

Decision 1/2015 (I. 16.) AB

on establishing the conflict with the Fundamental Law of, and annulling the judgement No. 3.Bhar.16/2013/5 of the Budapest-Capital Regional Court of Appeal

In the subject-matter of a constitutional complaint, the plenary session of the Constitutional Court – with concurring reasoning by Justices dr. Miklós Lévay, dr. Péter Paczolay, dr. István Stumpf, dr. Tamás Sulyok – has adopted the following

decision:

1. The Constitutional Court finds that the judgement No.3.Bhar.16/2013/5 of the Budapest-Capital Regional Court of Appeal, as a court of third instance is unconstitutional with regard to Article VI (1) of the Fundamental Law, and therefore annuls it.
2. The Constitutional Court refuses the constitutional complaint in all other respect.

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

Reasoning

I

[1] The petitioner filed a constitutional complaint pursuant to section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), in which he requested the declaration that the judgement No.3.Bhar.16/2013/5 of the Budapest-Capital Regional Court of Appeal as a third-instance court was unconstitutional, and the annulment of the judgement, with regard to the violation of Article VI (1) and Article XXIV (1) of the Fundamental Law.

[2] In the case underlying the constitutional complaint, the petitioner was mentioned on the iwiw user profile page of a private individual, listing his name as one of the animals of that individual, and also included posts which were detrimental to his reputation and credibility, including those concerning his capacity as a lawyer.

[3] Following a report of crime filed by the petitioner as a private prosecutor against an unknown person, the court of first instance found the owner of the iwiw user profile guilty of a single offence of insult committed continuously and therefore placed him on probation for three years. Following an appeal by the defendant and his lawyer, the court of second instance overturned the judgement of first instance, acquitted – for lack of evidence – the defendant of the accused offence of insult committed twice, and terminated the proceedings for defamation on the ground that the private prosecutor had withdrawn his accusation. However, the court refused the private prosecutor's motions for taking evidence. The private prosecutor filed a secondary appeal to the detriment of the accused against the judgement of the court of second instance. The court of third instance agreed on other legal grounds with the acquittal judgement of the court of second instance. It established the acquittal of the accused in the absence of a criminal offence, as the lawyer is considered a public figure who must tolerate the expressions used in the case and similar ones.

[4] Subsequently, the petitioner filed a constitutional complaint under section 27 of the ACC, in which he requested that the judgement of the Budapest-Capital Regional Court of Appeal, as a third-instance court, be declared to be in conflict with the Fundamental Law and annulled on the grounds of the violation of Article VI (1) and Article XXIV (1) of the Fundamental Law. In

his constitutional complaint, he complained of the length of the proceedings, the assessment of the evidence by the courts hearing the case and the failure to take evidence according to his motion. Moreover, in his view, the court of third instance had acted in conflict with the Fundamental Law, giving greater scope to freedom of expression than to the right to reputation and to a fair trial. By holding that the status of a lawyer makes the petitioner a public figure, by virtue of which an act which is punishable in the case of other persons is not punishable, the court infringed the right to impartial and fair administration

[5] The petitioner stated that he had not initiated a review procedure in the case.

II

[6] In ruling on the petition, the Constitutional Court acted in accordance with the following provisions of the Fundamental Law of Hungary:

“Article I (1) The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights.

[...]

(3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right.”

"Article II Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.”

"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.

[...]

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

“Article XXIV (1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act.”

“Article 28 In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the interpretation of the Fundamental Law and of the laws one should assume that they serve a moral and economic purpose, which is in line with common sense and the public good.”

III

[7] Pursuant to section 56 of the ACC, the Constitutional Court examined the statutory conditions for the admission of a constitutional complaint before examining the merits.

[8] According to section 27 of ACC, persons affected in an individual case may submit a constitutional complaint to the Constitutional Court against a judicial decision contrary to the Fundamental Law, if the decision adopted in the merits of the case or another decision terminating the judicial proceedings violates the petitioner's right granted in the Fundamental Law and the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her. The petitioner filed a constitutional complaint against the judgement of the Budapest-Capital Regional Court of Appeal as a court of third instance, against which there is no further appeal, and also stated that he has not initiated a review procedure. Pursuant to section 32 of the Rules of Procedure, the obligation to exhaust the remedies does not apply to the review as an extraordinary remedy, and the petition therefore meets the statutory requirements in this respect.

