

Decision 13/2014 (IV. 18.) AB

On a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Order No. 4.Bf.276/2013/7 of Pécs Court of Law as well as Judgement No. 4.B.85/2012/16 of Siklós District Court

On the basis of a constitutional complaint seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of judicial decisions, with dissenting opinion by Justice *dr. Egon Dienes-Oehm*, the Plenary Session of the Constitutional Court rendered the following

decision:

The Constitutional Court holds that the part of the decision relating to the petitioner of Order No. 4.Bf.276/2013/7 of Pécs Court of Law as well as Judgement No. 4.B.85/2012/16 of Siklós District Court infringes freedom of expression enshrined in Article IX (1) of the Fundamental Law and, therefore, annuls the judicial decisions contained respectively in the above Order and Judgement.

The Constitutional Court shall publish this Decision in the Hungarian Official Gazette.

Reasoning

I

[1] 1. The petitioner lodged a constitutional complaint before the Constitutional Court, in which the petitioner alleged non-conformity with the Fundamental Law of Order No. 4.Bf.276/2013/7 of Pécs Court of Law. The constitutional complaint challenges the decision of the court of law that concerns the petitioner.

[2] 2. In line with the petitioner's part of the facts established by the Siklós District Court (hereinafter referred to as the "District Court") acting at first instance in the criminal case, which is the basis of the constitutional complaint, the petitioner is a member of the municipal representative body of the town of Siklós. In January 2011, the petitioner published a journalistic writing titled "What did the new year bring to János Marencics? 521,775 HUF bonus on the money of the Siklós residents" in the monthly and bi-monthly Siklós public newspaper entitled "Democracy without Compromises" (in Hungarian: *Demokrácia megalkuvások nélkül*). The article criticized the activities of the

mayor of Siklós, dr. János Marenics, and read with reference to the mayor's activities that:

“After the drastic increase in the salaries of the mayor, deputy mayors and municipal representatives at the inaugural meeting, on 30 December 2010, the Board of Representatives made another brazen and shameless decision, again only to the account of the people of Siklós. At first it just seemed like what New Year’s Eve would entail as a feast of tradition, since the television was no longer present at the meeting, then it became a reality and was voted in favour. When a lot of people’s Christmas was spent in deprivation and many couldn’t even get heating fuels, the greedy mayor of our city proved once again that he loves money more than anything. And alas, ours again. The bonus roll call vote included the following names: [...]

You will surely remember when the mayor grabbed a 3-month bonus, the only one in the world to take seriously the frenetic tales of Zsolt Györei “shenanigans”. After an unrealised brainstorming session and getting caught, he forgot to repay the bonus. No sooner had the mayor, who imagines himself as Little Boy Blue, returned home from one of his usual luxury holidays of the year, thumbing his nose at the catastrophic state of the city, as a result of his blessed activities, than once again he reached deep into the pockets of the Siklós residents.

While they feel far from sorry for rewarding themselves with the taxpayers' money and treat it as if it were their own, the János Marenics—Szilvia Mehring Tóth duo town administration has come up with a drastic austerity package on the occasion of the New Year, which affects the population more deeply than ever before.

The roll call vote included the following names: [...]

[3] On the basis of such facts, following the submission of the mayor's criminal complaint, the Prosecutor's Office in the town of Komló indicted the petitioner for the misdemeanour of insult committed in broad publicity, in violation of and qualifying under Section 180 (1) (a) and (b) of Act IV of 1978 on the formerly effective Criminal Code (hereinafter referred to as the “Criminal Code”). The district court hearing the criminal case found the petitioner guilty of the misdemeanour of defamation in violation of Section 179 (1) of the Criminal Code and qualifying under Subsection (2) (b) and sentenced the petitioner to a fine as a cumulative penalty due to the termination of the previously established probationary periods. In the reasoning of its judgement, the district court, recalling the content of Decision 36/1994 (VI. 24.) AB of the Constitutional Court, explained that an opinion incorporating a value judgement in the discussion of public affairs is not constitutionally punishable. However, the district court also established that freedom of opinion in statements of fact may be subject to stricter limits; therefore, “it does not extend to the disclosure of untrue facts which are defamatory, if the person making the

statement was expressly aware of the untruthfulness of his disclosure or by reason of his occupation or profession, he would have been required to examine the veracity of the facts, but he failed to exercise that diligence as a result of the responsible exercise of the fundamental right in question. Freedom of expression includes only the freedom of criticism, characterization, views, and criticism, and falsification of facts does not enjoy such protection" (see pages 9 and 10 of the district court judgement). As held by the district court, the phrase in the newspaper article that "he feels far from sorry for awarding himself with the taxpayers' money and treat it as if it were his own ..." is a statement that contains facts, as it "refers to a phenomenon, condition or event that has taken place or is taking place." This fact is a reference to the prohibited use of public funds, which the district court concludes can only enjoy the protection of freedom of opinion if it proves to be true (see page 10 of the district court judgement). As the veracity of the allegation made in the written piece remained unproven during the criminal proceedings, the district court found the petitioner criminally liable for the misdemeanour of defamation.

[4] By order of Pécs Court of Law (hereinafter referred to as the "Court of Law") hearing the defence appeal seeking acquittal of the charges, dated 25 October 2013, which became final on that day, the Court of Law upheld the judgement of the trial court as regards both the facts established and the legal qualification of the act and the penalty imposed. The Court of Law argued that the district court had given adequate reasons for "which terms in the newspaper article it found to be capable of undermining the victim's honour" (see page 2 of the order by the Court of Law). The Court of Law maintains that although the defendants have the right to criticise under freedom of expression, the impugned sentence provided by the petitioner goes beyond that, because by giving false facts, it gave the impression that "the victim was abusing his official position and in breach of his duty as trustee, had unduly favoured himself" (see page 2 of the order by the Court of Law). The Court of Law established that the petitioner's impugned newspaper article formulates statements of fact which are capable of being defamatory; therefore, the judgement of the district court reached a correct conclusion.

