Decision 34/2017 (XII. 11.) AB

On a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Judgement No. Pfv.IV.20.624/2016/9 of the Curia as well as the imposition of a constitutional requirement arising under freedom of the press enshrined in Article IX (2) of the Fundamental Law

In the matter of a constitutional complaint, with dissenting opinions by Justices *dr. István Balsai, dr. Ágnes Czine, dr. Egon Dienes-Oehm, dr. László Salamon, dr. Péter Szalay* and *dr. Mária Szívós*, the Plenary Session of the Constitutional Court adopted the following

decision:

1. The Constitutional Court holds as follows: It is a constitutional requirement arising from the freedom of the press enshrined in Article IX (2) of the Fundamental Law, that it shall not be regarded as an act of rumour serving as grounds for civil sanctions for an infringement of personality rights by the media content provider's activities reporting in a manner faithfully corresponding to the reality and without its separate own assessment of statements made mutually at a press conference of public figures in the debate on public affairs, clearly indicating the source of the communications and also providing an opportunity for rebuttal (or the ability to respond) of a person affected by statements of fact that may damage the good standing of reputation.

2. The Constitutional Court holds that Judgement No. Pfv.IV.20.624/2016/9 of the Curia as a court of review is contrary to the Fundamental Law and therefore annuls the Judgement.

The Constitutional shall order publication of its Decision in the Hungarian Official Gazette.

Reasoning

I

[1] Nyugat Média és Világháló Egyesület (Western Media and World Wide Web Association) as petitioner requested the Constitutional Court in a constitutional

complaint pursuant to Section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act") to declare Judgement No. Pfv.IV.20.624/2016/9 rendered by the Curia in its review procedure to be contrary to the Fundamental law and annul said Judgement. The petitioner contends that the part of the judgement concerning the petitioner as second defendant, violates freedom of speech and of the press recognised in Article IX (1) and (2) of the Fundamental Law.

[2] 1. Based on the facts contained in the final judgement Győr Regional Court of Appeal, which gave rise to the review procedure, two members of parliament of the Hungarian Socialist Party (third defendant) and Csaba Czeglédy (first defendant), member of the presidency of the Szombathely organisation of the above political party, held a press conference on tobacco products concession tenders on 29 April 2013, during which first defendant declared the tender as a textbook case of nationalised corruption and stated, *inter alia,* the following: "It's manually controlled completely. The applications submitted for the tender were commented on by Fidesz (Hungarian Civic Alliance, the governing political party) local staff as a new party committee, and the final decision was announced by the constituency chair, Csaba Hende." The same day the petitioner published a report on the press conference on the "nyugat.hu" website edited by the petitioner, entitled "Tobacconist Law: A »Textbook Case of Nationalised Corruption«" and with the caption "If presented with the chance, this will be undone by the Socialists. In Szombathely, Csaba Hende decided on the winners of the concession, as it was stated at a press conference today." The final judgement found that the report quoted what was said accurately and faithfully to the letter, making it clear that the statement came from first defendant. The news portal published a statement by the Fidesz organisation in Szombathely in response to the press conference, entitled "Fidesz: A Socialist Politician Convicted In a Final Judgement of Tax Fraud Making Accusations", according to which Csaba Hende (the plaintiff in the lawsuit) "most emphatically rejects the false and baseless accusations of Csaba Czeglédy". Later, an article was published on the "nyugat.hu" website entitled "Szombathely Socialists on Doling Out Tobacconists", repeating the content of the previous report, with the addition that "Csaba Czeglédy stated exactly what had happened and it would be the task of the authorities to explore such avenues". At the end of this article, the paper published a piece titled "Retraction" as follows: "In relation to what was written (quoted) on 29 April 2013 in the article titled Szombathely Socialists on Doling Out Tobacconists, we retract and include Csaba Hende's statement that he did not make any decisions, did not participate in decision-making, did not influence the decision regarding the local tenders related to the Tobacconist Law. Applications

were assessed solely on the basis of the rules of Act CXXIV of 2012 on the Restriction of Smoking by Minors and the Retail Sale of Tobacco Products."

[3] 2. In his action, the plaintiff sought a finding that the defendants had violated the good standing of his reputation and honour with the statements contained in the coverage entitled "Tobacconist Law: A »Textbook Case of Nationalised Corruption«". The petitioner requested the court to enjoin the defendants from further violation, to oblige them to provide public recompense in the form of an apologetic press release to be published in the newspapers Népszabadság and Magyar Nemzet at their own expense, and to order the petitioner and the third defendant jointly to pay HUF 500,000 in non-pecuniary damages.

[4] 2.1 Veszprém Court of Law found at first instance that third defendant had wrongly claimed and the petitioner had incorrectly rumoured in its article that the Szombathely tobacconist tenders had been decided by the plaintiff, with which both of them violated the plaintiff's right to the good standing of his reputation. As a matter of satisfaction, the court ordered the defendants to publish a press release in the internet newspaper "nyugat.hu", and ordered third defendant to pay non-pecuniary damages, and as to the remainder, the court dismissed the action. With regard to the petitioner's liability, the grounds of the judgement explained in the light of judicial practice that the liability of the press for the rumouring of untrue facts was only narrowly precluded: If it reported on ongoing criminal proceedings in a manner that corresponds to reality. However, the press shall not be exempted from the objective sanctions for violations in the event of rumours of untrue facts made at a political party's press conference.

[5] In the context of the exemption from liability for damages, the Court of Law assessed that the petitioner had complied with his obligation to provide prompt and credible information, which would not have been possible if he had verified the veracity of the statement; therefore, the court dismissed the action for damages against the petitioner in the absence of attribution.

[6] 2.2 Following the appeal of the plaintiff, the petitioner and third defendant, Győr Regional Court of Appeal as a court of second instance affirmed the judgement of the court of first instance in that the impugned statements constitute statements of fact which provide a basis for establishing the infringement. However, as regards the petitioner's liability, the court explained that the petitioner had acted in accordance with professional rules and applicable expectations; thus, no violation of personality rights could be established against him in connection with the coverage.