[9] With regard to the petitioner's standing as an affected person, it was necessary to examine in the course of the admission procedure in what capacity the petitioner was involved in the criminal proceedings, since the position of the victim alone does not provide a basis for a finding of personally affected standing with regard to the way in which the State exercises its penal claim. However, the complainant, in addition to his capacity as a victim, acted as a private prosecutor in the main proceedings and a court decision was made affecting his fundamental rights, which also demonstrates that the statutory conditions for a constitutional complaint are met.

[10] According to section 30 of the ACC, constitutional complaints are to be submitted in writing not later than 60 days of serving the challenged decision. The contested court decision was served on 19 November 2013.

[11] On 17 January 2014, the petitioner sent the constitutional complaint by registered mail to both the Constitutional Court and the Central District Court of Pest that had acted as the court of first instance. Pursuant to section 53 (1) of the ACC, the petition for a constitutional complaint – with the exception of the case under section 26 (2) – shall be submitted to the court of first instance and addressed to the Constitutional Court, and the petition submitted to the Central District Court of Pest meets this condition.

[12] In his petition, the petitioner indicated section 27 of the ACC, on the basis of which he requested the Constitutional Court to proceed, and the petition contains an explicit request for the declaration that the challenged court decision is contrary to the Fundamental Law and for its annulment, which is justified by indicating the provisions concerned of the Fundamental Law and supporting the violation of those provisions.

[13] 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.

[14] The petition contains a complex constitutional complaint. On the one hand, the petitioner complains that the requests for the taking of evidence he made in his case were rejected by the court and that some of them could not even be taken subsequently due to the length of the proceedings. Moreover, he claims that the contradictory testimonies of the witnesses were not properly assessed and that the person who had taken responsibility for the commission of the offence was not held liable.

[15] In addition, the petitioner also complains that the court of third instance, although agreeing with the court of second instance, delivered a judgement of acquittal, but changed the legal basis of the judgement to the absence of criminal offence. In the court's view, the status of lawyer makes the complainant a public figure, which means that an act that might be punishable in the case of other persons is not punishable. According to the complainant, the court, in conflict with the Fundamental Law, thus gave greater scope to freedom of expression than the right to reputation and to a fair trial.

[16] As regards this part of the petition, the petitioner raises a fundamental constitutional problem which is not part of the specific adjudicative activity but goes beyond deciding in the individual criminal case before the court.

[17] In the light of the above, the Constitutional Court found that the application met both the formal and substantive requirements for admissibility and examined the merits of the constitutional complaint.

IV

[18] The Constitutional Court reached its decision on the basis of the following facts as established from the available documents.

[19] According to the reasoning of the judgement of the court of first instance, the private prosecutor accused the perpetrator of committing the offence of defamation, violating section 179 (1) of the Act IV of 1978 on the Criminal Code (hereinafter: "old Criminal Code") and qualified under paragraph (2) (a) to (c) thereof – committed for a base reason, in front of a large audience, causing significant harm to interests –, who, posted in his iwiw social media application user profile data sheet accessible via the Internet the following post in the animals section of his personal data: "Zizi, a beautiful girl Hungarian Vizsla hound and X.Y. (with full name) imitation lawyer". The court of first instance found that the data sheet in question contained the communications complained of and that there was no evidence that anyone else had access to the accused person's computer, user name and password during the period in question. In this respect, he also sought the opinion of a forensic IT expert. The court took the view that the offence was committed by the owner of the iwiw data sheet and, having found the defendant guilty, placed him on probation for 3 years.

[20] Following an appeal by the defendant and his lawyer, the Budapest-Capital Regional Court as the court of second instance overturned the judgement of first instance, acquitted the defendant of the accused criminal offence of insult committed twice [section 180 (1) (b) of the old Criminal Code], while terminated the proceedings for the criminal offence defamation [section 179 (1) of the old Criminal Code] on the ground that the private prosecutor had dropped charges. The court of second instance considered the judgement of first instance to be partly unfounded, in view of the incompleteness of the facts established, and partly because its reasoning contained a logical error. It remedied the deficiency of the facts by noting that the post entry had subsequently been supplemented, according to which: "X. Y. (with full name), the ugly thief-cheater-liar-dog", and heard a witness called by the defence, who testified at the appeal hearing that he had written the posts complained of. In the light of this testimony, the court found the first-instance court's factual conclusion that there was no other person who could have made the offending posts other than the accused to be rebutted and acquitted the accused person for lack of evidence. However, the court of second instance rejected the private

prosecutor's request for taking evidence aimed at requesting the service provider about the IP address from which the defendant's iwiw page was accessed at the time of the offence, and also rejected the request for taking evidence to obtain cell information of the mobile phone of the witness who had claimed responsibility for committing the offence.