[5] 3. Pursuant to Section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act"), the petitioner lodged a constitutional complaint with the Constitutional Court against the order of the Court of Law, in which alleged unconstitutionality by non-conformity with the Fundamental Law of the final order of the Court of Law and sought annulment of the judicial decision. The petitioner contends that the judicial decision challenged in the constitutional complaint violates freedom of expression enshrined in Article IX (1) of the Fundamental Law. The petitioner further maintains that the courts hearing the case had sanctioned criticism of the work of the mayor exercising public power in the course of public debate by

means of criminal law, which infringed the right to freedom of expression guaranteed in the Fundamental Law. To substantiate his belief so assured, the petitioner, in addition to referring to Decision 36/1994 (VI .24.) AB of the Constitutional Court, explained that the contestability of public affairs is an indispensable element of a democratic society. It follows that judgement and opinion on public affairs enjoy stronger constitutional protection, even if they are exaggerated and augmented. The petitioner also referred to the relevant case law of the European Court of Human Rights (hereinafter referred to as the "Human Rights Court"), based in Strasbourg, which, in the petitioner's view, confirms that the social function of the debate must be taken into account when determining the limits of freedom of expression. The petitioner argues that it is only in the light of this requirement that a decision can be made as to whether a published newspaper article constitutes a statement of fact or a value judgement. In the petitioner's view, the published newspaper article was an opinion that sought to draw attention to the fact that, despite the town's poor financial situation, "the mayor prefers to vote for certain benefits for himself." The petitioner takes the view that the impugned sentence does not refer to a criminal offence but to an "act of moral condemnation".

[6] Therefore, the petitioner considers that the judicial decision challenged in the constitutional complaint was therefore contrary to the Fundamental Law, thus he sought a finding of unconstitutionality by conflict with the Fundamental Law and annulment of said judicial decision. The petitioner also initiated that the Constitutional Court suspend the execution of the sentence imposed in the final order pursuant to Section 429/B (1) of Act XIX of 1998 on Criminal Procedure (hereinafter referred to as the "Criminal Procedure Act").

II

[7] Legal provisions governing the adjudication of the constitutional complaint

[8] 1. Provisions of the Fundamental Law referred to in the constitutional complaint:

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

[...]

(4) The right to freedom of expression may not be exercised with the aim of violating the human dignity of others."

[9] 2. The relevant provisions of the Criminal Code are as follows:

"Section 179 (1) Any person who, in front of other persons, asserts or rumours a fact that is capable of diminishing the honour of another person or uses an expression

directly referring to such a fact, shall be guilty of a misdemeanour punishable by imprisonment for up to one year.

(2) The punishment shall be imprisonment for up to two years, if the defamation is committed

a) with malice aforethought or with malicious motive;

b) in broad publicity;

c) causing a significant injury of interest

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Section 180 (1) Any person who, apart from what is contained in Section 179, uses an expression that is capable of diminishing honour directed against another person or commits other similar acts

a) in connection with such person's performance of professional or occupational duties, public office or public interest activities; or

b) in broad publicity;

shall be guilty for a misdemeanour punishable by imprisonment for up to one year."

III

[10] 1. On the basis of the provisions of Section 56 (1) of the Constitutional Court Act, the Constitutional Court first assessed whether the constitutional complaint was admissible, that is, whether it met the criteria for the admissibility of complaints set out in the Constitutional Court Act.

[11] 2. Examining the formal conditions of admissibility, the Constitutional Court came to the following conclusions:

[12] As provided in Section 30 (1) and Section 27 (b) of the Constitutional Court Act, a constitutional complaint may be lodged in writing within sixty days of service of the contested judicial decision. The petitioner received the order of the Court of Law on 7 November 2013, while the constitutional complaint was lodged on 6 January 2014 with the district court of first instance, within the time limit prescribed by law.

[13] The petition also meets the conditions set out in Section 52 (1) of the Constitutional Court Act. The constitutional complaint contains a reasoned reference to the competence of the Constitutional Court under Section 27 of the Constitutional Court Act. The petitioner explicitly states the right to freedom of expression recognized

in Article IX (1) of the Fundamental Law and at the same time sets out the reasons for the violation of the right guaranteed in the Fundamental Law.

[14] Pursuant to Section 52 (1) (f) of the Constitutional Court Act, a petition is deemed to be explicit, *inter alia*, if it contains an express request for the annulment of the legal regulation, the provision thereof or the judicial decision. The constitutional complaint contains an explicit request because the petitioner seeks a finding of unconstitutionality by conflict with the Fundamental Law and annulment of the decision of a the Court of Law

[15] 3. With regard to the substantive conditions of admissibility, the Constitutional Court, in its discretion, examines concernment under Section 27 of the Constitutional Court Act, the exhaustion of legal remedies, and the substantive requirements under Sections 29 to 31 of the Constitutional Court Act. Assessing these conditions, the Constitutional Court has established the following:

[16] 3.1 The petitioner can be considered entitled under Section 27 and Section 51 (1) of the Constitutional Court Act and is obviously a party concerned, as the petitioner is indicted in the criminal case on which these Constitutional Court proceedings are based.

[17] Pursuant to Section 27 of the Constitutional Court Act, a constitutional complaint may be filed against a court decision on the merits of the case or other decision terminating the judicial proceedings, provided that the petitioner has exhausted his or her remedies or no possibility for legal remedy is available for him or her. In the present case, the petitioner submitted a constitutional complaint after the exhaustion of the possibility of appeal available under the Criminal Procedure Act, so the complaint meets this requirement set forth in Section 27 of the Constitutional Court Act.

[18] 3.2 Pursuant to Section 29 of the Constitutional Court Act, the Constitutional Court shall admit constitutional complaints if a conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. These two requirements of admissibility are of an alternative nature, so the Constitutional Court examined the exhaustion of these conditions separately.

[19] The petitioner contends that his fundamental right to freedom of expression recognised in Article IX (1) of the Fundamental Law is violated by the criminal court's interpretation of the law, which classified the criticism and value judgement criticizing local public life as a statement of fact and, on such basis, established his guilt in the crime of defamation. The courts hearing the criminal case on which the constitutional complaint found the petitioner guilty because, in their assessment, the impugned criticism was a statement of fact whose truth had not been proved during the criminal

proceedings. In view of this, in the opinion of the Constitutional Court, the objection raised in the constitutional complaint may have substantially influenced the judicial decision, which raises doubts as to the unconstitutionality by conflict with the Fundamental Law of the judicial decision {[Decision 7/2013 (III. 1.) AB, Reasoning [20]}].

