

CONSTITUTIONAL COURT DECISION N. 8/2018. (VII. 5.)

The plenary session of the Constitutional Court, in the subject of a constitutional complaint – with concurring opinions by Judges *dr. Attila Horváth*, *dr. Béla Pokol*, *dr. Mária Szívós* and *dr. András Varga Zs.*– adopted the following

decision:

The Constitutional Court establishes that the judgement No. Pfv.IV.20.773/2016/5. of the Curia, as the review court, is in conflict with the Fundamental Law, therefore the Constitutional Court annuls it.

The Constitutional Court publishes its decision in the Hungarian Official Gazette.

Reasoning

- [1] 1. On the basis of Section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC) the petitioners, through their legal representative (Dr. Andrea Szigeti attorney-at-law, 1126 Budapest, 16 Szendrő u. 1/4.), have submitted a constitutional complaint to the Constitutional Court requesting the establishment of a conflict with the Fundamental Law and the annulment of the judgement No. Pfv.IV.20.773/2016/5. of the Curia adopted in a review procedure. In their opinion, the challenged decision is in conflict with Article II, Article VI paragraph (1), Article VII paragraph (3), Article IX paragraph (4), Article XXVIII paragraph (2) and Article 28 of the Fundamental Law.
- [2] 1.1. According to the facts of the case as established in the Curia's judgement, the notifier who had previously been employed by the Diocese of Szeged-Csanád, sent a report dated 2 January 2014 to the Police Office of Orosháza via the National Tax and Customs Administration (NAV) as the investigating authority, complaining about being intimidated in July 2013 by the plaintiffs (who submitted the constitutional complaint): if he did not stop reporting about the criminal offences occurred at the Episcopate of Szeged-Csanád, they would terminate his employment; later on he was removed from the service of the church and he had to leave his lodging as well. According to the document transferred by the investigating authority, the reported act raises the suspicion of the criminal offence of coercion. After having the notifier heard, the Police Office of Orosháza rejected the reporting of the offence on 14 February 2014. With its decision of 10 March 2014, the District Prosecutor's Office of

Orosháza annulled the decision of the police and ordered the continuing of the investigation.

- [3] Then in the volume of 22 March 2014 an article with the title "Investigation under way against bishop [...] due to coercion" was published in the daily paper "Népszabadság", published by the defendant. According to the article, the church employee who reported the suspicion of fraud had been threatened with firing and finally he was fired, removed from his lodging and his computer was confiscated. The paper mentioned that the District Prosecutor's Office of Orosháza ordered an investigation due to the criminal offence of coercion, "related to the acts of" the diocesan [...] and the commissary [...]. The article made a reference to an earlier article of the daily paper according to which the NAV had carried out an investigation in the Diocese of Szeged-Csanád because of the suspicion of budgetary fraud and other criminal offences and then the investigation was terminated. In this context, the paper quoted the spokesperson of NAV who stated that on the basis of the investigation committing a criminal offence could not be verified and the acts described in the report do not qualify as a criminal offence. According to the information obtained by the paper, as early as at the time of the investigation "a chase after potential notifiers" has been started in the diocese. The article then mentioned the decision of the District Prosecutor's Office of Orosháza, ordering the investigation, explained the decision of the prosecutor's office, mentioning that according to the information available, the suspicion has not yet been communicated to the affected persons.
- [4] The article continued with a framed writing with the subtitle "Priest involved in politics" dealing with the person of the plaintiff of 1st order (one of the petitioners). Accordingly, the plaintiff has become well known not only as a church leader but also as a priest involved in politics and as a football manager. The article underlined that the plaintiff has interests in local football, he maintains a school and that in the election campaign of the year 2010 he personally supported the campaign of János Lázár. The newspaper then referred to the fact that later on the diocese received from the National Development Agency lead by János Lázár 2.4 billion Forints for the renovation of the Cathedral of Szeged. According to the article, several priests were disturbed by the fact that village churches go to ruins while the diocese raises huge amounts for other purposes.
- [5] 1.2. In their claim, the plaintiffs asked the court – in addition to obliging the defendant to publish a communication and pay 500 000-500 000 Forints as recompense – to establish that by publishing the article the defendant violated their right to the protection of honour and to human dignity. They argued that the paper falsely stated that they had carried out a chase after notifiers and that they had fired the notifier from work, they had confiscated his computer and that there had been an investigation started concretely against the plaintiffs due to coercion or any other

criminal offence. In reality, they have not been incriminated, the notifier has not been intimidated and the computer was returned after the clarification of ownership. On the other hand, the article raised a false image as if the plaintiff of 1st order used illegally the financial resources he disposed over, causing a lack of funds for the renovation of the churches of the diocese, and as if the support received for the renovation of the Cathedral of Szeged was related to the election campaign of 2010.

