the 'public figure' as the secondary consideration, ensures the proper balance of the freedom of speech and the enforcement of personality rights. However, giving the same priority to both and thus making them the conjunctive condition for the restricted protection of personality rights would bring about an unjustified restriction of open public debates. It would not result in a stronger protection of the rights of public figures, who would enjoy the level of protection granted to private persons; furthermore, debates of public affairs in which non-public figures participate would be less protected. This is an unwelcome development, and contradicts the principles that are derived from the case law of the Constitutional Court.

IV The Distinction Between Statements of Fact and Statements of Opinion

Pursuant to Decision 36/1994. (VI. 24.) AB, when judging statements liable to damage one's good reputation and honour, a distinction needs to be made between statements of fact and statements of opinion. This distinction is in turn based on further criteria. It is already enshrined in the Civil Code thus, pursuant to Section 2:45, that violation of good reputation means in particular misrepresenting or reporting untrue facts concerning and offending another person or misrepresenting true facts. Decision 7/2014. (III. 7.) AB also stipulates that the freedom of untrue facts and extreme opinions and their restrictability is to be established through the application of different constitutional tests.

[43] Decision 3145/2018. (V. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 745, [103]–[106] (Judge Schanda).

According to the Constitutional Court's decisions on statements of fact, a distinction must be made between true statements of fact (that have been proved before the court) and untrue (unproven) statements of fact. A further distinction may be drawn up in the context of untrue statements of fact due to the different evaluation of intentional statements or statements where the speaker failed to exercise the caution reasonably expected of him pursuant to the rules applicable to his profession or occupation, and statements made while observing the rules of his profession. Although the decisions of the Constitutional Court did not prescribe making such distinctions, the jurisprudence does draw a distinction between opinions based on facts and opinions, which, due to their character, lack such grounds (such as opinions generated by passion, reflecting emotions or containing an individual subjective value judgement). If, in the case of the former, the reality of the facts, which serve as the grounds for the opinion, is proved before the courts then the person expressing the opinion shall not be prosecuted, no matter how extreme or offensive his or her opinion is. On the other hand, opinions that have no factual grounds will remain restrictable if they are unduly offensive, insulting and humiliating (disparaging) as described by the judicial terminology.

Decision 13/2014. (IV. 18.) AB established criteria with a general scope and beyond the boundaries of criminal law, based on which the courts must take into account the following when differentiating between statements of fact and statements of opinion in cases of defamation:

> [The] proceeding courts need to respond to the question of whether publicism (topical editorials) qualifies as a statement of fact or as a value judgement. In the course of this, attention must be paid to the fact that the full meaning of the incriminating sentence is available only in the context of a full text, the objective of which was to criticise the asset management practices of the municipality, i.e. the writing criticised the asset and financial management of the city with irony and exaggeration as [rhetorical] devices. Furthermore, it is necessary to evaluate the opinion context of the essay, which drew public attention to material inequalities and wasteful budgetary management experienced within the local community. On the basis of this, the question can be decided as to whether the essay contains any specific element at all, the truthfulness of which may be verified, or whether the writing is a value judgement expressing criticism, the opportunity and fact of which is protected, irrespective of its content.[44]

The above set of criteria is also applicable in private law disputes. Even with all the above taken into account, making a distinction between statements of fact and statements of opinion is a daunting task in specific cases. Such a task faced the Constitutional Court in respect of a debate between two historians.[45] The defendant in the main proceedings said, of the complainant, that what he said is 'extreme right-wing political provocation, which […] would be punishable with lawful tools, because it relativises the Holocaust, and it is on the verge of

[44] Decision 13/2014. (IV. 18.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 286, Statement of Reasons, [49].

[45] Decision 3001/2018. (I. 10.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 14.

Holocaust denial. The complainant has 'two fundamental objectives in mind: […] they are related to the new ideological considerations of the new institution; the new authoritarian regime needs to whitewash its predecessor, the Horthy regime. It is absolutely obvious that this is what the issue is about and it tries to whitewash even Horthy himself from the crime of genocide, but it is an impossible endeavour'. The defendant, referring to the complainant, claimed that 'only people who are professionally, morally and politically open to the extreme right, and ideologically think in terms of the restoration of the Horthy regime may be appointed as directors of such government institutes'. The above utterances are half-way between statements of facts and statements of opinions, and the Constitutional Court itself was divided on the issue of how to classify them. However, the majority regarded them as statement of facts, because:

> the Constitutional Court took into account the context and purpose of the sentences at issue in the statement of the defendant, as well as the context and purpose of the statements in their entirety. Based on these criteria, it may be established that the defendant criticised and amplified the position of the complainant as expressed in the interview in a way that draws attention to it, using generalisation and exaggeration as legitimate tools, occasionally in an agitated tone; it questioned its scientific foundations and, drawing conclusions from the aforementioned, questioned in general the aptitude of the complainant to work as the institute's director and criticised the ideological bias of the historical research institute established by the government.[46]

The element of criticism, with the nature of a judgement, made the statement an opinion according to the majority of the Constitutional Court and, as such, a less stringent test had to be applied to it and so the constitutional complaint was rejected by the body. The opinion-like character of the statement in respect of relativising the Holocaust, which qualifies as a crime, may be disputed, as five Constitutional Court judges did dispute it. However, even in this case, its qualification as an opinion is acceptable, taking the formulation and the opinion-character of the statement into account.