[7] The appellate court considers that on the basis of recent judicial practice regarding press rectification lawsuits, which can be applied by analogy in personality rights

lawsuits, the press is not burdened with proof of reality even if its information is based on an official press conference on a problem of public interest. The liability of the original communicator of a newspiece may be established if the communication reveals from whom and from what source the communication originates, and the coverage of what was said at the press conference is faithful and authentic. In this case, the press is not obliged to verify the reality of what was said at the press conference before going to press, but even in this case the press is still expected to contact the other party for the relevant information. The appellate court found that the petitioner had complied with such requirements in the litigation, so that the petitioner could not be held liable for rumouring untrue facts.

[8] 2.3 Following the plaintiff's request for review, the Curia set aside the final judgement in so far as it concerned the petitioner and upheld the judgement at first instance by amending the wording of the press release to be published as recompense. Pursuant to the governing provisions of Act IV of 1959 on the Civil Code (hereinafter referred to as the "previous Civil Code") and Act CIV of 2010 on Freedom of the Press and Fundamental Rules of Media Content (hereinafter referred to as the "Press and Media Act"), the Curia concluded that the press was objectively liable for the accuracy of the factual statements it published or rumoured. The Curia disagreed with the appellate court that the petitioner was not liable for the statements made at the press conference. In consonance with its reasoning, in line with judicial practice, the press can only report on official proceedings without the obligation to prove veracity, since, in this case, it is for the authorities concerned to verify the facts; therefore, the press is required, at the request of the person concerned, only to report on the final outcome of the proceedings. The press, which reports on a press conference involving a political or public debate, disseminates more widely what is said by public figures, and thereby rumours the statement of facts. If this statement of fact is untrue and offensive, the liability of the press can be established. With regard to the statements made at the press conference, the press can decide for itself whether to publish them, thus assuming liability for any infringement. If it chooses to disclose, it will not be relieved of its strict liability for complying with any laws or press ethics that apply to its activities. On the basis of all this, the Curia agreed with the position of the court of first instance that the petitioner's liability could be established due to the rumour of the untrue fact.

[9] 3. The petitioner maintains that the decision of the Curia violates the fundamental right to free expression of opinion and freedom of the press enshrined in Article IX (1) and (2) of the Fundamental Law. The constitutional complaint explains that rumouring untrue statements of fact as a criminal act and liability for it may not be interpreted as broadly as the Curia did, because it already violates the free dissemination of

information necessary for democratic public opinion. The petitioner takes the view that the establishment of strict liability in the circumstances of the present case does not take into account the fact that the petitioner performed its public interest informational duty in full compliance with the professional rules: Its communication was based on an official press conference, concerned with public affairs, was faithful and authentic, the source of the information was clearly identifiable and the other party's statement was published at the same time. The constitutional complaint refers to the case law of the Constitutional Court, according to which freedom of the press is not only a means of individual expression of opinion, but also of information, that is, the press has a privileged role in obtaining and inquiring information. The petitioner considers that journalists are generally not in a position to immediately judge the veracity of factual statements made at a press conference; therefore, the interpretation contained in the Curia's judgement forces the press not to report on certain events and briefings if it certainly wants to avoid the possibility of subsequent assumption of liability. All this has a serious effect on the free dissemination of information function of the press and reduces the public's access to information of public interest. The petitioner contends that an eventual violation of rights can be repaired by a press rectification or a statement of recompense of the original informant; however, the additional legal consequences of the violation of personality rights cannot be imposed on the press, because it violates the right of the press to provide information of public interest.

II

[10] 1. The relevant provisions of the Fundamental Law are as follows:

“Article I (3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.”

“Article VI (1) Everyone shall have the right to have his or her private and family life, home, communications and good standing of reputation respected.”

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

(2) Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for the free dissemination of information necessary for the formation of democratic public opinion.

[11] 2. The applied provisions of the previous Civil Code are as follows:

"Section 78 (1) The protection of individual rights shall also include protection of the good standing of reputation.

(2) Violation of the good standing of reputation shall include in particular any assertion or rumour by any person of an untrue fact that is offending to another person or misinterpretation of a true fact."

"Section 79 The rules for enforcing the claim for press rectification shall be laid down in Act CIV of 2010 on Freedom of the Press and Fundamental Rules of Media Content, as well as the Act on Civil Procedure.

"Section 84 (1) Depending on the circumstances of the case, a person whose individual rights have been infringed may, as a claim under civil law,

(a) demand a court declaration of the occurrence of the infringement;

(b) demand to have the infringement discontinued and the person causing the infringement restrained from further infringement;

(c) demand that the infringing person provide recompense in a statement or by some other suitable means and, if necessary, that the infringing person, at his own expense, make an appropriate public disclosure for such recompense;

(d) demand the termination of the injurious situation and the restoration of the state prior to infringement by and at the expense of the infringing person and, furthermore, to have the effects of the infringement eliminated or deprived of their injurious nature; and/or

(e) claim damages in accordance with the rules on liability under civil law."

[12] 3. The relevant provisions of the Press and Media Act are as follows:

Section 4 (1) Hungary shall recognise and protect freedom and diversity of the press.

[...]

The exercise of freedom of the press shall not constitute a criminal offence an incitement to commit a criminal offence, shall not violate public morality or infringe the personality rights of others."

"Section 10 All persons shall have the right to receive proper information on public affairs at local, national and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation. The media system as a whole shall have the task to provide authentic, prompt and accurate information on such affairs and events."

Section 12 (1) If untrue facts are asserted or rumoured about a person or if true facts related to a person are misinterpreted in any media content, such person may demand the publication of a corrective statement suitable to identify the part of the statement that was untrue or unfounded, or the facts that the statement has misinterpreted while also presenting the true facts."

[13] 4. The relevant provisions of Act V of 2013 on the Civil Code (hereinafter referred to as the "Civil Code") are as follows:

"Section 2:45 [Right to honour and the good standing of reputation]

[...]

(2) Violation of the good standing of reputation shall include in particular any assertion or rumour by any person of an untrue fact that is offending to another person or misinterpretation of a true fact."

"Section 2:51 [Sanctions independent of attributability]

(1) A person whose personality rights have been violated shall have the right to demand within the term of limitation, based on the infringement, as appropriate by reference to the circumstances of the case:

(a) a court ruling establishing that there has been an infringement of rights;

(b) to have the infringement discontinued and the infringing person restrained from further infringement;

(c) that the infringing person provide appropriate recompense and at his own expense, make an appropriate public disclosure for such recompense;

(d) the termination of the injurious situation and the restoration of the state prior to infringement, and to have the effects of the infringement eliminated or deprived of their unlawful nature;

(e) that the infringing person or his successor pass on the financial advantage acquired by the infringement in accordance with the rules on unjust enrichment."