[20] In addition, the Constitutional Court found that the examination of the constitutional problem raised by the petitioner was of significance beyond the individual case. Until now, the Constitutional Court has been able to develop the constitutional standard related to freedom of opinion concerning the debate on public affairs only in norm control type proceedings [See, for example Decision 36/1994 (VI. 24.) AB, ABH 1994, 219; Decision 34/2004 (IX. 28.) AB, ABH 2004, 490, and most recently, Decision 7/2014 (III. 7.) AB]. Accordingly, the Constitutional Court has so far not been able to set a constitutional standard that can assist those applying the law in distinguishing between statements of fact and value judgements concerning the debate on public affairs. However, the new system of public law has also opened the competence of the Constitutional Court to review the unconstitutionality by non-conformity with the Fundamental Law of judicial decisions, through which the Constitutional Court can also effectively control judicial practice on the exercise of freedom of opinion {Decision 7/2014 (III. 7.) AB decision, Reasoning [53]}. Thus, in the context of a specific case, the substantive decision of the Constitutional Court may also formulate in general terms the aspects for the future, subject to which courts adjudicating cases related to the criticism of public figures may take a position on the distinction between statements of fact and value judgements in public debates in accordance with the requirements of the Fundamental Law {See in a similar vein Decision 3/2013 (II. 14.) AB, Reasoning [33]}. The Constitutional Court therefore considers, as a constitutional law issue of fundamental importance to be answered in the course of the substantive proceedings, the main requirements arising from freedom of expression recognised in the Fundamental Law, which must be enforced as a mandatory aspect when delimiting statements of fact and value judgements concerning public debate.

[21] This constitutional complaint satisfies both alternative conditions set out in Article 29 of the Constitutional Court Act. Thus, on the basis of these aspects, the Constitutional Court decided, in accordance with Section 31 (6) of the Rules of Procedure, to admit the constitutional complaint and to carry out a substantive review of constitutionality. Based on the information provided by the district court, there is no extraordinary remedy procedure pending in the criminal case.

[22] 1. In his constitutional complaint, the petitioner referred to the violation of the right to freedom of opinion, so in this part of the reasoning of the Decision the Constitutional Court examines the merits of the freedom of opinion prevailing in the practice of the Constitutional Court. Bearing in mind the obligation to interpret the Fundamental Law contained in Article R (3) of the Fundamental Law, in the course of such interpretation, the Constitutional Court presents the content of the freedom of expression ensuring free debate in public affairs and the criticism of public figures, as well as the Constitutional Court's case-law. In doing so, the Constitutional Court outlines the limits to freedom of expression that criminal law may lay down (1). The Constitutional Court then provides an overview of the perception of the criticism of public figures represented by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter referred to as the "Convention"), promulgated by Act XXXI of 1993, and the Human Rights Court created for the interpretation of the Convention, and the aspects of the delimitation of facts and value judgements (2). The Constitutional Court will then examine the expectations of the fundamental rights standard thus known in order to ensure the freedom of opinion in the criminal law assessment of a criticism directed at a public figure, as well as in the assessment of his or her criminal liability, and the relevant aspects of the distinction between statements of fact and value judgements (3).

[23] 2. In democratic states governed by the rule of law, freedom of expression has a special role to play: It is not only the key to individual self-expression, the free development and intellectual autonomy of the individual, but also an indispensable source of democratic public opinion and the development of informed political opinion. Indeed, democratic governance and political public life presuppose the freedom to communicate, to be able to communicate and to clash different opinions without any impediment. Freedom of speech and of the press guarantee the development of democratic public life by promoting self-governance of citizens and their participation in democratic dialogue. Prior to the entry into force of the Fundamental Law, the Constitutional Court had shaped the meaning, content and limits of the fundamental right to freedom of opinion through the elaboration of its abundant case-law. In doing so, it also defined the constitutional role of freedom of opinion in the democratic functioning of the political community. In its Decision 7/2014 (III. 7.) AB, the Constitutional Court held that the previously unfolded constitutional contexts of freedom of speech and of the press retain their validity even after the entry into force of the Fundamental Law {Decision 7/2014 (III. 7.) AB, Reasoning [20] to [24]}. Consequently, the starting point for the assessment of the present case is the constitutional contexts elaborated earlier.

[24] 2.1 In the interpretation of the Constitutional Court, freedom of expression is regarded as the "maternal right" of a number of freedoms, known as communication

rights. This freedom provides an informed opportunity to participate in social and political processes through freedom of expression, freedom to provide information, to receive information and to form opinion on public affairs. It is not certain thoughts, opinions, ideas or values, but the opportunity for expression itself that enjoys constitutional protection. Thus, the freedom of the forum for expression itself is what carries constitutional value. Accordingly, the fundamental right to freedom of expression cannot be denied because what has been said violates the interests, perceptions, attitudes or sensitivities of others. Freedom of opinion and freedom of expressing such opinion are therefore the primary guarantees of a diverse and democratic public opinion and the development of informed political opinion.

[25] The press provides a forum for freedom of expression and free debate in public affairs, which plays a key role in making public authorities and public officials controllable to the public and politicians. Only in the possession of such information can citizens be free to form an opinion on the performance, efficiency and quality of the work carried out by those exercising public authority. And the controllability of state bodies provides an opportunity for democratic self-governance of citizens; therefore, they have a fundamental right to be informed about issues affecting public affairs. It follows from the above that constitutional democracies provide protection for a greater say in public affairs. Accordingly, the Constitutional Court protects the possibility of expressing public opinion, regardless of its content, in order to give all members of the political community the opportunity and the right to freely debate issues concerning public affairs [Decision 30/1992 (V. 26.) AB, ABH 1992, 167.; Decision 18/2004 (V. 25.) AB, ABH 2004, 303.]. It also follows that when drawing the constitutional limits of freedom of expression, it is always necessary to pay special attention to the aspect of democratic and free development of public life {Decision 30/1992 (V. 26.) AB, ABH 1992, 167.; Decision 37/1992 (VI. 10.) AB, ABH 1992, 227; reaffirmed most recently in Decision 165/2011 (XII. 20.) AB, ABH 2011, 478, 503; and Decision 7/2014. (III. 7.) AB, Reasoning [39] and [40]}.