[6] The court of first instance rejected the plaintiffs' claim completely. As argued by the court, it can be established beyond doubt on the basis of the documents obtained in the procedure that the defendant had provided a true account of the state of the investigation. The paper did not state any preliminary judgement concerning the plaintiffs as it was clear for the readers that the presented statements were from the reporting of the crime and that the investigation was still under way. Although the title of the article mentioned investigation against the plaintiff of 1st order, the article made it clear that the investigation was under way due to the acts of the named persons but there has not been any notification on the suspicion yet. Moreover, according to the judgement of first instance, the content of the text under the subtitle "Priest involved in politics" was clearly an opinion formed by the author of the article and its wording was neither unreasonably offensive, insulting nor humiliating.

[7] The court of second instance acting upon the plaintiffs' appeal changed the judgement of first instance and it found the appeal to be completely well founded, establishing that the defendant violated the plaintiffs' reputation with the false statements challenged in the claim and by presenting the truth in false light. As underlined in the judgement of second instance: the article falsely stated that there was a criminal procedure under way against the plaintiffs as the investigation was carried out against an unknown perpetrator, and also the story about intimidating the notifier and the chase against him proved to be false. In addition, the relation referred to by the paper between campaigning in support of János Lázár and the State aid subsequently acquired was unfounded, moreover, the contrast alleged between the State funds obtained for other purposes and the deterioration of village churches also conveyed unlawful content. The court of second instance obliged the defendant to give recompense (publication of communication) and to pay the amounts specified in the claim.

[8] Upon the defendant's application for review, the Curia annulled the final judgement and approved the judgement of the court of first instance. After quoting the provisions of the Fundamental Law and the interpretations by the Constitutional Court on the freedom of expression, in particular on the free debating of public affairs, the Curia's decision explained on the one hand that – following the resolution No. PK 12 – in the course of judging upon a claim submitted against a press agency, the press communication shall be examined in its entirety, the related parts shall be

assessed in their context and the public approach developed in the society shall be taken into account in the evaluation. As regards the weighing of all the circumstances, the Curia shared the position taken by the court of first instance: although, contrary to the title of the article, actually there was no criminal procedure carried out against the plaintiffs, it can be established with due account to the entirety of the article that there was no preliminary judgement expressed by the defendant. It had to be noted that the article was written when the prosecution returned the case for further investigation due to the suspicion of the criminal offence of coercion, and, according to the decision, the subject of the investigation was the plaintiffs' conduct, and the article contained information about the fact that the the plaintiffs had not been notified about the suspicion.

- [9] On the other hand, with regard to the information qualified by the judgement of second instance as false statements of facts – according to which there was a chase after the notifier depraving to his firing and the confiscation of his computer, and that the termination of his employment at the diocese was related to the tax authority's investigation started at the diocese and to the deterioration of his relation with the plaintiffs –, the Curia explained that they have to be regarded in the relevant process and context as opinions that may be expressed within the wider limits of the freedom of expression. Based on the above, with regard to the first part of the article, the Curia established in consonance with the court of first instance that on the one hand it contains a report about the state of a criminal procedure, and on the other hand it does not make any untrue nor insulting statement of facts regarding the persons of the plaintiffs.
- [10] The Curia also fully shared the opinion of the court of first instance regarding the framed text with the subtitle "Priest involved in politics": the plaintiff of 1st order, as a public figure has to tolerate to an enhanced extent the manifestations of criticism towards his person and his activities. The Curia considered the content of the article about the political positions taken by the plaintiff of 1st order, as well as his public roles undertaken and its possible financial-material implications as assumptions that may be presented in the scope of the freedom of expression. Accordingly, by assessing all the circumstances of the case, the context and the essential content of the article, the Curia annulled the final judgement condemning the defendant and it approved in its entirety the judgement of first instance.
- [11] 1.3. The petitioners primarily founded their constitutional complaint on assuming that the judicial decision taken in the review procedure was mistaken in exploring and judging the relations between the freedom of expression and freedom of the press as the rights of the defendant and the protection of the personality rights of the plaintiffs, leading to the violation of Article II of the Fundamental Law, protecting human dignity, Article VI paragraph (2) protecting reputation and Article IX (4)