III

[14] 1. First of all, the Constitutional Court established on the basis of Section 56 (2) of the Constitutional Court Act that the constitutional complaint complies with the formal and substantive requirements set out in the Constitutional Court Act.

[15] 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. The interpretation of legal obligations concerning the information activities of the press and, in this context, the constitutional limits of the freedom to edit media content, are considered to be a constitutional law issue of fundamental importance {Decision 3/2015 (II. 2.) AB, Reasoning [15]}. The present constitutional complaint addresses such an issue. The legal requirements for reporting on the press conferences of political parties and public figures and the related liability issues significantly affect the work of the press, which is why the Constitutional Court admitted the complaint.

[16] 2. On the basis of the constitutional complaint, the Constitutional Court had to decide whether the judicial interpretation of law that meets the constitutional requirements arising from the Fundamental Law pursuant to which the media content provider covering a press conference of public figures implements the rumours of untrue statements made there and, based on its strict liability for the publication, civil law sanctions for violation of personality rights can be applied against such provider in all cases.

[17] The Curia has applied the rule of civil law protection of the personality to these facts based on which the damage to the good standing of reputation is committed not only by the person who asserts an untrue fact concerning another person which offends that person, but also by the person who rumours such a fact formulated by other persons. In line with the legal interpretation of the judgement, by disclosing a statement by a public figure (in this case, a leader and a member of a political party) at a press conference concerning a political or public debate, the press disseminates the facts presented by the public figure more widely, thus rumouring the statement of facts. And since, according to the Curia, the press is strictly liable for the untrue factual statements it makes, that is, liable independently of the observance of the legal and ethical rules that apply to such statements, the press can be held liable for violation of personality rights if they are violated.

[18] On the one hand, the Constitutional Court found that the legal interpretation of the Curia could be supported by the relevant professional legal provisions and arguments in the case. Pursuant to the civil law rules governing the violation of the good standing of reputation [Section 78 (2) of the previous Civil Code applied in the present case and Section 2:45 (2) of the Civil Code, which has the same effect], the transmission of an untrue statement of facts may be generally regarded as a rumour in so far as the provisions themselves do not provide for exceptions to the infringement committed by such conduct. In spite of the fact that the present case is not a matter of press rectification, the interpretation of the rules of professional law applicable to the press cannot be disregarded that within the concept of rumour, as the transmission of disputed facts, the Press and Media Act itself does not differentiate either: In the statutory definition of the press rectification (the right to request corrections in the press) [Section 12 (1) of the Press and Media Act], rumour is also included as a general category in civil law. The Curia therefore, on the whole, came to the decision contained in the contested judgement by assessing the legal aspects in the usual manner.

[19] On the other hand, it is the task of the Constitutional Court, as the supreme body for the protection of the Fundamental Law, to guard over the constitutionality of interpretations of professional law and, if necessary, to determine the direction or constitutional boundaries of interpretation. On the basis of a constitutional complaint directed at this, the Constitutional Court examines the compliance of the interpretation of law contained in the judicial decision with the Fundamental Law, whether the court enforced the constitutional content of the rights guaranteed in the Fundamental Law. In this regard, the complaint is a legal institution for the enforcement of Article 28 of the Fundamental Law, according to which the courts shall interpret legislation in accordance with the Fundamental Law. The courts must enforce the relevant constitutional requirements within the margin of interpretation allowed by the rules of professional law {*cf*. Decision 3/2015 (II. 2.) AB, Reasoning [17] and [18]}. The constitutional review of the Constitutional Court, in comparison, is the final control over the enforcement of the fundamental rights aspects contained in the Fundamental Law. On the one hand, compared to the work of ordinary courts focusing on the professionally correct and lawful interpretation of the applied legislation, the constitutional task imposed by the Fundamental Law of the Constitutional Court is to explicitly highlight and enforce constitutional requirements. On the other hand, while the courts may not exceed the limits of the margin for interpretation allowed by legislation, the Constitutional Court may also remedy the constitutional errors or omissions of the applied norm. In this context, the Constitutional Court also has the possibility to steer the interpretations of professional law that can otherwise be read

from the legislation in the direction in accordance with the Fundamental Law with constitutional requirements. If the deficiency of the impugned interpretation of the law can be traced back to the lack of differentiation of a provision which at the same time provides the necessary margin for interpretation to achieve constitutional objectives, then, in order to spare the norm in force, the Constitutional Court should clarify the meaning of the norm by establishing a sufficient constitutional requirement.

[20] In the Constitutional Court's view, the usual interpretation of the civil law concept of rumour in the present case does not take sufficient account of the specific constitutional value of the activities of the press and is therefore incompatible with the constitutional requirements of the right to freedom of the press. The general considerations and arguments concerning the rumour are rendered more subtle by special constitutional considerations related to the operation of the press. In the circumstances of the present case, the press is not one of the entitled parties of freedom of expression, but an actor whose operation is of particular constitutional significance. The meaning of the relevant civil law provisions must be developed with this in mind.

[21] Even after the entry into force of the Basic Law, the Constitutional Court has repeatedly addressed the issue of how the constitutional requirements arising from freedom of the press should be taken into account when interpreting the various provisions of different branches of the law. The Constitutional Court considers these guidelines to be relevant in the present case as follows.

[22] 2.1 The case law of the Constitutional Court in this field is based on the interpretation of freedom of speech and of the press which considers these rights to be the foundations of a democratic State under the rule of law, of society and public opinion which merit a specific protection regime and, closely related to this, gives particularly strong protection to communications relating to the debate on public affairs {[Decision 7/2014 (III. 7.) AB, Reasoning [39] to [40] and [45] to [47], Decision 13/2014 (IV. 18.) AB, Reasoning [25]}.

[23] The central constitutional role of freedom of the press in the formation and maintenance of democratic public opinion was a characteristic feature of the practice of the Constitutional Court even under the previously effective Constitution [*see* first Decision 37/1992 (VI. 10.) AB, then in summary, Decision 165/2011 (XII. 20.) AB], accordingly, Article IX (2) of the Fundamental Law expressly provides, in addition to the recognition of freedom of the press, for the provision of the conditions for free dissemination of information necessary for the formation of democratic public opinion.