In order to further illustrate the difficulties posed by differentiating between statements of fact and statements of opinion, it is worth making a short detour to examine the case law of courts and the Constitutional Court in respect of the Act on Electoral Procedure, which is linked in an interesting way to the constitutional interpretation emerging in respect of the Civil Code.

In Decision 31/2014. (X. 9.) AB, the Court used its own case law as a basis with regard to the protection of personality rights of public figures as a given; in the present case, it primarily referred to Decision 7/2014. (III. 7.) AB: 'In an election campaign, the freedom of expression and its restrictions need to be interpreted and judged in the personal relationship of public figures.'[47] This justification is disputable, at least. The section of the Act on Electoral Procedure concerned prescribes exercising of rights 'in good faith in accordance with their

[46] Ibid Statement of Reasons, [36].

[47] Decision 31/2014. (X. 9.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 1376, Statement of Reasons, [28].

purpose',[48] i.e. in the cases discussed, its test must be found (when is it possible to make an untrue statement in good faith, is it possible in theory to publish extreme and offensive opinions in good faith and within the limits of the purposeful exercise of rights during an election campaign period). The personality right tests invoked in the cases (protection of good reputation and honour in private law and defamation and libel in criminal law) are related to the application of other facts; therefore, at first sight, it is not absolutely clear whether they may be applicable in the context of the Act on Electoral Procedure. However, it is logical to some extent that the Curia, as well as the Constitutional Court, drew upon these tests, given the civil analogies in the statement of facts; for example, those tests related to which public figures are affected, to the necessary distinction between statements of fact and opinion and to the debate or discussion of public affairs. In the specific case, the Constitutional Court essentially overruled the court of appeal:

> The judicial decision did not take into account that the complainant made a statement expressing his opinion. The distinction between a value judgement and a statement of fact may also have constitutional relevance. […] Therefore, the freedom of expression is given increased protection in relation to value judgements which surface in a collision between opinions on public affairs, even if they are perhaps exaggerated and heightened.[49]

Overruling without giving an actual statement of reasons is problematic. The Constitutional Court should have defined the constitutional criteria for the distinction between a statement of fact and a statement of opinion; what the court may consider a fact and what it may regard as an opinion? In addition, the range of choices available is not merely limited to one between facts and opinions and therefore a more differentiated approach is necessary: statements of fact need to be distinguished from one another (they may be true or untrue), while opinions may have a factual ground that may be examined (the factual ground of which may be true or untrue) or be fully subjective opinions and value judgements that have no factual basis.

The complainant in Decision 5/2015. (II. 25.) AB called himself the only left-wing candidate on 1 February 2015 at the demonstration in Kossuth tér in Budapest. He stated: 'Fidesz has 11 candidates wearing 11 different shirts. The Fidesz team has fake candidates, dividing the voters of the opposition and adventurers who are in preparation. […] On 22 February, I will defeat the Fidesz candidates in Veszprém.' The constitutional background to the decision in this case was again Decisions 36/1994. (VI. 24.) AB and 7/2014. (III. 7.) AB, relating to the protection of the reputation and honour of public figures. Again, in terms of classifying the statements as facts or opinion, the Constitutional Court came to a different conclusion to the court: '[The] decision taken by the judge in the current case seized on the direct content of the statement and stuck to it, ignoring the fact that the complainant expressed his ideas as his opinion.'[50]

---

[48] Act XXXVI of 2013 on Electoral Procedure, s 2(1)*e)*.

[49] Ibid [29] and [30].

[50] Decision 5/2015. (II. 25.) AB of the Constitutional Court of the Republic of Hungary, ABH 2015, 136, Statement of Reasons, [27].

No substantive reasoning was attached to the decision of the Constitutional Court. It may be assumed that the Constitutional Court was right in deciding that the speech in question was an opinion, but they should have given arguments in favour of this position. True, if we take the expressed statement word for word, it included untruths, but this strict interpretation may also be misleading. It was obvious that the words must not be interpreted in their strict sense. The same would seem to apply to this case, because it is obvious that one party cannot have 11 different candidates in the same constituency competing with one another.