delimiting the boundaries of the freedom of expression. According to the petition, the mere fact that someone holds an office with an ecclesiastical legal entity that also empowers him to exercise – according to the terminology of secular law – employer's rights, does not create a public figure status and the acts taken by that person are not considered to result in public affairs by virtue of their subject. In accordance with the Criminal Code, members of ecclesiastical bodies who perform religious acts or ceremonies by profession qualify as persons entrusted with public functions, but performing a public function is not identical with exercising public authority. Therefore, in the opinion of the petitioners, they qualify neither as persons exercising public authority, nor as public figure politicians, thus the Curia acted in conflict with the Fundamental Law by extending to them the standards of the freedom of expression requiring greater tolerance. The constitutional complaint also alleges that the legal interpretation of the challenged decision is a violation of Article VII paragraph (3) of the Fundamental Law, according to which the State and religious communities shall operate separately.

[12] The constitutional complaint also challenged the fact that the judgement of the Curia held it acceptable to publish information that had connected the persons of the petitioners with a criminal procedure started against an unknown perpetrator without the petitioners being subject to the procedure and without incriminating them. They hold that the judicial decision maintaining the lawfulness of such a false statement is a violation of their human dignity and reputation and it is also in conflict with the presumption of innocence guaranteed in Article XXVIII paragraph (2) of the Fundamental Law. According to the latter, both the preliminary declaration of being guilty and giving the impression thereof are prohibited. As held in the constitutional complaint, the falsification of true facts or presenting true facts in false light violate human dignity irrespectively to whether the affected person is a public figure or not. In this context, the petitioners challenged in general, with regard to several statements of facts held untrue by the court of second instance, that the Curia has taken a position different from that of the final judgement without delimiting, on the merits of the case, the statements of false facts from the expression of opinions classified as value judgements. In their opinion, the argument above is supported by the fact that the Curia failed to apply the aspect of verifiability.

II

[13] The affected provisions of the Fundamental Law:

"Article VI (1) Everyone shall have the right to respect for his or her private and family life, home, communications and reputation."

"Article IX (1) Everyone shall have the right to freedom of expression."

[14] The relevant provisions of the Act V of 2013 on the Civil Code (hereinafter: "Civil Code"):

"Section 2:44 [Protection of the personality rights of public figures]

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."

"Section 2:45 [Right to honour and reputation]

(1) Defamation means in particular expressing an opinion in a way that is capable of adversely affecting society's perception of another person and is unduly insulting in its formulation.

(2) Violation of good reputation means in particular misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts."

III

[15] The constitutional complaint is well-founded.

[16] 1. The Constitutional Court established primarily on the basis of Section 56 (2) of the ACC that the constitutional complaint complied with the formal and substantial requirements described in the ACC.

[17] According to Section 29 of the ACC, the Constitutional Court shall admit the constitutional complaint if a conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. The Constitutional Court considered as constitutional law issues of fundamental importance on the one hand whether the court applied correctly the arguments of constitutionality applicable to debating public affairs, including the aspects related to the persons and offices of the complainants, and on the other hand whether the judicial interpretation of the law about the need to assess in its entirety – together with its title – the article containing the challenged statements and inaccuracies was in line with the requirements of the Fundamental Law.