With this in mind, the Constitutional Court has developed and consistently enforced the constitutional significance of freedom of the press.

[24] As held in Decision 7/2014 (III. 7.) AB, "[f]reedom of the press, encompassing the freedom of all media types, is an institution of freedom of speech. The press, in addition to being engaged in more and more complex and diversified activities, is first and foremost an instrument for expressing and forming opinion and for gathering information necessary for developing opinion" (Reasoning [40]). This role of the press is especially valued in public opinion, as "[i]n a significant part of social and political debates the public figures and other participants in public debates criticise, typically by using the press, each other's views, political performance and, in this context, one another's personality as well. It is a constitutional mission of the press to control those who exercise public authority, and it is the essential element of this control to present the activities of the individuals and institutions who participate in the formation of public affairs" (Reasoning [48]).

[25] Decision 13/2014 (IV. 18.) AB therefore explained that "[t]he 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" (Reasoning [25]).

[26] Decision 28/2014 (IX. 29.) AB indicated that "[f]reedom of the press, as an achievement of our historical constitution, has been linked from the outset to free dissemination of information about current events, to the presentation of social issues to the public" (Reasoning [14])

[27] Decision 3/2015 (II. 2.) AB underscored the essence of the constitutional requirements arising from freedom of the press: "The constitutional mission of the press is to uncover events, circumstances and connections that affect the development of public affairs and to bring them to the attention of the public. Free dissemination of information by the media is a key component of a modern democratic public and is therefore central to enabling the press to carry out this task without uncertainty, compromise or fear" (Reasoning [25]).

[28] 2.2 The Constitutional Court has also been consistent in its practice to protect the essence of the activities of the press outlined above, that is, provision of information in

social and political matters, free dissemination of information to the public, as the most protected sphere of press freedom against state interference, whatever the branch of law. In this context, the Constitutional Court has previously emphasised in the context of abstract norm control that constitutional requirements for the privileged protection of freedom of speech and of the press apply not only to criminal law applicable as an *ultima ratio* instrument in the legal system, but also to the less restrictive civil law. "It is a particularly important constitutional interest that the citizens and the press should be able to participate in social and political debates without uncertainty, compromise or fear. It would be against this interest if those who speak in public affairs had to be afraid of the legal consequences resulting from the protection of the personality of public figures. [...] In addition to criminal prosecution, these requirements are applicable with regard to the legal consequences under civil law as well" {Decision 7/2014 (III. 7.) AB, Reasoning [48]}.

[29] Moreover, the constitutional complaints filed in recent years have already provided the Constitutional Court with an opportunity to enforce the content of freedom of the press as a measure of the constitutionality of judicial interpretations of law in specific cases. In the interpretation of the Constitutional Court, the central role of the media in the formation of democratic public opinion does not mean that "the information activities of the press should not be subject to legal provisions [...], but when creating and interpreting them, one should always act in such a way as not to obstruct or hinder the fulfilment of the constitutional mission of the press, that is, the disclosure of information of public interest" {Decision 3/2015 (II. 2.) AB, Reasoning [25]}. In the specific case, that decision drew the attention of the national courts to the need to review the contested administrative decision on the basis of an interpretation of the prohibition on market manipulation which did not infringe the constitutional content of freedom of the press (Reasoning [20]).

[30] By the same logic, the Constitutional Court decisions already address the issue of civil law linked to the relationship between freedom of the press and the protection of the personality: the issue of the unauthorized disclosure of images of police action. Constitutional case law, which is now becoming a consistent practice, found court judgements finding a violation of personality to be contrary to the Fundamental Law, especially because the interpretation of the law contained in them did not sufficiently respect the constitutional content of freedom of the press. In that regard, those decisions also provided relevant guidelines in the present case for taking into account the activities of the press reporting on public affairs.

[31] In line with Decision 28/2014 (IX. 29.) AB, if the image is published by the press in the context of information on current events or in the public interest in the exercise of public power, then, contrary to the otherwise applicable rule, no consent is required (Reasoning [43]). The decision identified the following as relevant in the present case as well: "As long as any information does not constitute an abuse of freedom of the press, a reference to a violation of individual rights in the context of the protection of human dignity rarely justifies a restriction on the exercise of freedom of the press." (Reasoning [42]). Decisions 16/2016 (X. 20.) AB and 17/2016 (X. 20.) AB of this interpretation have also been consistently enforced in favour of freedom of the press.

[32] In addition to reaffirming the relevant practice, other important aspects related to press coverage were explained in Decision 3/2017 (II. 25.) AB. The Constitutional Court also emphasised this time that "in adjudicating a dispute before them, the courts must examine the completeness of the situation covered by the report in order to ensure adequate constitutional protection of freedom of the press. Indeed, there is a right and an obligation for courts to assess, if such a circumstance arises in a lawsuit, whether the press has acted properly" (Reasoning [24]). However, as held by the Constitutional Court, in the absence of such a circumstance, the courts are "obliged to assert the primacy of the constitutional interest in the presentation of contemporary events" (Reasoning [25]).

[33] 2.3 In addition, the arguments made by the Constitutional Court, within a larger group of expressing opinions, regarding the place of factual statements in the constitutional consideration also bear relevance in the present case. In this case as well, maintaining the position taken from the beginning of its practice, the Constitutional Court distinguishes between value judgements and statements of fact. "While in the case of opinions the proving falsehood is incomprehensible, facts that can be proven to be false do not enjoy constitutional protection" {Decision 7/2014 (III. 7.) AB, Reasoning [49]}. Consequently, "[t]he 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" {Decision 13/2014 (IV. 18.) AB, Reasoning [40]}.