[21] The private prosecutor filed a secondary appeal to the detriment of the accused against the judgement of the court of second instance, because of the acquittal of the accused person. The third-instance court considered the supplemented facts of the case to be well-founded and to be guiding in the third-instance proceedings. However, it took the view that the courts of first and second instance had placed too much emphasis on clarifying the identity of the person who made the post, although this was not of primary importance in the case. It did not go into the issue of the form of liability in more detail because it agreed – on other legal grounds – with the view of the second-instance court, which led to acquittal. According to the Budapest-Capital Regional Court of Appeal, “a person acting as a lawyer, as a public figure, is subject to a heightened duty of tolerance, which only allows him to act against defamatory statements. A person acting in such a capacity should, by virtue of his higher threshold of tolerance, also tolerate criticism of an undignified and offensive nature.” In view of this, the accused person was acquitted of the charges raised against him for lack of a criminal offence.

[22] The third-instance trial court found that the private prosecutor had come into contact with the accused person as a lawyer when he represented the accused person's spouse who was an opposing party in a family law lawsuit. In his opinion: “it is up to any individual who possesses the necessary qualification to decide whether to engage in a lawyer’s activity, and anyone who is registered as a lawyer becomes a public figure in the scope of their work, just as other members of the judiciary with a legal qualification. It is linked to the victim's exercise of the legal profession that incriminated posts about him have been published by a person whose interests are contrary to those of the person represented by the lawyer.” The court referred to the Constitutional Court's decision 36/1994 (VI.24) AB, interpreting it in a way that the limits of permissibility of criticism are wider in the case of public figures than in the case of private individuals; in its view: “persons who undertake to act in public must also accept the higher level of attention paid to their acts and words by the press and the public opinion in a broader sense, and thus they must show greater patience regarding those who criticise them.” The court of third instance, having found that the terms in the accusation clearly referred to the complainant's status as a lawyer, explained that it is commonplace to use similar terms to describe public figures. As the court stated in the reasoning of the judgement: “it is a normal feature of the legal practice that lawyers are called by similar expressions in relation to their competence and character.” However, this has no bearing on how the person is perceived as a private individual and does not rise to the level of criminal liability. On these grounds, the court of third instance held that the act charged did not constitute a statutory criminal offence of defamation and therefore acquitted the defendant for lack of a criminal offence. However, the court pointed out that the case-law of civil courts differs from that of the criminal courts, since a person who has been acquitted by a criminal court for lack of a criminal offence may be sanctioned as a litigant party to a case.

V

[23] 1 The constitutional complaint is, in part, well-founded.

[24] The Constitutional Court first examined the petitioner's claim that the court of third instance had extended the freedom of expression in a manner that was contrary to the Fundamental Law and this way the petitioner's right to a good reputation, which is part of human dignity, had been unduly impaired.

[25] In the course of the examination of the merits, the Constitutional Court briefly reviewed its previous decisions on the subject, which are no longer in force.

[26] The mutual relationship between the fundamental right to human dignity and – as its specific element – the right to reputation, and freedom of expression presupposes a competition between fundamental constitutional rights. This question, examined by the Constitutional Court in a large number of cases and in almost all types of proceedings, has required the Constitutional Court to take a constitutionally derived position on a wide variety of its aspects.

[27] In the Decision 36/1994 (IV.24.) AB [ABH 1994, 219 to 237] cited by the Budapest-Capital Regional Court of Appeal as the basis of its reasoning, the Constitutional Court, examining the relationship between the criminal protection of the honour and reputation of public authorities and officials and the right to freedom of expression, held that the criminal protection of the honour and reputation of such persons is not contrary to the Constitution. At the same time, the holdings of the decision laid down that the scope of constitutionally protected expression of opinion is broader in relation to persons exercising public authority and politicians in public office than in relation to other persons. The reasoning of the decision [drawing to a large extent on the reasoning of the Decision 30/1992 (V.26.) AB, ABH 1992, 167 to 181] stated that although the role of expressing one's opinion is privileged, this does not mean that it is as unrestricted as the right to life and human dignity, and indeed, human dignity, honour and reputation may in certain cases be a limitation to freedom of expression.