[26] Public criticism of those involved in shaping public affairs is also an integral part of these political discourses and public debates. The free debate on public affairs thus necessarily entails, where appropriate, sharp or excessive criticism of the formulation of public affairs, that is to say, the activities of public figures, and questioning, freely refuting and criticising the credibility of their views. Indeed, it is closely linked to public dialogue and the debate on public affairs that the statements and actions of public figures are measured before the public. In democratic societies, the guarantee of control and accountability of public authority and public officials also includes the freedom to criticise public figures. And for this to happen, it is an essential requirement for citizens to be able to take part in public debates without fear of various retaliations and adverse consequences. The basis of this consideration is that the focus of

expression of an opinion on public affairs is primarily on the democratic functioning of the political community and not on the person of the public figure affected by a speech or criticism [See on a similar note Decision 18/2004 (V. 25.) AB, ABH 2004, 303, 308.].

[27] In its Decision 36/1994 (VI. 24.) AB, the Constitutional Court reviewed in detail the criticism of public figures and the limits of criticism. In this decision, the Constitutional Court explained that freedom of opinion “requires special protection when it relates to public matters, the exercise of public authority, and the activity of persons with public tasks or in public roles. In the case of the protection of persons taking part in the exercise of public authority, a narrower restriction on freedom of expression corresponds to the constitutional requirements of a democratic state under the rule of law. Open discussion of public affairs is a prerequisite for the very existence and development of a democratic society which presupposes the expression of different political views and opinions and criticism of the operation of public authorities. As the experience of societies with democratic traditions shows, in these debates governments and officials are attacked from time to time by wild, bitter and possibly unjust accusations, and facts are revealed to the public which are capable of offending the honour of public figures” (ABH 1994, 219, 228.). The Constitutional Court takes the view that the essential element of democracy includes free criticism of the operation and activities of the State and local government institutional system, even if such criticism takes the form of an exaggerated value judgement (ABH 1994, 219, 230.).

[28] For all these reasons, criticism of public figures is more widely protected by freedom of expression than criticism of an average citizen. Thus, in the consistent view of the Constitutional Court, the expression of opinions concerning public affairs and the activities of persons and organizations taking part in public life enjoys stronger constitutional protection, and thus the legality of its restriction may be constitutionally justified only in a narrower scope. Accordingly, legislation which restricts freedom of opinion in disputes in public matters must be interpreted strictly. However, this privileged constitutional protection cannot be unlimited, even with regard to criticism of public figures.

[29] 2.2 It can also be seen clearly from Article IX (4) of the Fundamental Law that the protection of honour, good standing of reputation and public trust in public institutions arising from human dignity constitute a constitutionally justifiable restriction on freedom of opinion and thus on public affairs. It is also obvious that a person does not exercise his freedom of expression in public, who uses terms that are seriously hurtful or offensive in order to humiliate another person as a human being. Accordingly, human dignity, which directly embodies human status, marks the boundary of freedom of public debate. Speech affecting public matters must yield to such unrestricted essence of human dignity, which determines human status. The specific legal limits of the freedom of opinion in disputes concerning public affairs arising from human

dignity are primarily determined by the rules of protection of the personality of civil law and the system of instruments of criminal law {See Decision 7/2014 (III. 7.) AB, Reasoning [43]}.

[30] The criminal protection of human dignity, due to the *ultima ratio* nature of criminal law, can only provide protection against the most serious cases where the opinion expressed violates a constitutional right or there is a direct risk of a violation thereof. This position is reinforced, on the one hand, by the public nature of the enforcement of the State's claim to prosecute, which is based on legal coercive acts, and, on the other hand, by the retaliatory and stigmatising nature of the criminal sanction. The deterrent effect of punishments also intimidates and deters those involved in shaping public opinion, which thus weakens the unfolding and value of public life based on democratic and pluralistic foundations. Criminalising the exercise of freedom of expression and that of the press and imposing sanctions is likely to have a chilling effect which could force those wishing to exercise their freedom to resort to self-censorship [See also, to that effect, the United States Supreme Court in *Lamont v. Postmaster General*, 381 U.S. 301 (1965)]. Therefore, the imposition in a restricted manner of a subsequent criminal sanction on those who exercise their freedom of opinion in public matters may be justified if the communication infringes the fundamental rights of others. As expressions of opinion concerning public debate enjoy increased constitutional protection, criminal action against criticism of public figures is possible only within strict limits, differentiated according to whether public communication concerning public affairs formulates a value judgement or a statement of fact.

[31] Based on the consideration of all these aspects, the Constitutional Court has ruled that the expression of an opinion encompassing a value judgement directed against a public authority, an official, or a public figure which is likely to degrade his or her honour, is not constitutionally subject to punishment. However, the assertion or rumour of facts capable of undermining honour does not enjoy the protection of freedom of opinion if the person asserting or rumouring such facts knew that his disclosure was untrue or was unaware of the untruth because he had failed to pay the attention or prudence required by his occupation [Decision 36/1994 (VI. 24.) AB, ABH 1994, 219, 230.]. These holdings were reaffirmed by the Constitutional Court a decade later, in its Decision 34/2004 (IX. 28.) AB, when it also held that the crime of insult may not be committed in connection with an activity in the public interest against a Member of Parliament and another politician exercising public power or otherwise acting in public (ABH 2004, 490, 500). It follows from the foregoing that, by the standard of the Constitutional Court, opinions conveying value judgement and personal convictions, as long as they are related to public affairs, enjoy the constitutional protection of freedom of opinion regardless of whether they contain a right or wrong, pleasing or displeasing, valuable or worthless thought. This is also required by the value of the

freedom of an opinion-neutral forum for expression. By contrast, statements of fact concerning public affairs which have proved to be false are protected by freedom of opinion only if the assertion or rumour of the fact was spread in good faith. It also follows that the demarcation of the facts from value judgements has a decisive influence on the scope, exercise and effective enforcement of the fundamental right to freedom of opinion in specific cases {See, to this effect, Decision 7/2014 (III. 7.) AB, Reasoning [49] to [50]}.

[32] Until now, the Constitutional Court has only been able to examine issues of freedom of opinion in norm control-type proceedings, thus, it has not had the opportunity to determine the criteria that are decisive for legal practice when distinguishing facts from value judgements. However, Article 24 (2) (d) of the Fundamental Law also confers on the Constitutional Court the power to review specific judicial decisions; therefore, in the context of the constitutional complaint under review, the Constitutional Court outlines the aspects which it considers to be relevant for the distinction between statements of fact and value judgements made in public debates and those affecting public affairs {*cf.* with the Reasoning for this Decision [20] to [21] and Decision 7/2014 (III.7.) AB, Reasoning [53]}. To determine this, the Constitutional Court primarily invites the practice of international legal protection mechanisms that also evaluate specific law enforcement decisions and examines what aspects they consider relevant.