[34] However, the Constitutional Court has also been consistent in emphasizing that, although they must be judged by significantly different standards from value judgments, statements of fact, both real and untrue, fall within the scope of freedom of expression and are subject to arguments for greater protection of public affairs. "Manifestations of expression containing a statement of fact are also part of freedom of speech. On the one hand, the communication of certain facts can express personal

opinion and, on the other hand, the forming opinion would become impossible without communicating facts. [...] The enhanced protection of political expression is applicable both to the value judgements worded in public matters and to the statements of fact in public affairs" {Decision 7/2014 (III. 7.) AB, Reasoning [49] and [50]}. In accordance with the foregoing, the Constitutional Court has repeatedly pointed out that although false statements of fact, as opposed to value judgements and criticism, are not in themselves constitutionally protected, consideration of all the circumstances of the case may mean that there is still no constitutional possibility to hold the person making the false assertion liable. It is not only that the criminal prosecution of untrue statements of fact formulated in public affairs was limited by the practice of the Constitutional Court both prior to [*cf*. Decision 36/1994 (VI. 24.) AB and Decision 18/2000 (VI. 6.) AB] and after the entry into force of the Fundamental Law [*cf*. Decision 13/2014 (IV. 18.) AB]. Decision 7/2014 (III. 7.) AB also stressed even under civil law that the disclosure of facts related to the debate in public matters is typically the basis for opinions; therefore, in the case of legal liability, even in the case of factual allegations that do not otherwise have constitutional value and later proved to be false, the interests of promoting public debate as freely as possible should be taken into account (Reasoning [50]).

[35] 2.4 However, Decision 28/2014 (IX. 29.) AB also pointed out that "[r]espect for the achievements of our historical constitution and the obligation according to which the provisions of the Fundamental Law must be interpreted in accordance with such achievements of the historical constitution [Article R (3)], also justifies the overriding protection of freedom of the press, free dissemination of information and the role of the press in shaping »democratic public opinion«. Freedom of the press is undoubtedly one of the achievements of our historical constitution. The very first step and at the same time the main demand of the revolution of 1848 was to free the press and secure freedom of the press, because freedom of the press was the basis for all other freedoms. In the absence of this, burning political and social issues as well as the wishes of the great transformation could not be articulated in public. The very first of the 12 points in the Proclamation published on 15 March stated: »We demand freedom of the press, the abolition of censorship.« Only this was followed by the responsible ministry, equality before the law, equality in the discharge of public burdens, the demand for the emancipation of serfs and all other demands. With the abolition of prior censorship, one of the April Laws, Act XVIII of 1848, known as the Press Act, guaranteed freedom of the press. Freedom of the press, as an achievement of our historical constitution, has been linked from the outset to free dissemination of information about current events, to the presentation of social issues to the public" (Reasoning [12] to [14]).

[36] The Press Act of 1848, cited above, is particularly noteworthy with regard to the constitutional issues raised in the present constitutional complaint, as it prescribed in a specific provision that the press could not be held liable to some extent for communicating the statements of others. Pursuant to the provision: "Whoever communicates the documents of the National Assembly, the authorities enforcing the law, all kinds of tribunals, and other bodies constituted by law, and discloses their public meetings in a spirit of faith and truth, may not be brought to justice for the content of such communications and disclosures." (Section 14 of Act XVIII of 1848) Thus, the idea that the press reporting "in a spirit of faith and truth" deserves a certain degree of protection against prosecution is part of the Hungarian interpretation of freedom of the press from the outset, in line with the period-bound perception of public debate in public affairs.

[37] 2.5 In deciding the present case, the Constitutional Court relied above all on the antecedents, arguments and requirements of the Hungarian Constitutional Court presented above; however, the case law of the European Court of Human Rights (hereinafter referred to as the "Human Rights Court") was also taken into account in the issue of the liability of the press reporting on the communications of others. From the case law of the Human Rights Court, some important aspects concerning the liability of the press covering public information and events can also be drawn from cases with different facts.

[38] In Jersild v. Denmark, the Human Rights Court pointed out, for the first time, that in a case involving the media, it was relevant that a member of the press did not himself make objectionable statements but only contributed to their publication as a journalist. In this context, the ECtHR saw a serious obstacle to the essential role of the press, its indispensable contribution to the public debate in a case where a journalist was convicted of having assisted in the dissemination to the public of statements made by other persons, in an interview (ECtHR, Jersild v. Denmark (15890/89) of 23 September 1994, paragraphs 31 and 35).

[39] In Bladet Tromsø and Steensas v. Norway, the Human Rights Court also confirmed regarding the disputed statements of fact that the authorities have only a limited margin of manoeuvre to obstruct the activities of the press which disseminate information of public interest, and measures or sanctions that weaken the participation of the press in public debate must be subjected to the most exacting scrutiny. In line with the judgement, the Convention does not provide a completely undisturbed area for the media, but the press, acting in good faith and in accordance with the rules of journalistic ethics in order to inform the public, is protected by the Convention. In this

decision, the Human Rights Court also explained that the press may, to a certain extent, be relieved of its usual obligation to verify the veracity of statements of fact which may infringe the rights of others before publication. In the present case, the Human Rights Court considered that the press could be dispensed from its liability, on the one hand, on account of the infringing character of the communication and, on the other hand, the journalist's reasonable reliance on the content of the report setting out the disputed statement in his work [ECtHR, Bladet Tromsø and Stensaas v. Norway) (21980) , 20 May 1999, 59 and 64-66. paragraphs]. Subsequently, the judgment in Tønsbergs Blad AS and Haukom v. Norway also set out the special circumstances for exempting the press concerned from the obligation to verify the accuracy of the facts in advance [ECtHR, Tønsbergs Blad AS and Haukom v. Norway (510/04), 1 March 2007 .].

[40] In Thoma v. Luxembourg, the Human Rights Court, in the case of a journalist citing statements from another press article, also stressed that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the role of the press to provide information on current events, opinions and ideas [ECtHR, Thoma v. Luxembourg (38432/97), 29 March 2001, Paragraph 64].

[41] 3. On the basis of the foregoing, the Constitutional Court underscores in the present case that one of the essential elements of the activity of the press, which plays a central role in the development of democratic public opinion, is the communication of public events to the public. The media is the main custodian of the public in the modern age, without which the functioning of democratic social deliberation is completely inconceivable. The primary constitutional task of the press is to disseminate information of public interest, including the statements and positions of public figures. It is important not only that the dissemination of information related to the debate on public affairs is the constitutional mission of the press, but also that other participants in the democratic debate have a right to such information. It is therefore particularly important for the press to be able to report as freely as possible on the circumstances relevant to the public debate.