[28] Thus, as early as at that time, the Constitutional Court took a position on the basic principle of competition between the two fundamental rights. However, given that the decision also annulled section 232 of the old Criminal Code, which contained the statutory offence of insulting an authority or an official, the adjudicating courts of law have adopted different positions in the criminal cases pending before them. In some cases, the proceedings were terminated on the basis of the absence of a criminal offence (BH1995. 6.), while in other cases the court concluded that the continuation of the proceedings already in progress was possible only on private initiative (BH1998. 162.) In a number of cases, there was also a problem as to the interpretation of the scope of the persons to whom the Constitutional Court's finding should be applied.

[29] The uncertainty in case-law led the President of the Supreme Court to request a constitutional interpretation on this issue in 2006. In the case No. 538/G/2006, the petition sought an interpretation of Article 61 (1) of the Constitution, then in force, in the light of Article 54 (1) and Article 59. The Constitutional Court acknowledged that the petition concerned very important constitutional issues which the Constitutional Court had been dealing with continuously since the beginning of its existence and had taken a position on a number of issues in this area. However, in its ruling, it explained that the Constitutional Court could not deal with the merits of the case because the questions raised in the motion could not be answered by an interpretation of the Constitution alone, were not sufficiently specific and, on the other hand, were aimed at the constitutional assessment of laws that had not yet been enacted. In addition, it formulated questions concerning the case-law of the courts, which were exclusively for the

courts to decide in the framework of their activity of interpreting the law, and the Supreme Court was responsible for ensuring the consistency of this activity. [ABH 2009, 2876 to 2890.]

[30] On 1 January 2012, the Fundamental Law of Hungary entered into force, which also lays down the relationship between human dignity and the right to reputation as a specific element of human dignity, and freedom of expression, as well as the constitutional framework for this relationship.

[31] Article II of the Fundamental Law states that human dignity is inviolable, while Article VI specifically mentions that everyone has the right to respect for his or her reputation. Article I states that the inviolable and inalienable fundamental rights of MAN must be respected and the State has a duty to protect them. A fundamental right may be restricted only in order to safeguard the effective use of another fundamental right or to protect a constitutional value, in accordance with the principles of necessity, proportionality and respect for the essential content of the fundamental right.

[32] Freedom of expression is also a fundamental right enshrined in the Fundamental Law and guaranteed to all under Article IX. As a fundamental right, it may be restricted in the manner set out in Article I of the Fundamental Law, i.e. in order to protect another fundamental right or to protect a constitutional value, while maintaining necessity and proportionality, and with regard to the essential content of the other fundamental right. However, the right to human dignity is not simply a competing fundamental right, but is placed above freedom of expression as a fundamental right to be protected in the context of Amendment IV of the Fundamental Law, which states that the exercise of freedom of expression may not be directed at violating the human dignity of others.

[33] In the present case, the Constitutional Court had to examine whether the judgement of the Budapest-Capital Regional Court of Appeal interpreted the relationship between the right to protection of reputation and freedom of expression in accordance with the Fundamental Law.

[34] In the underlying case, the terms complained of can be divided essentially into two categories. The first – that the victim was referred to as a pet or a dog – can be regarded as a value judgement by its nature, which is the expression of an individual's subjective opinion of the victim. In the field of forming a democratic public life and the colliding of opinions related to public affairs, the term used qualifies an arbitrary degrading expression that has no relevance whatsoever and is capable of offending one's honour.

[35] The other group – “thief-cheater-liar” – can be considered a statement of fact. Depending on the purpose and the form of expression of the statements of fact, their constitutional protection may vary. If these expressions, possibly supported by evidence, are addressed to the authorities responsible for the proceedings, they meet the conditions for the expression of an opinion to be constitutionally protected, since the disclosure to the authorities of abuses affecting public affairs is an essential element in the exercise of democratic public life. Similar considerations apply where a client in litigation or other official proceedings makes statements of fact in relation to the merits of the case. On the other hand, a form of expression aimed solely and exclusively at discrediting the person concerned as a kind of swear-word, does not fall within the constitutionally protected exercise of the right to freedom of expression.