[33] 3. The Constitutional Court recalls here that it accepts the level of legal protection provided by international legal protection mechanisms as a minimum standard for the enforcement of fundamental rights {*See first:* Decision 61/2011 (VII. 13.) AB, ABH 2011, 290, 321; reaffirmed, *inter alia*, by Decision 22/2013 AB, Reasoning [16]}. Hungary has submitted to the jurisdiction of the Human Rights Court, established in order to safeguard European public order and to protect human rights and freedoms; thus, the Constitutional Court outlines the restrictions which the Human Rights Court, in its own case-law, imposes on the exercise of freedom of expression in public debate, and the criteria by which it distinguishes between facts and value judgements.

[34] 3.1 Article 10 (1) of the Convention gives everyone the right to freedom of expression, which includes, *inter alia*, the freedom to form opinions and to communicate information and ideas without interference by public authority. Paragraph 2 of the same Article mentions the protection of reputation as a justifiable restriction on freedom of expression.

[35] In the Human Rights Court's interpretation, freedom of expression is one of the essential preconditions for the democratic development of society [ECtHR, *Handyside v. The United Kingdom* (5493/72) of 7 December 1976, paragraph 49]. The Convention protects all opinions, whether offensive, shocking or disturbing, as demanded by the

requirements of tolerance, pluralism and openness, which are fundamental principles of democratic societies (ECtHR, *Castells v. Spain* (11798/85) of 23 April 1992, paragraph 42). Accordingly, in permitting restrictions on freedom of expression, the Human Rights Court takes into account the values of a democratic society which permeates the Convention as a whole and seeks to answer whether restrictions on freedom of expression are necessary in a democratic society, that is, whether there is a pressing social interest which duly justifies the restriction [ECtHR, *Sunday Times v. the United Kingdom* (6538/74) of 26 April 1979, paragraphs 58 to 67]. The Human Rights Court also starts from the role of freedom of expression in a democratic society when assessing debates in public affairs. Indeed, in the Court's reading, freedom of the press protects democratic public life by guaranteeing the task of a "watchdog" by guaranteeing public debate on public affairs. This role necessarily involves the communication of excessive and even provocative, possibly vulgar, views [ECtHR, *Prager and Oberschlik v. Austria* (15974/90) of 26 April 1995, paragraph 38; ECtHR, *Bergens Tidende v. Norway* (26132/95) of 2 May 2000, paragraphs 48 to 50.]. The Human Rights Court sees this not only as an opportunity but also as a duty of the press in democratic countries {ECtHR, *Goodvin v. The United Kingdom* [GC] (17488/90) of 27 March 1996, paragraph 32}. Also in the light of the requirements of democratic public life, the Human Rights Court, in *Lingens v. Austria*, distinguished for the first time between the limits of criticism of public figures and individuals. As the freedom of public debate is the soul of democratic societies, the limits of criticism are wider for politicians than for individuals. This is because politicians take on public responsibility in the knowledge that their words and actions are being brought to the attention of the public at large. The boundaries of criticism are even wider for the government, whose activities can be controlled not only by the legislature and the judiciary, but also by the public and the press, and which must therefore exercise strict restraint in exercising state criminal responsibility in response to criticism, especially when other means are available to defend itself against wrongful criticism [ECtHR, *Lingens v. Austria* (9815/82) of 8 July 1986, paragraph 42 and ECtHR, *Castells v. Spain* (11798/85) of 23 April 1992, paragraph 46, confirmed, for example, by the ECtHR, *Şener v. Turkey* (26680/95) of 18 July 2000, paragraph 40, last confirmed by the ECtHR in, *Pentikäinen v. Finland*, (11182/10) of 4 February 2014, paragraph 37].

[36] Hungary is a State Party to the International Covenant on Civil and Political Rights (hereinafter referred to as the "Covenant"), Article 19 (2) of which provides for freedom of expression, while Article 19 (3) (a) allows exceptions to this freedom for other persons in order to respect their reputation or rights. The Human Rights Court's approach is reinforced by the practice of the UN Commission on Human Rights as the monitoring mechanism of the Covenant. In the reading of the Commission on Human Rights, freedom of opinion is one of the most important freedoms in any society, so the possibility of restricting it must be interpreted strictly [see, for example, *Rakhim*

Mavlonov and Others v. Uzbekistan, (1334/2004) 27 April 2009, point 8.4; Albert Womah Mukong v. Cameroon, (458/1991), 21 July 1994, point 9.7]. The Constitutional Court notes here that other regional redress mechanisms, such as the Inter-American Court of Human Rights, take a similar view when describing the role of freedom of opinion as a key to free debate in democratic public life [Verbitsky v. Argentina, 20 September 1994, Ivcher-Bronstein v. Peru, 6 February 2001, paragraph 151].

[37] 3.2 The Constitutional Court examines below the criteria on the basis of which it can be decided on a speech or communication disputing a public matter whether it enjoys the protection of the freedom of expression guaranteed in Article 10 of the Convention. In classifying an opinion, the Human Rights Court takes into account the circumstances of its disclosure, the content and context of the communication [ECtHR, News Verlags Gmbh & Co. KG v. Austria (31457/96) of 11 January 2000, paragraph 52] and its role and purpose [ECtHR, Thorgeir Thorgeison v. Iceland (39394/98) of 25 June 1992, paragraphs 66 and 67]. On the basis of all this, it can be decided whether or not the communication in question concerns a dispute in public matters. Where, by reason of its context and purpose, the communication concerns a dispute over public matters, Article 10 (2) of the Convention allows a minimum scope for restricting the dispute [ECtHR, Sürek v. Turkey, (26682/95) of 8 July 1999, paragraph 61]. In Lingens v. Austria, cited above, the Human Rights Court first took the view that it was necessary to distinguish between statements of fact and value judgements when assessing a communication. The essence of the distinction is that, while the reality of the facts can be proved, it is not possible to speak of the provability of value judgements, that is to say, their truthfulness (ECtHR, Lingens v. Austria (9815/82) of 8 July 1986, paragraph 42). The significance of the distinction lies precisely in this: Proof of value judgements cannot be required, so they in themselves enjoy the protection of freedom of opinion. In the Human Rights Court's approach, if the truth content of a statement can be at least partially verified or justified, then it is regarded as a statement of fact [ECtHR, Keller v. Hungary, (33352/02) of 4 April 2006, ECtHR, Csánics v. Hungary, (12188/06) of 20 January 2009, paragraph 38], otherwise, in all other cases, it is considered a value judgement, which includes exaggerated criticism, even using a vulgar term, or a statement of taste [ECtHR, Uj v. Hungary, (23954/10) of 19 July 2011, paragraph 21]. Borderline cases are known as value-laden statements of fact, which in the practice of the Human Rights Court enjoy a high level of protection of freedom of opinion [ECtHR, Karsai v. Hungary, (5380/07) of 1 December 2009, paragraphs 33 to 35]. Freedom of opinion also protects strong, overly critical and polemical, but thinly factual value judgements [ECtHR, Dichand and Others v. Austria, (29271/95) of 26 February 2002, paragraph 52]. However, according to the Human Rights Court's standard, the stronger the value judgement, the closer the factual connection must be (ECtHR, Pedersen and Baadsgraad v. Denmark, [49017/99] of 17 December 2004, paragraph 76). In addition, the freedom of expression guaranteed in the Convention no longer protects