A nominating organisation in another case shared a video on its social media site on 29 March 2015, according to which one of the rival candidates running in the by-election for a seat in the National Assembly, who was a member of the supervisory board of MAL Zrt. at the time when the red sludge disaster occurred, might be liable for the accident. According to the video, 'P.F. was sitting among the management of the company'; furthermore, 'P.F. would have been responsible for preventing the disaster, but he did not do anything.' The Curia deemed these words as a misrepresentation of facts, and elaborated in detail, with legal references, that a member of the supervisory board may not be considered as a 'manager' of the given company. Decision 9/2015. (IV. 23.) AB rejected this, and judged the statements in the video to be an opinion:

> Taking into account the circumstances, subject matter and purpose of the specific statement, the Constitutional Court established that the video shared in the election campaign, and the statements it contains clearly belong to the sphere of the free discussion of public affairs, which is to be granted increased protection in order to ensure the freedom of expression. Therefore, this means that the Curia, when taking its decision, did not take into account the fact that the local organisation of the nominating organisation represented by the applicant shared this video as a political opinion in the course of an election campaign.[51]

The claims relating to Decision 5/2015. (II. 25.) AB are also valid here. It is not only the constitutional criteria applied to the statement of fact and opinion that are not identified in the decision, but it is also not clear why the Constitutional Court considered the statement in question as an opinion (which I think is erroneous). Undoubtedly, in certain cases, the differentiation between statements of fact and of opinion is difficult and presupposes a necessarily subjective decision, but the Constitutional Court, in its decision, should have provided an explanation of why it provided an interpretation that is different from that of the Curia; all the more so because in this decision, it had made genuine efforts to provide reasons for the claims being interpreted as a statement of facts.

Decision 3107/2018. (IV. 9.) AB was handed down in respect of a leaflet featuring the following claim: 'T.B., your MP, has uttered the name of Fót [one of the towns in his constituency] in the Parliament once since 2014.' The Constitutional Court had the following to say on whether the statement was regarded as a fact or an opinion:

[51] Decision 9/2015. (IV. 23.) AB of the Constitutional Court of the Republic of Hungary, ABH 2015, 552, Statement of Reasons, [43].

> [26] […] The Constitutional Court has consistently considered an election campaign as a situation in which arguments for a free debate of public affairs are the strongest, and where opinions on political programmes and the suitability of candidates may be expressed even in an exaggerated and agitated manner, taking account of the fact that, during this period of time, there are also ample opportunities to express rebuttals or counter-opinions. […]
> [28] 3.2. Confirming all this, the Constitutional Court emphasises that in political debates, which are especially heated during the time of the election campaign, statements of fact may not be defined by automatically applying the provability test in the ordinary sense of the word, i.e. it may not be restricted only to evaluating the verbatim content of the statement examined. To establish the legal liability of those participating in an intensive debate on public affairs, it is not sufficient to show that certain elements of the examined statement may be rebutted objectively. The statement at issue has to be evaluated in the special situation of the election campaign and in the light of its real message for the addressees of the campaign slogans, the message for voters. The approach taken by this evaluation is determined by the fact that, in a democratic debate on public affairs, those who are concerned with the debate are citizens interpreting political events in their own context, who are aware of the specific features of opinions expressed by political parties, especially aware of the special features of campaigning, which are to attract attention and which have a tendency to exaggerate. […]
> [29] When deciding whether or not a statement is a fact from the constitutional law perspective, all this needs to be taken into account. If taking into account the debate on public affairs, and especially the specific features of the campaign then it is reasonable to attribute a meaning to the statement according to which the voters will interpret this statement as a political opinion of the past or future policy of the party concerned, or the aptitude of the candidate, and not take it word for word, this, then, has to be the point of departure in order to ensure the freedom of the most intensive sphere of a public debate. This evaluation, therefore, clearly goes beyond an examination of the elements of the statement and applying the provability test, and requires the evaluation of all the conditions relating to the case. If the statements expressed concern different public figures and relate to their political activities, programme or credibility and suitability, it may be assumed that voters will deem these statements to be opinions, even if these statements were formulated in the indicative mood. The exaggerated and shocking formulation of criticism might also be granted protection, even if the exaggeration might affect a fact as well. In doubtful situations, the evaluation may rely on the fact that there is ample opportunity in the campaign to rebut certain details or elements factually.[52]

It is clear that, in individual cases, the freedom of debating public affairs and the differentiation between statements of fact and statements of opinion require a flexible decision, which takes into account the general state of public speech and the context of the statement. In the long run, in election-related questions, it may be worth contemplating whether, in the context of the Act on Electoral Procedure, the analogy of the generally valid rules of personality rights

[52] Decision 3107/2018. (IV. 9.) AB of the Constitutional Court of the Republic of Hungary, Statement of Reasons, [26] and [28]–[29].

protection is justifiable and applicable to the debate of public affairs, or, due to the character of an election (referendum) procedure, it is possible to identify specificities which justify a derogation from them. This is not an easy task, because applying the analogy seems natural, as in both cases public figures and public affairs are concerned; what is more, public affairs, which are the most likely to give rise to vigorous views, are the subject of a running debate in an election campaign, in which the parties state facts and formulate opinions. Even on this basis, in theory, it is possible to interpret the tests of good faith and exercising rights in accordance with their purpose as prescribed by the Act on Electoral Procedure in a way that is compatible with, but not fully identical to, the constitutional expectations relating to rules on the protection of the personality rights enshrined in the Civil Code and Criminal Code. One example of a possible derogation could be that even if due care is given [see Decisions 36/1994. (VI. 24.) AB and 7/2014. (III. 7.) AB], arguments against the protection of stating untrue facts may be raised in the context of the election process because, although they do not result in the violation of personality rights, they may mislead voters.