[36] In the application of the law, the courts have a fundamental duty to interpret the text of laws, primarily in accordance with its purpose and the Fundamental Law, in which the public

good and common sense play a key role (Article 28 of the Fundamental Law). However, the finding of the Budapest-Capital Regional Court of Appeal that the offending expressions corresponded to the minimum level of socially customary forms of contact and were not of such gravity or content that they could be considered abusive is not in line with the Fundamental Law, even if – as the court stated in its judgement – the use of similar expressions is commonplace.

[37] In reaching its decision, the Budapest-Capital Regional Court of Appeal, referring to the case-law of the European Court of Human Rights (hereinafter: ECtHR), concluded that the jurisprudence of European democratic countries clearly points towards an increase in the value of freedom of expression and, at the same time, towards the marginalisation of restrictions by means of criminal law. The case-law of the ECtHR interprets, step by step, the provisions of the underlying Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950) [promulgated in Hungary by the Act XXXI of 1993], by responding to the specific legal disputes brought before it. However, the mere fact that a relatively large number of cases before the ECtHR involve violations of freedom of expression does not in itself allow for neglecting the provisions of Article 10 (2) of the Convention, which states that freedom of expression is a freedom that implies obligations and responsibilities. Its exercise may be subject to statutory restrictions that qualify as necessary measures in a democratic society to safeguard protected legal objects. This includes: national security, territorial integrity, public safety, the prevention of disorder or crime, the protection of public health or morals, the protection of the reputation or rights of others, the prevention of the disclosure of confidential information, or the maintenance of the authority and impartiality of courts. The Convention therefore specifically recognises the protection of reputation as a possible and, in certain circumstances, duly justified and acceptable limit to the expression of opinion.

[38] With regard to the scope of victims, the Budapest-Capital Regional Court of Appeal held in the judgement challenged by the constitutional complaint that a person who is registered as a lawyer becomes a public figure in the course of his work, like other participants in the administration of justice with a legal qualification, and, as a public figure, is subject to a heightened duty of tolerance.

[39] The Constitutional Court deems it necessary to note that the Decision 36/1994 (VI. 24.) AB invoked by the Budapest-Capital Regional Court of Appeal as the basis for its reasoning, stipulated as a constitutional requirement in relation to persons and institutions exercising public authority and politicians in public office that the scope of expression of opinion, which is constitutionally protected by the right to freedom of expression and thus not punishable, should be broader in their case than in the case of other persons. However, a person acting as a lawyer cannot, by virtue of his or her status as a lawyer, be regarded either as a person exercising public authority or as a politician acting in a public capacity. Act C of 2012 on the Criminal Code, currently in force, stipulates, among its interpretative provisions – literally in line with the old Criminal Code –, that in judicial or other official proceedings, a defender or legal representative is a person performing a public function. In contrast, judges and prosecutors are considered as public officials and are regarded as public authorities.

[40] The finding of the Budapest-Capital Regional Court that a person registered as a lawyer is in the same capacity as other participants in the administration of justice with a legal

qualification is therefore incorrect. Moreover, in the specific case at issue in the main proceedings, the complainant was neither a person exercising public authority nor a politician in public office, so there was no constitutional reason why the otherwise punishable act should not have been sanctioned in view of the victim-accuser's capacity as a lawyer.

[41] In addition to the above, the Constitutional Court also examined the protection of the personality rights of public figures, i.e. the relationship between the freedom to discuss public affairs and the right to privacy, in its Decision 7/2014 (III.7.) AB. In this decision, the Constitutional Court examined the constitutionality of the wording “in the reasonable public interest” in section 2:44 of the Act V of 2013 on the Civil Code (hereinafter: Civil Code), which had not yet entered into force at that time, in the context of an abstract review of the law. The Ombudsman's motion, which was the basis of the review, was aimed at answering the questions related to the constitutional problem of the civil law framework in principle, projected for the future, and therefore did not require the Constitutional Court to rule on the basis of specific facts of a particular case such as the present one.

[42] In the Decision 13/2014 (IV.18.) AB, the Constitutional Court examined from a criminal law perspective, and, as in the present case, in the procedure for a constitutional complaint under section 27 of the ACC, the freedom of expression, which ensures the free debating of public affairs and allows public actors to be criticised. In this decision, the Constitutional Court – referring to its previous Decision 7/2014 (III.7.) AB – stated that “the protection of honour, reputation and public trust in state institutions, which derive from human dignity, is a constitutionally justifiable limitation on freedom of expression and thus on speech on public affairs, as is also clear from Article IX (4) of the Fundamental Law. It is also clear that anyone who uses seriously offensive or abusive language to humiliate another person's humanity is not exercising their freedom of expression in public affairs.” {Decision 13/2014. (IV.18.) AB, Reasoning [29]}.