[42] Of course, the freedom of the press to impart information is not unrestricted, but is subject to obligations in order to uphold other fundamental rights or constitutional values. In several cases, the Constitutional Court has already found the provisions on information provided by the media to be constitutional {*see* Decision 1/2007 (I. 18.) AB and Decision 3096/2014 (IV. 11.) AB; also, a similar reasoning is contained in Decision 3/2015 (II. 2.) AB, Reasoning [22]}. The exercise of freedom of the press does

not in itself extend to the disclosure of untruths; moreover, one of the main liabilities of journalists is to check the authenticity of the news and information disclosed. This does not mean, however, that the question of liability for untrue statements of fact can be judged in the same way in all cases, and there is no need to consider constitutional considerations in this context. In any event, the interest in the flow of information on public affairs and the relationship between the press and the statements disclosed by it constitute such a consideration. In the case of coverage of press conferences by public figures, these aspects are of particular importance, as set out below.

[43] In the case giving rise to the constitutional complaint, it is clear (and not disputed) that the media content provider has provided information on the matter of public interest in the strictest sense when it reported on a pre-announced press conference of a local organisation of one of the parliamentary parties on a particularly controversial political topic (the matter of tobacconist tenders). The debate on public affairs is largely based on the statements of the public figures who are the most active in shaping political life through the press, the statements and criticism made in a given subject or in connection with each other's activities.

[44] In addition to the apparently close connection with the public debate in the context of the liability of the media reporting on the press conference of public figures, it is also important that, unlike many other manifestations of public journalism, journalists do not present their own statements or opinions to the public, nor do they seek to influence the wider public with their own thoughts. The Constitutional Court maintains that the liability of the press for the statements of public figures for untrue statements of fact should be judged by a different standard than when editors and journalists determine media content solely on the basis of their own ideas and preliminary decisions. In such cases, the focus of the operation of the press is not on enriching and influencing the public debate with its own arguments, but on up-to-date and credible channelling of the statements of other participants in the social deliberations. The interest of the public debate in connection with the coverage of press conferences requires, above all, the accurate publication of what has been said, in line with the topicality of the news.

[45] The limited liability of the press to disclose assertions by others exists, especially when the media disseminates statements by politicians at the forefront of public debate. In this case, it cannot be ignored that "any criticism and qualification about their personality are handled differently by the public, regarding it as a necessary element of democratic debates, typically as a piece of information to be interpreted in the framework of different political interests. In Hungary, the specificities of the

operation of the plural political public have developed in the recent period, among which the society can evaluate the statements made during public debates with due care" {Decision 7/2014 (III. 7.) AB, Reasoning [57]}. It is an everyday part of such due care that those who follow political debates can confidently expect the response and refutation of the person concerned, which also appears in public, after the incriminating statement of one of the participants.

[46] In addition, in the case of coverage of a press conference, the responsibility of the media is specific not only for the content of the communications but also, in a specific way, for their wide publicity. In these cases, it is the public figures themselves who spark and organise the interest of the press, with the clear intention that their communications and statements should receive the widest possible attention. The media is much more a vehicle for expression than an independent actor in the debate.

[47] The Constitutional Court also took into account that, as indicated by the judgements in the present case, the civil law judicial practice has already established exceptions to the interpretation of the concept of rumour, when the press is relieved of its normal obligation to verify the veracity of the facts published. The impugned decision of the Curia also points out that, in keeping with judicial practice, not only does the press have recourse to reporting on the content of certain documents in criminal proceedings (crime report, indictment, non-final court judgement) or what was said at a public hearing, but it may also provide information on other official procedures without the obligation prove veracity, since, in such cases, the proceedings in question involve an examination of the facts also communicated by the press. Based on the arguments set out, the constitutional role of the press, the interest in the flow of information related to public affairs, the specificities of the debate of public figures and the attitude of the press to the statements disclosed, the Constitutional Court considers the press conference of public figures to be such an exception. This conclusion of the Constitutional Court does not affect the general obligation of the press to verify the truthfulness of the published facts, it is only about the constitutional justification of one of the cases of exemption from it.

[48] However, in the view of the Constitutional Court, this exemption cannot be considered unconditional. An essential element of the test of the responsibility of the press reporting on the communications of others is whether the journalist communicates faithfully what the other persons have said to the public, with a clear indication of the identifiable source of the communications, without their own assessment. On the basis of these facts, neither the contested Curia decision nor even the plaintiff in the main proceedings itself doubted that the coverage met those

expectations. On the contrary, the court judgments in the case explicitly acknowledged that the media content provider had reported the public event in compliance with these requirements. In the present case, the proper conduct of the journalists is also supported by the fact that the internet newspaper had already published the statements in question together with the statement of the person concerned, expressly referring to the plaintiff's defence as a "rectification" in the repeated article. In addition, other circumstances may indicate that the press may be abusing its immunity from proving reality. If such abuse is revealed on the basis of specific facts other than the current one, the press shall be liable accordingly. It would be abusive, for example, for the title of a press conference to be misleading as to the source or nature of the communications and to give the impression that it contained the media content provider's own claims or undisputed communications. However, the grounds for the contested decision does not refer to such a circumstance at all.

[49] The Constitutional Court also maintains that certain arguments that still play an important role in its current interpretation, above all the interest of the public information flow and the specificities and power of the debate of public actors, may be weakened even within the debate on social issues, which may have a meaningful effect on the standard applicable in a given case {*cf*. Decision 7/2014 (III. 7.) AB, Reasoning [58] and [61]}. In the present case, however, those arguments are fully valid, since they concern the hassle of public politicians on a public issue which has provoked a great deal of social debate.

[50] In view of the above, the Constitutional Court states: It shall not be regarded as an act of rumour serving as grounds for civil sanctions for an infringement of personality rights by the media content provider's activities reporting in a manner faithfully corresponding to the reality and without its separate own assessment of statements made mutually at a press conference of public figures in the debate on public affairs, clearly indicating the source of the communications and also providing an opportunity for rebuttal (or the ability to respond) of a person affected by statements of fact that may damage the good standing of reputation. In this respect, what matters is not primarily the weight of the sanctions imposed, but the fact that no decision shall be constitutionally adopted against anyone for the performance of their constitutional duty. However, the Constitutional Court does not consider sanctions for the violation of personality rights, regardless of attributability, to be weightless measures: litigation for redress with a view to recompense can in itself be a significant burden, and the finding of an infringement and the provision of public recompense, in addition to financial consequences, can seriously undermine the credibility of the press body concerned.