[18] 2. According to the consistent judicial practice of the Constitutional Court, on the basis of a constitutional complaint the Constitutional Court shall "examine the compatibility with the Fundamental Law of the interpretation of law found in the judicial decision, i.e. whether the court enforced the constitutional content of the rights enshrined in the Fundamental Law. If the court acts without paying due attention to the fundamental rights affected by the relevant case and if the interpretation of the law developed by the court is not compatible with the constitutional content of this right, then the adopted judicial decision is contrary to the Fundamental Law." {Decision 3/2015. (II. 2.) AB, Reasoning [18]}

- [19] The Constitutional Court may not distract the power of the adjudicating courts to comprehensively assess the elements of the facts of the cases before them; it may only review whether the interpretation of the law underlying the weighing was in compliance with the Fundamental Law, and whether the constitutional criteria of weighing were met.
- [20] 2.1. According to one of the main arguments of the petitioners, the judgement of the Curia is in breach of the quoted provisions of the Fundamental Law protecting their personality rights due to unconstitutionally extending to them the standards of the freedom of expression requiring greater tolerance. In this respect, their arguments emphasize that they do not qualify as persons exercising public authority or public figure politicians, and their ecclesiastical office in itself does not imply the need to apply to them or to their challenged actions the special test of the freedom of expression applicable to the debate of public affairs.
- [21] This argument of the petitioners is unfounded. The Curia decided to apply the standard providing enhanced protection for the freedom of expression in accordance with the relevant constitutional requirements, after carrying out a more complex assessment than the one contained in the constitutional complaint. In the challenged judicial decision, the offices held by the petitioners and their legal, personal statuses were not the only aspects taken into account regarding the application of the relevant standard. The arguments raised by the Curia refer to other concrete circumstances, based on which the expressions of opinion related to the issues in the facts of the case should be classified as a debate of public affairs.
- [22] As pointed out several times by the Constitutional Court, for the first time in the reasoning of the Decision No. 7/2014. (III. 7.) AB, in the course of harmonizing the freedom of expression and the protection of personality, the primary question is whether, with due account to all circumstances of the case, the speaker expressed his opinion in a social, public issue, a "public affair" (Reasoning [47]). This question cannot be decided solely on the basis of the status of the person affected by the expression – although this aspect should remain one of the most important elements of the weighing, sometimes an element with a determining force. {See the same in the Decision No. 3328/2017. (XII. 8.) AB, Reasoning [40] –[43]} On the one hand, the constitutional aspects applicable to expressing opinions in public life may have to be followed in a scope wider than the realm of opinions affecting the persons exercising public authority or those who act in public on a professional basis, but on the other hand one should not claim that any communication – including the ones not related at all to public affairs – affecting public figures should be assessed on the basis of these criteria.{Decision 7/2014. (III. 7.) AB, Reasoning [47]}
- [23] The Constitutional Court established on the basis of the above that the Curia had acted in accordance with the applicable constitutional requirements when it justified

the use of standards applicable to the debate of public affairs not merely on the basis of the offices and the status held by the petitioners, and it had made reference to further relevant factors of the case, concretely linked to their persons. For example, the challenged judgement referred to such circumstances, including the fact that one of the petitioners had regularly expressed political statements, he had attended the campaign events of one of the MP candidates, and that, in addition to his ecclesiastical office, he is an active participant of local social life due to his involvement in sports developments, as well as that the institutions represented by him have received state aid on several occasions. The Constitutional Court notes that although the limitation of the protection of personality is less justified with respect to the other petitioner, the commissary who is in charge of supporting the diocesan in the internal governance of the diocese, at the same time, the reasoning provided by the Curia focused on the relevant circumstances determining the entirety of the assessment of the case, related to the affected diocesan, with regard to which the concerned information belonged to the debate of public affairs.

- [24] These circumstances play a decisive role in the constitutional assessment also because the standards applied in the concrete case for the purpose of resolving the collision of the freedom of expression and the protection of personality may change in line with the circumstances of the expression, within the debate of public affairs and even with regard to the respective person. For example, the Constitutional Court pointed out earlier that the force of the arguments supporting the limitation of the protection of personality may lose strength in the case of adjudicating judges, thus in their case, to a certain extent, a special standard – to be elaborated within the debating of public affairs – may be applied. {C.p. Decision No. 7/2014. (III. 7.) AB, Reasoning [58] and [61]}. Similarly, it may be justified that in a specific case the legal assessment may take into account the particular status and the duties of the religious communities – operating separately from the State – and of their leaders: if it is supported by the circumstances of the specific case, with regard to their expressions – even if they touch upon social issues –, a special standard, different from the one applicable to public figure politicians may be elaborated within the scope of the debate of public affairs. This is not the case, however, when, based on their own decisions, the holders of ecclesiastic offices step out of the sphere closely linked to the life of their religious community, and they participate actively in public debates and the political life. In the latter case, the protection of their personality rights against the freedom of expression shall be more limited than it would be justified merely on the basis of their ecclesiastical office.
- [25] With account to all the above, the Curia applied in accordance with the Fundamental Law the test serving the purpose of the prominent protection of the freedom of expression and obliging the petitioners to exercise a higher level of tolerance against