V The Threshold of Tolerance with Regard to Personality Rights for Persons Involved in the Discussion of Public Affairs

The enforcement of the rules on the protection of personality rights in debates of public affairs and the higher threshold of tolerance for public figures and those concerned in public affairs was first defined in Decision 36/1994. (VI. 24.) AB. Twenty years later, it was made more precise when amended by Decision 7/2014. (III. 7.) AB, although regular courts did not apply or only partially applied the decision of 1994.[53] Decision 13/2014. (IV. 18.) AB partially reinforced the argument formulated in 1994 for criminal law but, remarkably, it was applied to the part of the test related to untrue facts:

> [the] freedom of expression relating to public affairs fully protects facts that are proved true, while it protects the act of stating or spreading false facts only if the person spreading the rumour was not aware of the falsehood and did not fail to apply the circumspection required by their profession, either. These statements of facts, capable of slander, constitute the criminal offence of defamation and hence are subject to punishment.[54]

Concerning the freedom of value judgements, however, the Constitutional Court did not refer to its decision of 1994 (intending to provide unlimited constitutional protection to value judgements) but, in a previous paragraph of the Statement of Reasons, it quoted its Decision 7/2014. (III. 7.) AB, which is more restrictive in terms of the freedom of speech, but more lenient in terms of the protection of the personality rights:

---

[53] See Koltay András, 'A közéleti szereplők hírnév- és becsületvédelmének kérdései Európában, különös tekintettel a magyar jogrendszerre' in Koltay, Török (n 7).

[54] Decision 13/2014. (IV. 18.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 286, Statement of Reasons, [41].

> [the] freedom of opinion no longer provides protection for self-serving statements, which are outside the scope of the debate of public affairs, thus are related to private or family life, and aim solely at humiliation or the use of insulting or offensive expressions, or the violation of other rights. […] Besides, it does not protect the opinion expressed in the public debate if the statements formulated violate the unrestrictable essence of human dignity; as such, they are the embodiment of an obvious and grave defamation of the human status.[55]

Decision 3328/2017. (XII. 8.) AB modified the test applied in 1994 on an important point. The Statement of Reasons concluded that, since defamation as a criminal act can only be committed deliberately, one of the elements of the test established in Decision 36/1994. (VI. 24.) AB may no longer be maintained, namely the one according to which the person who 'did not know of its falsehood [statement of fact offending one's honour] because of his failure to pay attention or exercise the caution reasonably expected of him pursuant to the rules applicable to his profession or occupation, taking into account the subject matter, the medium and the addressee of the expression in question'

> The Constitutional Court attributed special significance to the fact that the legislator does not deem the defamation caused by negligence punishable as a criminal act in the effective Criminal Code. Based on this, and taking the facts in the Statement of Reasons in Constitutional Court Decision [34/2004. (IX. 28.)] into account, it concluded that the constitutional expectation concerning defamation caused by negligence can no longer be maintained.[56]

This Decision 34/2004. (IX. 28.) AB, does indeed contain argumentation linked to the above. However, I am of the opinion that neither there, nor in Decision 3328/2017. (XII. 8.) AB is the point of departure appropriate: The decision of 1994 did not wish to introduce defamation caused by negligence; it only provided grounds for exemption with respect to the conduct in question in order to explore the reality of the given statement. As the decision of 2004 rightly concludes: 'The criminal act of defamation stipulated in Section 179 of the [old] Criminal Code may exclusively be committed deliberately and, in order to establish the deliberate nature of the act, it is necessary for the perpetrator to be aware of the fact that the statement of fact is capable of offending one's honour.' Therefore, 'deliberate nature' here only refers to the publication of offensive statements and not to the fact that only deliberate lies may be offensive. The perpetrator needs to be aware of the fact that his statement is capable of negatively impacting on the social reputation and perception of the person targeted. This is also possible by making true statements, which the court might allow to be proved (Section 229 of the Criminal Code). If the court does not permit evidence to be provided, an otherwise true statement might also be defamatory. It is enough if the person who did not proceed with due care and diligence when establishing the truth of the statement knows that his statement might have negative consequences for the person concerned, thus his conduct will be regarded

[55] Decision 7/2014. (III. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 209, Statement of Reasons, [40].