[51] The Constitutional Court notes that its interpretation herein does not jeopardise the civil law aspect of sanctioning a violation of personality rights in the light of the circumstances of the committing the infringing act in broad publicity. The public figures holding the press conference spark and organise the interest of the media themselves, so they have to reckon with the widest possible publicity of their statements. The resulting consequences may therefore be enforced against such public figures, where appropriate. In the present case, however, the Constitutional Court did not decide on the basis of the complaint about the assertions made by the politicians concerned against each other, but about the liability issues related to the activities of the media content service provider informing about them.

[52] On the basis of the above, the Constitutional Court found that the interpretation of the law contained in the decision taken in the procedure for review by the Curia infringed the right to freedom of the press enshrined in Article IX (2) of the Fundamental Law and therefore annulled the judgement of the Curia. However, in determining the legal consequences of the constitutional review, the Constitutional Court also took into account that the error of the impugned judgement is rooted in the lack of differentiation of the applied legal provision. Pursuant to Section 46 (3) of the Constitutional Court, the Constitutional Court, in its proceedings conducted in the exercise of its competences, may establish in its decision the constitutional requirements which emanate from the regulation of the Fundamental Law and which enforce the constitutional requirements of thereof, with which the application of the examined legal regulation or the legal regulation applicable in court proceedings must comply. The Constitutional Court held that the constitutional problem expressed, namely that the activities of the press must be an exception to the general interpretation of rumour to a certain extent, could be adequately remedied by establishing a constitutional requirement. The concept of rumour, in the absence of an explicit legal definition, leaves such a large margin of interpretation for those applying the law that allows the aspects raised to be taken into account. Given that the violation of the good standing of reputation by propagating rumours is regulated in the same manner by the previous Civil Code and the Civil Code now in force, the Constitutional Court formulated the constitutional requirement in a manner governing both Acts.

[53] The Constitutional Court points out that the constitutional review of the judgement challenged by the constitutional complaint was directed at the interpretation of the law contained therein. Reassessment of the specific facts in the light of the constitutional requirement now defined, having regard, in particular, to the existence of professional rules which, as explained above, have a decisive effect on the discharge of the press

from liability, and on that basis the substantive decision on the petitioner's liability is the responsibility of the court hearing the retrial.

IV

The Constitutional Court ordered publication of its Decision in the Hungarian Official Gazette on the basis of the second sentence of Section 44 (1) of the Constitutional Court Act.

Budapest, 5 December 2017

Dr. Tamás Sulyok sgd.,
Chief Justice of the Constitutional Court

Dr. István Balsai sgd.,
Justice

Dr. Egon Dienes-Oehm sgd.,
Justice

Dr. Ildikó Hörcher-Marosi sgd.,
Justice

Dr. László Salamon sgd.,
Justice

Dr. István Stumpf sgd.,
Justice

Dr. Tamás Sulyok sgd.,
Chief Justice of the Constitutional Court
on behalf of Justice
dr. Péter Szalay
prevented from signing

Dr. Ágnes Czine sgd.,
Justice

Dr. Attila Horváth sgd.,
Justice

Dr. Béla Pokol sgd.,
Justice

Dr. Balázs Schanda sgd.,
Justice delivering the opinion of the Court

Dr. Marcel Szabó sgd.,
Justice

Dr. Mária Szívós sgd.,
Justice

Dr. András Varga Zs. sgd.,
Justice

CZINE, J., dissenting:

[54] I do not agree with the annulment of the court's decision for the reasons set out below.

[55] In my view, there can be no doubt under the current Civil Code that courts must enforce a constitutional requirement set out in the operative part in personality rights lawsuits. In this case, however, the courts still had to base their decision on the provisions of the previous Civil Code. In view of this, I believe that in the present case the issue of constitutionality arises from the fact whether under Article 78 (2) of the old Civil Code, which has not been in force since 15 March 2014, the courts could have obtained the interpretation of the law contained in the constitutional requirement under Article 28 of the Fundamental Law.

[56] 1. At the outset, I consider it important to stress that the press has a special constitutional significance in the exercise of freedom of speech. As the Constitutional Court has pointed out in its decisions: "It is a constitutional mission of the press to control those who exercise public authority, and it is the essential element of this control to present and to criticise, even in a very strong tone, the activities of the individuals and institutions who participate in the formation of public affairs. [...] Consequently, the paramount constitutional importance of debating public affairs implies that, in the field of protecting the personality of public figures, a narrower restriction of freedom of speech and of the press is considered to comply with the requirements that may be deduced from the Fundamental Law. It is a particularly important constitutional interest that the citizens and the press should be able to participate in social and political debates without uncertainty, compromise or fear. It would be against this interest if those who speak in public affairs had to be afraid of the legal consequences resulting from the protection of the personality of public figures. In addition to criminal prosecution, these requirements are applicable with regard to the legal consequences under civil law as well" {Decision 7/2014 (III. 7.) AB, Reasoning [48]}. In view of this, it can be stated that civil courts must also take into account the constitutional aspects of freedom of the press in the context of civil liability in connection with the protection of the good standing of reputation.

[57] However, the extent to which civil courts can express the constitutional requirements of freedom of the press must be assessed in the light of the substantive

law applicable to the particular case. In view of this, I consider it important to highlight the following.

[58] In consonance with the consistent practice of the Constitutional Court, Article 28 of the Fundamental Law imposes a constitutional obligation on the courts to interpret legislation in accordance with the Fundamental Law in the course of their judicial activity {e.g. Decision 7/2013 (III. 1.) AB, Reasoning [33]; Decision 28/2013 (X. 9.) AB, Reasoning [29]; and Decision 3/2015 (II. 2.) AB, Reasoning [17]}. It follows from this obligation that the court must, within the scope of the interpretation given by legislation, identify the fundamental rights aspects of the case before it and interpret the legislation applied in the judicial decision in the light of the constitutional content of the fundamental right concerned. The constitutional complaint enabling the constitutional review of judicial decisions (Section 27 of the Constitutional Court Act) is a legal institution serving the enforcement of Article 28 of the Fundamental Law. On the basis of such a complaint, the Constitutional Court assesses the compliance of the interpretation of the law contained in the judicial decision with the Fundamental Law, that is, whether the court has enforced the constitutional content of the rights guaranteed in the Fundamental Law during the application of the legislation.