the opinions affecting them, and it interpreted the law in compliance with the guiding constitutional criteria.

- [26] 2.2. According to the other argument of the petitioners, the Curia acted in conflict with the Fundamental Law when it held acceptable that the article in the press had falsely depicted them as subjects of a criminal procedure. As they argued, the title of the article had mentioned an investigation against one of them, despite of the fact that the criminal procedure had actually been carried out against an unknown perpetrator and they have not been incriminated.
- [27] In this respect, the arguments of the petitioners are well-founded. The Curia itself established – similarly to the court of first instance – that the article's title itself was inaccurate and untrue: it was about a criminal procedure against one of the petitioners due to the offence of coercion although he has not been notified about being suspected by the authorities for such an offence. At the same time, the challenged judgement failed to establish a breach of the law. As explained in the reasoning of the judgement, the judicial decision had first and foremost been based on the interpretation of the law requiring the examination of the press article in its entirety and calling for the contextual assessment of its related parts. Accordingly, the decisive factor assessed by the court was the allegation that – taking into account the entirety of the article – the paper had not presented a preliminary judgement, as it had been pointed out in the text of the article that the notification of being suspected has not been given yet.
- [28] The Constitutional Court primarily emphasized that the Curia's interpretation of the law is in compliance with the requirements stemming from the Fundamental Law with regard to holding that the information conveyed in a press article has to be interpreted in its entirety and together with its interrelations, and that irrelevant mistakes or inaccuracies may not form the basis of a breach of law.
- [29] In this respect, considerations of primary importance have been presented by the Constitutional Court regarding the place of the statements of facts in the constitutional weighing – within the comprehensive group of the expressions of opinion. As it has been summarised in the Decision No. 34/2017. (XII. 11.) AB (Reasoning [34]), the Constitutional Court has been consistent in pointing out that although the statements of facts – both the true and the false ones – need to be judged with standards significantly different from the ones applicable to value judgements, they are also subject to the freedom of expression and the arguments supporting the enhanced protection of public debates are applicable to them as well. "The expressions containing statements of facts also form part of the freedom of expression. On the one hand, the communication of a fact may also express a personal opinion, and on the other hand, without the communication of facts, the forming of opinions would also become impossible. [...] The enhanced protection of

expressing political opinion shall apply both to the value judgements formulated in public affairs and to the statement of facts within the realm of public affairs." {Decision No. 7/2014. (III. 7.) AB, Reasoning [49]–[50]}. In accordance with the arguments above the Constitutional Court has pointed out several times that although the false statement of facts in itself – in contrast with value judgements and criticisms – is not subject to a constitutional protection, still the assessment of all the relevant circumstances of a given case may lead to the conclusion of having no constitutional way to enforce the legal liability of the party who made the false statement. This is not only about setting limits to the criminal prosecution of false statements of facts formulated in public affairs in accordance both with the former judicial practice of the Constitutional Court [c.p. Decision No. 36/1994. (VI. 24.) AB, Decision No. 18/2000. (VI. 6.) AB] and with the one developed after the entry into force of the Fundamental Law [c.p. Decision No. 13/2014. (IV. 18. AB)]. As pointed out in the Decision No. 7/2014. (III. 7.) AB also in the context of civil law, the communication of facts that belong to the debating of public affairs is typically the basis of opinions, therefore the interest in the freest possible flow of public debates should be taken into account when considering the question of enforcing legal liability, even with regard to the statement of facts that do not represent a constitutional value and that subsequently prove to be false (Reasoning [50]).