[56] Decision 3328/2017. (XII. 8.) AB of the Constitutional Court of the Republic of Hungary, ABH 2017, 1942, Statement of Reasons, [63].

as deliberate. The crime of defamation may be committed with a potential intention.[57] As a result, the reasoning of Decision 3328/2017. (XII. 8.) AB is unsound on this point, and it is also questionable whether, in cases relevant to criminal law, a new test will be applied by the Constitutional Court in the future.[58] A positive answer to this would entail a significant broadening of the scope of the freedom of speech as, in debates of public affairs in the future, only deliberately untrue statements (wilful, intentional lies) would be criminally punishable as defamation (though even in this case, the burden of proof would still lie with the speaker).

The interpretation of the right to honour and the freedom of opinions in the debate of public affairs is a question of fundamental importance. The Constitutional Court decision of 2014 introduced an interpretation that weighs up the options appropriately, and also provides room for free speech and the protection of personality rights, which will also be reflected in decisions handed down subsequently. Decision 3145/2018. (V. 7.) AB stipulated the following with respect to a legal dispute between two figures in the tabloid press:

> The courts acting in the case launched by the complainant examined the statements in the lawsuit – as they were explicitly referred to by the court of second instance in its judgment – taking into account the constitutional content of Article IX(1) of the Fundamental Law. Pursuant to this, they formulated their uniform position, according to which the use of the term 'psychopath' in the case is not a suitable ground for establishing the infringement of rights, neither on the basis of its content, nor on the basis of the way in which it was formulated. In this context, the courts attributed decisive importance to the fact that the defendant did not use the term at issue in a medical sense. The court of second instance also referred to how, in everyday language, it is customary to use this expression to describe somebody who does not act in a way liked by or expected by the other party. Consequently, from the notes in the lawsuit, it does not follow that, according to the defendant, the complainant suffers from the disease referred to. The defendant formulated the contested statements as the subjective evaluation of the complainant's conduct towards him. According to the position taken by the courts, the formulation 'under obscure circumstances' can also be clearly identified as an expression of opinion, which was a way in which the defendant reacted to the conduct of the complainant toward him.[59]

The Constitutional Court laid down in its Decision 3263/2018. (VII. 20.) AB a similar interpretation of the right to honour in light of the free debate of public affairs, coming to the conclusion that the right to honour does not really provide any protection in a debate of public affairs, and only statements that go beyond the damage to one's honour and which offend the unrestrictable aspect of human dignity may be sanctioned:

---

[57] Szomora Zsolt, 'Rágalmazás' in Karsai Krisztina (ed), *Kommentár a Büntető törvénykönyvhöz* (CompLex 2013, Budapest) 475.

[58] Balogh Éva, 'Alkotmánybíróság útvesztőben' (2018) 22 (2–3) Fundamentum 82–83.

[59] Decision 3145/2018. (V. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 745, Statement of Reasons, [81].

> [40] When interpreting the boundaries of the freedom of speech enshrined in Article IX para (1) of the Fundamental Law – with special regard to its restriction by criminal law –, […] the Constitutional Court established a more stringent test than 'the offence of honour'. According to the interpretation based on previous case law, and developing that further pursuant to the Fundamental Law, in the debate of public affairs, a criticism or value judgement relating to the person exercising state powers or a politician who is a public figure may not serve as grounds for criminal liability as the main rule. Only statements that collide with the unrestrictable aspect of human dignity, i.e. offending the legally expressed essence of one's status as a human being, violate the constitutional right of free expression.
>
> [41] The Constitutional Court emphasises that this restriction of the freedom of speech does not limit the disparaging or abusive nature of expressing an opinion per se, but it protects the essence of human dignity, which defines the essence of a human being. This unrestrictable domain of human dignity is not damaged by disparaging certain partial rights derived from human dignity (e.g. honour, good reputation) intensively and in a qualified manner, but if stating an opinion which ab ovo is aimed at violating this sphere protected in a special manner. Such a violation of rights could be, on the one hand, if the speaker negates or challenges the human status of those concerned or the requirement to treat them as human beings; on the other hand, if it intrudes into the innermost realm of human nature, attacking in a self-serving manner features that constitute the essence of one's personality and identity. As opposed to the subjective category of the 'sense of honour', this violation provides an objective ground, which the courts may invoke when assessing defamation from the perspective of criminal law.[60]

BDT 2018. 3808. follows an important supplementary interpretation, according to which a more lenient judgment should be handed down in terms of the statement of untrue facts if the organisation concerned in the public affair (in this case the National Tax and Customs Authority) does not provide adequate information to the representatives of the media. In this case, 'speculation', which might contain untrue statements that cannot be proved, might be lawful if its publication is not abusive: 'If, in public affairs of high interest to the public, the proprietors of information withhold information of high interest, the press, in addition to describing the facts and information serving as the basis of their conclusion, may also publish data in the form of speculation: these are protected by the freedom of expression on condition that they are not based on falsifying the facts.'[61]

It is also worth referring to a decision that relates to the constitutional interpretation of the Act on Electoral Procedure. In the case on which Decision 3122/2014. (IV. 24.) AB is based, a media service provider refused to broadcast a political promotional film by the applicant. The film 'depicts a man disguised as a monkey dressed up in a military uniform, who is lip-synching to the voices of former Hungarian prime ministers'.[62] According to the

[60] Decision 3263/2018. (VII. 20.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 1417, Statement of Reasons, [40] and [41].