communications that are intended to harm or humiliate another or a self-serving attack or violation unrelated to public affairs [ECtHR, *Skałka v. Poland*, (43425/98) of 27 May 2003, paragraph 34].

[38] 4. On the basis of all these aspects, the Constitutional Court determines the standard necessary for the criminal law assessment of a public communication concerning the dispute of a public matter to be in accordance with Article IX of the Fundamental Law in addition to the requirements arising from the freedom of expression guaranteed in Article 10 of the Convention {see Decision 34/2013 (XI. 22.) AB, Reasoning [25]}.

[39] 4.1 When judging a public communication, it is first necessary to decide whether the given communication reflects the speech in public affairs, the position expressed in a public interest debate, that is, whether it is related to the free debate of public affairs. In order to assess this, it is primarily necessary to take into account the manner and circumstances of the publication and the subject and context of the opinion. Thus, with regard to communication, the type of medium, the event giving rise to the communication, as well as the reactions to it and the role of the given communication in this process must be examined. As an additional aspect, it is necessary to evaluate the content and style of the statement, as well as the topicality and purpose of the communication. If, in the light of an assessment of those circumstances, it is established that the communication concerns a free debate in public matters, the communication will automatically enjoy the higher level of protection afforded by freedom of expression. Such communication is one of the main guarantees of the control and controllability of public power and those exercising public power, which is an essential requirement for the democratic and open functioning of a pluralistic society (*cf.* Reasoning [29] to [32] for this Decision).

[40] 4.2 It is then necessary to decide, on the basis of similar considerations, whether the communication can be considered a value judgement or a statement of fact. The limits of the exercise of freedom of opinion in matters concerning public affairs differ according to whether the given communication qualifies as a value judgement or a statement of fact. That is to say, that classification must comply with the requirements of freedom of opinion guaranteed by Article IX of the Fundamental Law because it also has a decisive and direct effect on its limits, such as the exercise and effective enforcement of a fundamental right. Freedom of opinion opens the door not only to certain perceptions or ideas, but also to the opportunity for expression. It follows that the free flow of value judgements in public affairs is ensured, since the common feature of value judgements in contrast to statements of fact is that their truthfulness cannot be verified and justified. In order to control the public power or the persons exercising public power and to inform and draw the attention of the public, they may also include a certain degree of exaggeration and provocation. This is what provides the basis for

pluralistic and diverse democracies. However, in view of the provisions of Article IX (4) of the Fundamental Law, the Constitutional Court stresses, in comparison with the previous practice of the Constitutional Court, that the limit of freedom of opinion is the protection of honour and the good standing of reputation arising from the human dignity of others. That is to say, freedom of expression no longer provides protection against self-serving communications, such as those relating to private or family life, which are outside the scope of public affairs, and which are intended to be mere humiliation or the use of offensive or offensive terms {*cf.* with the Reasoning [34] to [36] of this Decision and Decision 7/2014 (III. 7.) AB, Reasoning [62]}. Furthermore, it does not protect the opinion expressed in the public debate if its content violates the unrestricted core of human dignity, thus embodying an obvious and serious contempt for human status {*cf.* with the Reasoning [29] to [32] of this Decision and Decision 7/2014 (III. 1.) AB, Reasoning [60] and [62]}.

[41] In contrast to value judgements, statements of fact always contain specifics whose reality can be proved and verified by evidence. Thus, freedom of expression in public affairs is unrestricted in respect of facts which have been proved to be true, whereas protection against the allegation or rumour of a false fact is protected only if the person spreading the rumour was unaware of the falsehood and did not fail to exercise due diligence required by his occupation. Such allegations capable of degrading honour are among the statutory elements of the crime of defamation and are therefore punishable. In this connection, the Constitutional Court notes that the distinction between value judgements and factual statements is also of decisive importance in classifying opinions that do not affect public affairs. That classification determines the limits of the tolerance which may be allowed in relation to a given opinion. While opinions that represent value judgement require greater tolerance, more care can be required for statements that state or rumour facts. Differing judgement on value judgements and statements of fact are thus correlated with regard to speeches debating public affairs and those affecting other matters.

[42] However, the exercise of punitive power over communications challenging public affairs is particularly sensitive to freedom of expression and those wishing to exercise their freedom due to the severity, stigma and capability of triggering self-censorship of the criminal sanction (*cf.* paragraphs [29] to [32] of the Reasoning for this Decision). For precisely these reasons, criminal law cannot be given a broad meaning which would undermine or restrict freedom of expression guaranteed by Article IX (1) of the Fundamental Law. Accordingly, it is necessary to interpret restrictively the statutory definitions which constitute exceptions to the freedom of expression in disputes in public matters. Otherwise, the criminalisation of speech debating public affairs would run counter to the free exercise of a fundamental right guaranteed in Article IX (1) of the Fundamental Law. It follows that the words "asserts or rumours a fact ... or uses an

expression directly referring to such a fact" written in the statutory facts of the crime of defamation may be interpreted only in accordance with the requirements of Article IX (1) of the Fundamental Law.

V

[43] 1. Subsequently, the Constitutional Court, utilising the constitutional standard presented as a point of departure, assessed, in the context of the specific case on which the constitutional complaint is based, whether the legal interpretation of the courts hearing the case and the legal assessment of the material facts of the case giving rise to the complaint were in accordance with the system of requirements arising under freedom of opinion guaranteed by Article IX (1) of the Fundamental Law. The Constitutional Court then examined the specific violation alleged in the constitutional complaint and its legal consequences.