[30] These constitutional considerations are reflected in the judicial interpretation, according to which, if the whole of the press article provides true information, then the smaller inaccuracies, falsehoods found in certain sentences or terms of the article do not form ground for legal accountability. Consequently, the Constitutional Court holds this interpretation of the law to be correct and to be applied.

[31] However, the Constitutional Court holds at the same time that the criteria concerned should be considered differently when they are applied with regard to the title of an article. The title is not merely one of the sentences or phrases of the press article: it is a highlighted element enjoying a central role in raising the attention of the readers and grasping the content of the article, and this way, in a specific case, it may have an intensified effect with respect to the injury of personality rights as well. This focusing and emphasizing role provides the title of an article with an independent significance that has to come along with independent assessment in the scope of the protection of personality. Therefore the evaluation of the article's title should not be merged in a joint interpretation together with other parts of the article.

[32] The Constitutional Court stresses that due to its genre and its role mentioned above, the title of an article may naturally contain simplifications and inaccuracies: both the justified level of raising attention and the need to grab the essence of content pose limitations regarding the accuracy of giving a title. However, the question of the lawfulness of the resulting simplifications and inaccuracies shall depend on whether

they, in themselves, could be regarded as misleading or deceptive concerning any significant information and not on the fact whether the remaining, detailed part of the article provides a counterweight to them. Due to the particular role of the article's title, the title itself should not contain any significant, misleading inaccuracy or falsehood related to any important circumstance from the point of view of the entire article.

- [33] Accordingly, the interpretation of the law provided in the judicial decision, in its part stating that the inaccuracy and falsehood contained in the title of the article should be assessed in the light of the totality of the article, does not enforce adequately the criteria of constitutionality stemming from Article VI of the Fundamental Law. Therefore the Constitutional Court annulled the challenged judicial decision.
- [34] However, making a decision on the lawfulness or unlawfulness of the concrete title of the article in the facts of the case shall remain the duty of the adjudicating court. In the repeated procedure, with due account to the above, the court should assess concerning the lawfulness of the article's title, whether it contains, with regard to any circumstance significant from the point of view of the communication's entirety, any information that may mislead the readers by violating the personality rights of the affected person.
- [35] The Constitutional Court orders the publication of the decision in the Hungarian Official Gazette on the basis of the second sentence of Section 44 (1) of the ACC, with due account to the statements of principle contained in the decision.

Budapest, 26 June 2018

Dr. Tamás Sulyok,
President of the Constitutional Court

Dr. István Balsai,
Judge of the Constitutional Court

Dr. Egon Dienes-Oehm,
Judge of the Constitutional Court

Dr. Attila Horváth,
Judge of the Constitutional Court

Dr. Ildikó Hörcherné dr. Marosi,
Judge of the Constitutional Court

Dr. Béla Pokol,
Judge of the Constitutional Court

Dr. László Salamon,
Judge of the Constitutional Court

Dr. Balázs Schanda,
Judge of the Constitutional Court,
rapporteur

Dr. István Stumpf,
Judge of the Constitutional Court

Dr. Marcel Szabó,
Judge of the Constitutional Court

Dr. Péter Szalay,
Judge of the Constitutional Court

Dr. Mária Szívós,
Judge of the Constitutional Court

Dr. András Varga Zs.,
Judge of the Constitutional Court

Concurring opinion by Judge *Dr. Attila Horváth*

- [36] I agree with the annulment of the Curia's judgement, but in my opinion, the judgement of the Curia failed to enforce the constitutional criteria stemming from Article VI of the Fundamental Law not only with regard to the assessment of the false statement found in the title of the press article about the petitioner, but the judgement is also in conflict with the Fundamental Law in respect of the evaluation of the petitioners as public figures and concerning the belonging of the examined expressions of opinion to the scope of debating public affairs.
- [37] According to Article VII paragraph (3) of the Fundamental Law, the State and religious communities operate separately, and as a consequence – among others – the State does not interfere with the internal affairs of churches.
- [38] 1. As, according to the judicial practice of the Constitutional Court, the classification of being a public figure is subject to individual assessment in each case {see most recently in the Decision No. 3145/2018. (V. 7.) AB, Reasoning [44]}, in the present case it should have been taken into account that the basic legal debate in the concrete case was of employment character on the one hand, and the issue of church renovations was an internal question of the diocese on the other hand. I hold that an internal debate of the diocese and a labour dispute may not be automatically classified as a public debate if one of the parties of the debates is a church leader, even if these debates may, in the given case, be challenging to public interest. The judgement of the Curia failed to address these aspects.
- [39] 2. Furthermore, in my opinion, the reasoning of the Curia's judgement was in conflict with the Fundamental Law due to classifying the persons holding ecclesiastical offices as public figures and in this respect I hold that the "reference to other concrete circumstances", accepted by the majority of the Constitutional Court, was not convincing. The reason for holding it is that the affected church leader had not made any public statement about the labour dispute or the church renovations that qualify