[61] BDT 2018. 3808.

[62] Decision 3122/2014. (IV. 24.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 610, Statement of Reasons, [2].

position taken by the Curia, 'identifying somebody with an animal at any time qualifies as dehumanising the person concerned and this in a given case may be capable of violating human dignity'.[63] The position of the Curia is not sufficiently detailed; for example, the statement of reasons does not elaborate on the question of the extent to which satire and parody enjoy the protection of the freedom of speech. The conclusion that the phenomenon of public figures metaphorically 'dressing up as animals' may be interpreted as 'identification with an animal', the assessment of which concerns the very essence of the case, is dubious and so a more detailed elaboration would have been justified. The Constitutional Court, in agreement with the Curia, claimed that:

> [the] scope of the freedom of expression protected by the Fundamental Law is broader with regard to opinions concerning exercising state powers and politicians acting in public but, even in their case, human dignity has an essential, untouchable core, which those formulating potential criticism are also obliged to respect. In the present election-related case, the depiction of those concerned as animals in a disparaging manner violates this essential content and thereby violates Article II and Article IX(4) of the Fundamental Law.[64]

It may be contested that the depiction in this case violated human dignity. In the period of election campaigns, public figures need to tolerate harsh, sometimes extreme criticism. It is common sense that nobody would think that the filmmakers do not consider the public figures of outstanding importance concerned in this case as homo sapiens, and so the film, though it did depict public figures as animals, due to its characteristics as a parody, could not have met the condition of 'the total, obvious and severely disparaging negation of the human status of the person concerned'.[65]

VI Dissemination – the Obligations of the Media in Respect of Reporting Different Positions in Public Debate

The matter of dissemination is one of the most sensitive issues connected to the rules on the protection of reputation and honour. Dissemination means the act of relaying information received from others. Under both the Civil Code and the Criminal Code, dissemination is regarded as if the person who merely relayed the information made the false statement himself. According to Position No. 14 of the Civil Law Department of the Supreme Court on press correction – the validity of which may be extended to other means of protecting reputation – 'the correction of false statements is necessary, even if the communication originates from other sources. For this reason, the law allows for press corrections in the event

63 Ibid [3].
64 Ibid [17].
65 Decision 7/2014. (III. 7.) AB of the Constitutional Court of the Republic of Hungary, ABH 2014, 238, Statement of Reasons, [62].

of both making statements based on their own experiences and of relaying or communicating, i.e. disseminating, information received from others.'

The interest of publishing reports on public affairs and public events might collide with the interest of publishing true statements. The media, due to their character and the pace of publication, in numerous cases, do not have or have only a limited opportunity to check whether information complies with reality. In policy questions, they cannot decide in favour of any of the opposing positions, nor do they always have the opportunity to listen to the other party (although there is a fundamental ethical requirement for the media to make efforts to do so). Therefore, it is necessary to define the sources of information for which the media are automatically exempted from the obligation to check the content for reality (official communications, for example), and those that bring about some additional obligation (such as a procedure in good faith), as well as those where due diligence or increased diligence is expected in the course of publication.

Before the Civil Code was adopted, the case law of Hungarian courts had already shifted to a more lenient approach toward dissemination, with exemption from liability for persons disseminating information. In certain cases, and if using certain journalists' sources, it may be acceptable if the media provider merely publishes a statement as is. According to case EBH 2001. 407., such sources include the National Assembly, local governments and various national and local public administration bodies. 'Press members […] reporting on proceedings falling within the competence (of these) or on motions or proposals filed during such proceedings are not required to have evidence for the truthfulness of their statements.' Similarly, the media may not be required 'to verify the statements made in a press conference by a police officer' (BH 2002. 51.). By way of extending the application of this principle, the act of relaying information received from a press officer of the court may not serve as grounds for any claim for the infringement of personality rights (BH 2003. 357.). Similarly, 'press correction may not be sought if the press publishes correct information about a fact established in a criminal, civil or public administrative action before the completion of the proceedings' (BH 2004. 273.), even if the information subsequently turns out to be false in the course of the proceedings. For example, journalists who practically called a victim of a crime a psychopath on the basis of a defective expert opinion prepared during the police investigation were found not guilty of the crime of libel under case EBH 2005. 1289. A Supreme Court decision has also been made concerning the interpretation of the notion of dissemination in the context of on-line communication. If the on-line content provider publishes the news on a public website of a weekly paper run by it in a way that is accessible to anybody, the person who releases this information to others does not meet the statutory conditions of dissemination (BDT 2012. 2742.). In contrast, according to BH 2013. 266. 'relaying the infringing article by e-mail shall qualify as dissemination.'