[44] 1.1 The petitioner published in a local public newspaper in January 2011 a journalistic writing which criticised the mayor's wealth management. On the basis of the mayor's criminal complaint, the town prosecutor's office in the case pressed charges against the petitioner on account of the disclosure of this journalistic writing. According to the incriminating sentence in the writing, "[w]hile they feel far from sorry for rewarding themselves with the taxpayers' money and treat it as if it were their own [...]". The court of first and second instance in the case, classifying the historical facts as the same as the incriminating part of the piece of journalism, found the petitioner guilty of a crime of defamation. In keeping with the courts' reasoning, the indicted act falls within the statutory elements of the defamation offence because the part of the sentence disclosed can be considered as a statement of fact, as a "refers to a phenomenon, condition or event that has taken place or is taking place" and "a reference to the prohibited use of public funds may, in fact, serve as a basis for initiating criminal proceedings". According to the courts, for such reasons, the communication provided exceeded the limits of freedom of expression.

[45] 1.2 The petitioner lodged a constitutional complaint against the judicial decisions because, in his view, the courts hearing the case had sanctioned the criticism of the mayor exercising public power in public debate by means of criminal law, which was contrary to the Fundamental Law. The petitioner argues that the incriminating part of the journalistic writing he published is not a statement of fact but a value judgement that emerged in a debate over public affairs. He did not accuse the mayor of committing a crime, but drew the attention of the local public to an act of moral condemnation, which in turn enjoys the protection of freedom of expression.

[46] 1.3 According to the Constitutional Court's primary assessment, in the criminal case concerned by the constitutional complaint, the trial courts recognised and paid attention to the constitutional aspects of the case. In doing so, the courts cited previous decisions of the Constitutional Court and also considered the conflict of fundamental rights that played a relevant role in the case. In doing so, they recalled that the right to freedom of expression should give way to very few rights, and also referred to differences in the assessment of factual statements and value judgements.

[47] However, based on the standard set out in paragraphs [39] to [42] of the Reasoning of this Decision, the Constitutional Court considers that the interpretation of law applied by criminal courts is not even in line with the requirements of freedom of expression as regards the contestability of public affairs, as recognized in Article IX (1) of the Fundamental Law. In line with the position of the Constitutional Court set out below, the courts hearing the contested criminal cases have given such a broad meaning to the "assertion" clause in the statutory definition of the defamation offence, that it violates the fundamental right recognised in Article IX (1) of the Fundamental Law and the standard arising therefrom.

[48] 1.4 In the view of the Constitutional Court, when judging a question, the courts hearing a criminal case must first decide whether the journalistic piece subject to the charge enjoys a high level of constitutional protection for disputing public matters. In doing so, criminal courts must take into account the subject matter and context of the communication, the manner in which it appears, the circumstances and the topicality, that is, the fact that the incriminating journalism appeared in a local public newspaper and criticised the asset management activities of the mayor exercising public power as well as his decisions related to the town budget. It is also necessary to pay attention to the fact that the writing was not characterised by self-interest, because its topicality was given by the decisions concerning the municipal budget. In the light of all the foregoing, it can be decided whether the piece of journalism enjoys a high level of constitutional protection for the debate on public affairs (*cf.* paragraph [39] of the Reasoning for this Decision). Excessive, provocative or polemical styles are permissible in criticising public affairs, which enjoy greater protection of freedom of expression and, at the same time, the limits of expression of opinion, including the need to interpret criminal statutory provisions set out in defence of a person's honour, need to be interpreted strictly.

[49] Next, the question of whether journalism constitutes a statement of fact or a value judgement requires a response from the courts seised. In doing so, it should be borne in mind that the impugned sentence makes sense in the context of the full text, which was intended to critique municipal asset management, that is, the writing criticised the town's asset management by means of irony and exaggeration. It is also necessary to assess the opinion-related context of the piece of journalism, which has drawn public

attention to wealth inequalities within the local community and wasteful budget management. On the basis of all this, it is possible to decide whether the journalistic piece contains any specifics at all, the truthfulness of which could be justified, verifiable, or whether the writing is a value judgement expressing criticism, the possibility and the very fact of which are protected, regardless of its content (*cf.* Reasoning [40] to [42] of this Decision).

[50] The Constitutional Court finds that the relevant aspects of the exercise of freedom of opinion in public matters presented above have not been assessed by the criminal courts in their decisions, thus, the prosecution of the petitioner violates the freedom of expression recognized in Article IX (1) of the Fundamental Law. Consequently, the criminal courts extended the clause "asserts [...] a fact" in the statutory definition of the crime of defamation to the impugned sentence in violation of the fundamental right enshrined in Article IX (1) of the Fundamental Law.

[51] 2.1 The Constitutional Court has a primarily legal protection role in the proceedings conducted on the basis of a constitutional complaint, because according to the provisions of Sections 26 and 27 of the Constitutional Court Act, its task is to effectively enforce the fundamental rights recognized in the Basic Law. Consequently, it is also the task of the Constitutional Court to answer which judicial interpretation of a given legal act meets certain requirements inherent in the rights recognised in the Fundamental Law. The Constitutional Court ultimately guarantees the enforcement of the system of fundamental rights requirements as the last domestic forum through the constitutional review of judicial decisions {Decision 8/2013 (III. 1.) AB, Reasoning [55], Decision 25/2013 (X. 4.) AB, Reasoning [48]}. In assessing the specific criminal court decision and the objections raised in the constitutional complaint challenging the decision, the Constitutional Court also takes into account the limits of its power of review provided for in Article 24 (2) (d) of the Fundamental Law. Pursuant to the findings of principle significance contained in Decision 7/2013 (III. 7.) AB of the Constitutional Court, the Fundamental Law does not provide the Constitutional Court with an opportunity to review whether those applying the law have correctly assessed the evidence in the specific case and whether the facts established as a result of its consideration are well-founded. The establishment of the facts and, in so doing, the assessment and weighing of the evidence, is a task reserved exclusively to those applying the law. Similarly, the interpretation of legislation and the assessment of the correctness and validity of positions belonging to the dogmatics of law are also a competence reserved for those implementing the law. Thus, the Constitutional Court refrains from taking a position on issues of fact assessment, or interpretation of law and professional issues of law related to the main case {Decision 7/2013 (III. 7.) AB, Reasoning [33] and [38]}. However, in the opinion of the Constitutional Court, the Constitutional Court's assessment of the issues arising in the present case does not