an internal affair of the diocese, and the root of the criticism against him was not any public information note or communication of this kind.

Budapest, 26 June 2018

Dr. Attila Horváth

Judge of the Constitutional Court

[40] I join the concurring opinion.

Budapest, 26 June 2018

Dr. András Varga Zs.

Judge of the Constitutional Court

Concurring opinion by Judge *Dr. Mária Szívós*

[41] Based on my powers granted in Section 66 (3) of the "ACC", I attach the following concurring opinion to the Constitutional Court's decision.

[42] I support the holdings of the adopted decision, however, as explained below, on the one hand I hold the reasoning not to be satisfactory, and on the other hand I doubt certain statements made in the majority decision.

[43] The annulment of the Curia's judgement should have been supported by a more elaborate reasoning. In my view, it definitely should have included the presenting of connecting points and the mutual interrelation of the fundamental rights to human dignity and to reputation, together with the related limitations of the freedom of expression.

[44] I challenge the majority decision's claims that the petitioner must tolerate more with regard to the press article concerned, and the qualification of the case under examination as a public affair. According to the consistent position taken by the Constitutional Court and in line with its case law, with regard to the expression of opinions in the scope of debating public affairs and the assessment of the applicable protection, the substantial issue is not the status of the affected persons, but the fact that the expressing party uttered his views concerning a social, political issue. Therefore the constitutional criteria regarding the expression of opinions in public affairs shall not be applicable to the opinions affecting public figures, if those opinions are not related at all to public affairs {see Decision No. 7/2014. (III. 7.) AB, Reasoning [47]}.

- [45] In the question of the collision of the freedom of expression and the protection of personality, the majority decision overruled its own standard when it classified the underlying case into the scope of debating public affairs.
- [46] In my view, point III.2.2 of the Reasoning should have laid down clearly that the title in question goes beyond the reasonable limit within which, in the interest of raising attention, the freedom of expression could have enjoyed primacy over the fundamental rights to human dignity and reputation. Indeed, the most significant element of the information conveyed in the title is the false statement about having an investigation under way against the petitioning diocesan. The Budapest-Capital Regional Court of Appeal had found the title of the examined article to be false, and neither has this been questioned by the Curia. The majority decision consistently described this false statement of fact as an inaccuracy. The term inaccuracy is very inappropriate in the context of the underlying case, as it fails to express that the title in fact contains a statement of fact, indeed, this term is better suited to conceal its importance, instead of clearly establishing it. Therefore, in my opinion, the judgement should be annulled not because the Curia failed to enforce adequately the constitutionality requirements stemming from Article VI of the Fundamental Law – as formulated in the majority decision –, but because the Curia assessed the title not in accordance with the Fundamental Law, thus violating the petitioner's human dignity and his fundamental right to reputation.
- [47] I also challenge the note related to the duty of the adjudicating court, found at the end of the adopted decision. I hold it inappropriate, in the decision annulling the Curia's judgement in conflict with the Fundamental Law, for the Constitutional Court to guide and to almost encourage the court about the possibility to conclude in the repeated procedure that a false communication related to committing a criminal offence would not violate human dignity and the fundamental right to reputation.

Budapest, 26 June 2018

Dr. Mária Szívós

Judge of the Constitutional Court

- [48] I join the concurring opinion.

Budapest, 26 June 2018

Dr. Béla Pokol

Judge of the Constitutional Court

[49] I join the concurring opinion.

Budapest, 26 June 2018

Dr. András Varga Zs.

Judge of the Constitutional Court