[43] In its judgement, the Budapest-Capital Regional Court of Appeal pointed out that the case-law of civil courts differs from that of the criminal courts, since – as a result of a review carried out from another aspect – a person who has been acquitted by a criminal court for lack of a criminal offence may be sanctioned as a litigant party to a case. Therefore, in similar cases, the initiation of civil proceedings is considered by the court to be a more appropriate solution than launching criminal proceedings.

[44] In that regard, the Constitutional Court has compared the essential elements of the criminal and civil law rules, which are based on fundamentally similar facts, as they apply to the present case. Criminal law rules, while protecting the person and honour of the victim, perceives it as an injury to a member of society, as an act to be condemned by society, as a danger to society as a whole, and the punishment is primarily intended to provide moral satisfaction and prevention. The individual, on the other hand, renounces the unrestricted exercise of his or her certain individual rights precisely in order to be able to obtain redress through the society for the harm done to him or her, and to be protected by the society. Although civil law also considers the violation of personal rights to be undesirable, the aim is essentially to stop the offending conduct and to compensate the victim. At the same time, there are significant differences between criminal proceedings (or offence proceedings) and civil proceedings, e.g. in terms of the rules of guarantee or the means of proof and the possibility of using them. It is therefore not possible to avoid the victim-accuser's claim for criminal prosecution of the

perpetrator by arguing that the civil route would be more expedient. Indeed, the constitutional protection of personality rights is achieved through the system of parallel or even simultaneous enforcement of claims provided by different branches of law.

[45] In view of the above, the Constitutional Court found that the judgement of the Budapest-Capital Regional Court of Appeal violated the fundamental law by extending the freedom of expression, which unnecessarily impaired the human dignity and the right to reputation of the complainant. Therefore, the Constitutional Court annulled the judgement pursuant to section 43 (1) of the ACC.

[46] In his constitutional complaint, the petitioner complained that the requests for the taking of evidence he made in his case were rejected by the court and that some of them could not even be taken subsequently due to the length of the proceedings. Moreover, he claims that the contradictory testimonies of the witnesses were not properly assessed and that the person who had taken responsibility for the commission of the offence was not held liable. The evidentiary procedure complained of in the constitutional complaint petition, including the assessment of the evidence and the rejection of the complainant's requests for taking evidence and the delay in the evidentiary procedure, are part of the specific adjudicatory activity of the courts hearing the case. The Constitutional Court is not to be regarded as a general review court, either by virtue of Article 24 of the Fundamental Law or by virtue of its powers under the ACC. In the constitutional complaint procedure, too, its task is to ensure the enforcement of constitutionality, and this does not include adjudicating on specific cases, it only has the power to review the constitutionality of the judicial decision before it and to eliminate the violation of the Fundamental Law that materially affects it, therefore the constitutional complaint was refused for lack of competence in this part. {Decision 3029/2013. (II.12.) AB, Reasoning [16]}

[47] In view of the above, the Constitutional Court declared the judgement of the Budapest-Capital Regional Court of Appeal challenged by the constitutional complaint to be contrary to the Fundamental Law, and annulled it pursuant to section 43 (1) of the ACC, and otherwise refused the petition pursuant to section 64 (a) of the ACC.

[48] 2 The Constitutional Court ordered the publication of the decision in the Hungarian Official Gazette on the basis of section 44 (1) of the ACC.

Dr. Péter Paczolay, President of the Constitutional Court

Dr. István Balsai rapporteur, Justice of the Constitutional Court

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

Dr. Imre Juhász, Justice of the Constitutional Court

Dr. László Kiss, Justice of the Constitutional Court

Dr. Barnabás Lenkovics, Justice of the Constitutional Court

Dr. Miklós Lévay, Justice of the Constitutional Court

Dr. László Salamon, Justice of the Constitutional Court

Dr. István Stumpf, Justice of the Constitutional Court

Dr. Tamás Sulyok, Justice of the Constitutional Court

Dr. Péter Szalay, Justice of the Constitutional Court

Dr. Mária Szívós, Justice of the Constitutional Court

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