exceed the limits of the constitutional review assigned to the Constitutional Court in the Fundamental Law. The reason for this is that the evaluation of what was said in the public debate as a critique or statement of fact, and the related interpretation of the law by those applying the law, have a direct impact on the exercise and actual enforcement of freedom of expression. Thus, in the classification of speech debating public affairs, constitutional law is present simultaneously and inseparably, directly and intensively, together with the rules of professional law. Consequently, the legal classification of a speech on public matters also determines the direct exercise of a fundamental right, the source of which is the international human rights conventions adopted in line with the Fundamental Law and the general process of the "internationalisation of the protection of fundamental rights under constitutional law". Accordingly, in examining the present case, the Constitutional Court performs a constitutional assessment, in which, in the exercise of its competences under Article 24 (2) (d) of the Fundamental Law, it ultimately guarantees that the abstract constitutional standard of freedom of expression does not deviate from the practice of those applying the law in adjudicating specific cases. Through its constitutional consideration, the Constitutional Court also ensures that the decisions of those implementing the law imputable to the state in accordance with the general liability rules of the state, that is, in accordance with the general rules of international law, are also in line with international human rights obligations. This view is reconciled with the expectation that the task of the Constitutional Court is to ensure that respect for and protection of the constitutional values protected in the Fundamental Law are effectively enforced not only in legislation but also in judicial practice {cf. Reasoning [20] to [21] of this Decision and Decision 7/2014 (III. 7.) AB, Reasoning [53]}.

[52] The Constitutional Court found that in the criminal proceedings challenged with a constitutional complaint, the courts had interpreted the notion of "asserts [...] a fact" in the statutory definition of the crime of defamation in such an extensive manner that was inconsistent with the requirements of freedom of opinion recognized in Article IX (1) of the Fundamental Law. Pursuant to Article 24 (2) (d) of the Fundamental Law and Section 27 and Section 43 (1) of the Constitutional Court Act, the Constitutional Court reviews the unconstitutionality by conflict with the Fundamental Law of a judicial decision established in a court decision. However, it is possible that a court decision contains several judicial decisions at the same time. It therefore follows from Section 27 and Section 43 (1) of the Constitutional Court Act that the Constitutional Court reviews the judicial decisions contained in a judicial decision which is objected to in line with the content of the constitutional complaint.

[53] As the judicial decision establishing the petitioner's criminal liability, which was contested in the constitutional complaint, was substantially influenced by an interpretation of the law contrary to the Fundamental Law; therefore, the Constitutional

Court found that Order No. 4.Bf.276/2013/7 of Pécs Court of Law concerning the petitioner was contrary to the Fundamental Law; therefore, the judicial decision was annulled in accordance with Section 43 (1) of the Constitutional Court Act. In his constitutional complaint, the petitioner challenged only the Order of the Court of Law. However, pursuant to Section 43 (4) of the Constitutional Court Act, the Constitutional Court may also annul other court or official decisions reviewed by the decision in the event of annulment of the judicial decision. Accordingly, the Constitutional Court annulled Judgement No. 4.B.85/2012/16 of Siklós District Court at first instance establishing criminal liability of the petitioner in the criminal case upheld by the Pécs Court of Law, which served as the basis for the constitutional court proceedings.

[54] 2.2 Pursuant to Section 43 (2) and (3) of the Constitutional Court, the Constitutional Court finds that the procedural consequences of a decision of the Constitutional Court of annulment are subject to the provisions of the Act on Rules of Court Proceedings and in the course of court proceedings to be conducted as necessary, the constitutional issue shall be dealt with in accordance with the decision of the Constitutional Court. Criminal courts hearing cases of opinions on matters of public life shall apply not only the operative part of this Decision of the Constitutional Court, but also the constitutional standard of principle developed in its Reasoning. The Constitutional Court thus ensures that the subsequent practice of the courts can also meet the expectations arising from the abstract constitutional standard of freedom of expression outlined in the present case.

[55] As the constitutional complaint lodged in the present case was adjudicated as a matter of urgency by the Constitutional Court, it no longer ruled on the request for suspension of the enforcement of the final court decision.

[56] 3. The Constitutional Court ordered the publication of this decision in the Hungarian Official Gazette in accordance with the second sentence of Section 44 (1) of the Constitutional Court Act and the general principles set out in this Decision.

Budapest, 14 April 2014

Dr. Péter Paczolay sgd.,
Chief Justice of the Constitutional Court

<i>Dr. Elemér Balogh</i> sgd., Justice	Justice
<i>Dr. András Bragyova</i> sgd., Justice	<i>Dr. Péter Kovács</i> sgd., Justice
<i>Dr. Imre Juhász</i> sgd.,	<i>Dr. Miklós Lévy</i> sgd., Justice

Dr. László Salamon sgd.,
Justice

Dr. Péter Szalay sgd.,
Justice

Dr. István Balsai sgd.,
Justice delivering the opinion of the
Court

Dr. Egon Dienes-Oehm sgd.,
Justice

Dr. László Kiss sgd.,

Justice

Dr. Barnabás Lenkovics sgd.,
Justice

Dr. Béla Pokol sgd.,
Justice

Dr. István Stumpf sgd.,
Justice

Dr. Mária Szívós sgd.,
Justice

Dissenting opinion by Justice *dr. Egon Dienes-Oehm*:

[57] I do not agree with the operative part of the Decision and with the findings of its Reasoning leading to the annulment of court decisions.

[58] I agree with the following grounds of the Decision (paragraphs [51] to [53] of the Reasoning): The Constitutional Court must refrain from ruling on issues of fact, of statutory interpretation and of professional law relating to the main proceedings.

[59] In the present case, however, the Constitutional Court's assessment went beyond the legal framework of constitutional complaints and constitutional review assigned to it by the Basic Law and reaffirmed by this very Court. In my view, it is incorrect and legally flawed to state in the Reasoning for the Decision conclusively finding that "[...] in the criminal proceedings challenged with a constitutional complaint, the courts had interpreted the notion of »asserts [...] a fact« in the statutory definition of the crime of defamation in such an extensive manner that was inconsistent with the requirements of freedom of opinion recognized in Article IX (1) of the Fundamental Law."

Budapest, 14 April 2014

Dr. Egon Dienes-Oehm sgd.,
Justice