It was rather late, at the end of 2017 that the Constitutional Court first dealt with the question of dissemination in its Decision 34/2017. (XII. 11.) AB. In its first decision, it laid down a rule on interpretation – as a constitutional requirement – that extends the scope of exemption of the media from liability with regard to dissemination. The exemptions granted

include not only official communications by various organisations exercising executive power and other state organisations but press conferences of public figures in general.

> The Constitutional Court establishes: It is a constitutional requirement stemming from Article IX(2) of the Fundamental Law and the freedom of the press enshrined therein that media content providers' activity, when reporting on the statements made at the press conferences of public figures in the debate of public affairs, in a way that is true to reality, without any interpretation and assessment and clearly indicating the sources of information and providing space for the rebuttal of the person affected by the statements of facts which might potentially offend his good reputation (or offering the opportunity for a response) shall not qualify as dissemination that is sanctioned by civil law as the violation of personality rights.[66]

The constitutional interpretation has also been followed in the case law of this area and indeed the practices of courts have further extended its scope. According to the decision of the Court of Appeal in Pécs, BDT 2018. 3835., the full and true to reality reporting of any statements made by public figures – i.e. not only statements made at a press conference – provides grounds for exemption from liability, even if the reporting published contains a statement of untrue facts: 'The media shall not be liable to prove truthfulness, if it reports the statement of a public figure in its entirety and true to the original. The substantive content of the statement in such a case shall be the opinion of the speaker itself, which may also include statements of facts evaluated by the speaker.'[67]

A second Constitutional Court decision on this matter, 3002/2018. (I. 10.) AB, handed down not long after this one, however, immediately narrowed the scope of the above constitutional requirement. In a way that is somewhat difficult to interpret, it established that the media shall be exempted from liability for an untrue statement they have disseminated only on condition that the media content includes exclusively the statements of those participating in the debate of the public affair, and nothing else beyond that. This is not too realistic and *ab ovo* excludes the possibility of an exemption of any article or news report prepared by the media themselves, beyond noting down and publishing the statements made by others. At the same time, the Constitutional Court does not limit the theoretical possibility of exemption from liability in terms of publishing facts stated at a press conference, thus such a publication – in line with the decision of the Pécs Court of Appeal – may include any statement concerning a public affair on condition that it does indeed contain only the statements of those concerned.

---

66 Decision 34/2017. (XII. 11.) AB of the Constitutional Court of the Republic of Hungary, ABH 2017, 2065, operative part.

67 BDT 2018. 3835.

> In the interpretation of the Constitutional Court – taking the constitutional requirement established in Decision 34/2017. (XII. 11.) AB into account – press coverage is outside the interpretation scope of dissemination if the media content focuses only on the up-to-date and credible statements of the persons participating in the debate on the public affair. In the given case, the press coverage did not focus on the statement of the first defendant but the description of information related to the events, which is contradictory. Consequently, in the given case, the press coverage examined qualifies as dissemination.[68]

The *Magyar Jeti Zrt. v Hungary* case[69] was launched following the latter decision of the Constitutional Court. The applicant made a complaint before the ECtHR, claiming that the Hungarian authorities had violated his right to the freedom of speech. The case is particularly interesting in that the dissemination was committed by embedding a link into the article; as such, the case was also about the legal judgment of a new form of communication made possible by Internet-based communication: Is it possible for the mere publication of a link to be infringing if the link leads to text or a video containing infringing, untrue statements?

According to the judgment of the ECtHR, if the journalist and/or the media content made by him did not express his agreement with the infringing content, and if he proceeded in good faith with due diligence, respecting the ethical rules of journalism or professional ethics, posting the link in itself does not amount to defamation. In addition, the context of the infringing content needs to be considered, namely what was the legal case regarding which it was posted for the public and who is affected; clearly the threshold of tolerance of outstanding public figures (in this case a parliamentary party) is also higher in such cases.[70]

VII Legislative Changes in the Summer of 2018: The Amendment of the Fundamental Law and the Civil Code, and the New Law on the Protection of Private Life

The summer of 2018 saw several important legislative amendments, which have fundamentally affected the freedom of debate in public affairs and the enforcement of personality rights in private law. In the seventh amendment of the Fundamental Law, Article VI(1) was supplemented with the following text: 'Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others.' If the category of private life is interpreted by the Constitutional Court in line with Article 8 of the European Convention of Human Rights then that may include the right to good reputation and honour.

Act LIII of 2018 on the Protection of Private Life uses this as its point of departure (which, however, logically may not tie the hands of the Constitutional Court when interpreting the provisions of the Fundamental Law in the future). According to Section 8(1) of the Act,

---

[68] Decision 3002/2018. (I. 10.) AB of the Constitutional Court of the Republic of Hungary, ABH 2018, 26, Statement of Reasons, [77].

[69] *Magyar Jeti Zrt. v Hungary,* no. 11257/16, 4 December 2018.

[70] Ibid [77]–[82].

'the purpose of the right to respecting private life is especially the right to a name, the protection of personal data, private secrets, image and sound recording, honour and good reputation'. Section 7(2), however, stipulates that '[the] private and family life, as well as the home of a public figure, shall be granted the same protections as those of a person who does not qualify as a public figure'. Reading the two provisions concurrently, we may also conclude that the right to good reputation and honour, as well as the right to one's image and one's recorded sound, are part of the right to private life, and the scope of these rights of public figures are exactly the same as the scope of the rights of private individuals. However, this interpretation is not acceptable, because, on the one hand, in terms of the enforcement of these rights, the most relevant category is not that of the public figure but the public affair while, on the other hand, the same act amended Section 2:44 of the Civil Code, which stipulates the restriction of personality rights in the context of the discussion of public affairs. Nevertheless, the new act does not create a new statement of fact, which may have an impact on the tests of the freedom of speech in the debates of public affairs, and so it remains possible to establish a violation of 'good reputation' or 'private life' on the basis of the Civil Code and the case law of the Constitutional Court and other courts based on it. Instead, the act defines individual facts amounting to the violation of the right to family life, home and respecting and maintaining contacts.

According to the provisions of the Civil Code, which took effect in August 2018:

> Section 2:44 [Protection of the personality rights of public figures]
> (1) The exercise of fundamental rights ensuring a free discussion of public affairs may limit the personality rights of public figures to an extent that is necessary and proportionate and is without prejudice to human dignity; however, it shall not violate their private and family life and home.
> (2) Public figures shall be entitled to the same protection as non-public figures with regard to communications or conduct falling outside the scope of free discussion of public affairs.
> (3) Activities and data in relation to the private or family life of public figures shall not qualify as public affairs.

The new text inserted into Paragraph (1) ('however, it shall not violate their private and family life and home') makes it likely that the text of the Civil Code will lend itself to a more restrictive interpretation of the concept of private life, as it does not include the right to good reputation and honour. From the whole of Paragraph (1), it still emerges that, in debates of public affairs, the protection of the right to good reputation, honour, image and recorded sound is restricted and opinions published in these debates and negatively influencing these rights are not infringing per se due to their character, but instead they are to be judged by earlier case law applying the Civil Code and the constitutional interpretation of the freedom of speech. Essentially, the new Paragraph (2) codified part of what is in decision 7/2014. (III. 7.) AB, providing the same degree of protection to public figures as for non-public figures in terms of statements falling outside the debate of public affairs. With regard to the new Paragraph (3), it is extremely important that it should be interpreted by courts in light of the freedom of speech enshrined in Article IX of the Fundamental Law: The private life of a public figure

may also be of high interest to the public if it is related to his public activities or has any bearing on any public affair.

Act LIII of 2018 seems, then, to be a strange piece of legislation, because for the most part it repeats certain provisions of the Fundamental Law, the Civil Code and Act CXII of 2011 on informational self-determination and the freedom of information with some additional content and imposing the sanctions enshrined in the Civil Code in the event of infringements. Its interpretation and identifying its autonomous normative content will be the responsibility of courts and the Constitutional Court.

VIII Closing Remarks

The interpretation of personality rights and the relevant provisions of the Civil Code have gained momentum as a result of the decisions adopted by the Constitutional Court and regular courts in recent years related to the freedom of speech, specifically in discussions of public affairs. It would not be an exaggeration to claim that the number of important decisions taken during this period exceeded those made between 1994 and 2014, a span of twenty years. The significant number of constitutional complaints raised indicates a similar intensity in the near future, which one hopes will lead to the cementing of constitutional principles and the resolution of contradictions in their application. Discussions of public affairs continue to enjoy a broad degree of freedom, and the case law under the aegis of the Civil Code has been extremely helpful in defining the scope of this freedom. With regard to questions of detail, no long-term conclusions may be drawn, due to the rapid changes in this area and legislative efforts as recently as the summer of 2018, but the main criteria needed to strike a balance between the protection of personality rights, and the freedom of the debate of public affairs have already been identified, and the principles applicable to decisions made in individual cases are available in a solid and mature form with a sufficient degree of detail. The category of public affairs is to be interpreted broadly, whereby the public figure is an important category, but it is of secondary importance compared to the category of public affairs, and where the differentiation between statements of fact and statements of opinion is to be treated in a flexible way, and the threshold of tolerance of those concerned is clear from the case law of the Constitutional Court. These are praiseworthy successes in the less than three decades of history of the freedom of speech in Hungary.

ELTE LAW JOURNAL
CONTENTS