[59] However, as the principal organ for the protection of the Fundamental Law under Article 24 (1) of the Fundamental Law, the Constitutional Court shall, under Article 24 (2) (d) of the Fundamental Law, review judicial decisions only from the point of view of constitutionality by conformity with the Fundamental Law. Accordingly, the competence of the Constitutional Court in adjudicating constitutional complaints filed on the basis of Section 27 of the Constitutional Court Act is limited to the assessment of the unconstitutionality by non-conformity with the Fundamental Law and conformity of the interpretation of law contained in the judicial decision with fundamental rights, that is, the Constitutional Court shall review the interpretation of the law contained in a judicial decision challenged on the basis of Section 27 of the Constitutional Court Act only if the case has a fundamental right relevance. However, the mere fact that a case has a fundamental legal relevance cannot result in the courts hearing the case disregarding the professional assessment of the case. The courts must endeavour to take into account the fundamental rights implications of the case within the scope of the substantive and procedural rules applicable to the case before them and to enforce the constitutional content of the fundamental right in their decision in accordance with the applicable rules. And if the applicable norm does not have such a possibility of interpretation, the norm is contrary to the Fundamental Law.

[60] In the light of the above, I believe that the Constitutional Court must examine whether the margin of interpretation of a substantive rule applied in a particular case allows the trial court to enforce constitutional requirements arising from the fundamental legal relevance of the case. And if the norm does not have the possibility of interpretation that would allow a decision to be made in accordance with the constitutional requirements, the Constitutional Court must examine the compliance of the legislation with the Fundamental Law on the basis of Section 28 (1) of the Constitutional Court Act, or it must provide for the application of the legal consequence specified in Section 46 (1) of the Constitutional Court Act.

[61] 2. In the given case, in my opinion, the Constitutional Court should have examined whether the margin of interpretation of Section 78 (2) of the previous Civil Code made it possible to enforce the constitutional aspects of freedom of the press.

[62] 2.1 The rules of civil law on the protection of the good standing of reputation apply the following legal policy aspects: "Our value judgements concerning the person of others are normally concluded from data and information reported on and, related to, the given person, his or her behaviour and acts. Therefore, it is of paramount legal policy interest to ensure, as far as possible, the veracity of factual statements made by various sections of the public that are suitable for the evaluation of others. The specifically mentioned personality right, intended to protect the good standing of reputation, seeks to achieve this in civil law by its own specific means" [Lajos Vékás (ed.): Szakértői Javaslat az új Polgári Törvénykönyv tervezetéhez, Complex, Budapest, 2008. p. 163].

[63] 2.2 Courts typically assess whether the impugned statement contains a statement of fact in the case of an alleged violation of the right to the good standing of reputation. Damage to the good standing of reputation may only be based on the communication of an (untrue) statement of fact that defies reality. Accordingly, expression of opinion should not lead to damage to reputation, however, if the communication is unreasonably offensive, hurtful or degrading, it may be deemed offensive to human dignity or honour (Court Reports, BH 2001.468). Thus, opinions and value judgements typically do not provide a basis for a finding of a violation of personality rights, even if it is otherwise erroneous or incorrect. Whether a fact is untrue must be assessed in its context (Court Reports, BH 1998.169, Compendium of Judicial Decisions, BDT 2005.1277).

[64] 2.3 The damage to the good standing of reputation is also realised by the rumour of an untrue fact. In line with the judicial practice, "in examining the realisation of" the latter "[…] that in the conceptual system of Hungarian law, rumour is the transmission

or communication of something as news to others on a large scale [Volume III of the Interpretive Dictionary of the Hungarian Language (A magyar nyelv értelmező szótárának III. kötete), Akadémiai Kiadó, Budapest, 1960, p. 263]. Consequently, rumour consists in the transmission of news, that is the communication of an idea and the sharing of obtained information (Compendium of Judicial Decisions, BDT 2012. 2742.). This presupposes active and conscious behaviour, that is, the consciousness of the infringing party must embrace the infringing allegation or expression of opinion and share it with the public in a communicative way as a manifestation of his own state of mind." (Compendium of Judicial Decisions, BDT 2013.2904.) The Curia also pointed out that "rumour is realised through the transmission and disclosure of information, as a result of which anyone has a chance to access the given content. The internet is just one possible alternative to disclosure, the place where the act of rumouring is committed, which simply means transmitting information and disseminating the facts via a computer network." (Court Reports, BH 2013.266.)

[65] 2.4 In the practice of the courts, the responsibility of the press has arisen several times in connection with reporting on proceedings within the competence of the National Assembly, the courts and other official bodies. In these cases, the Supreme Court (now the Curia) has typically emphasised that "[t]here is an important public interest [...] for the public to be informed through the press about the procedures within the competences and responsibilities of the supreme state power (popular representative) body, the National Assembly, local governments, national and local public administration bodies and the judiciary without imposing on the press the obligation to prove the veracity as to the subject-matter of such procedures. Revealing reality is then a matter of procedure which is to be conducted within the competence of the designated body, within the framework of the substantive and procedural rules applicable to it. The obligation of the press in this case only extends to the factual coverage of the procedure in question, its stage and the motions made by those entitled to it in the proceedings. This obligation also includes that the press should later report the termination of the procedure, the decisions made and the findings of the assessments as well. The possibility of providing information on the activities of the judiciary in this way is already provided for in points II and III of Resolution PK 14 of the Civil Division of the Supreme Court"(E-Court Reports, EBH 2001.407).

[66] In line with these considerations, the Supreme Court also stressed that "[t]he press body is not obliged to verify the veracity of factual statements made at a press conference held by the police; a press release does not infringe the presumption of innocence and the rights of the individual if such in such press release it is reported in a manner consistent with what was stated at the police press conference, that the

plaintiff subject to criminal proceedings is being prosecuted for similar acts committed in other parts of the country in addition to the proceedings which are the subject of the press conference"(Court Reports, BH 2002.51).

[67] In view of the contents of the court decision in principle presented above, I note that I do not agree with the fact that in the present case the Constitutional Court considered the content of journalistic freedom according to the historical constitution to be a ground for unconstitutionality by non-conformity with the Fundamental Law {Decision 28/2014 (IX. 29.) AB, Reasoning [12] to [14]}. I consider it important to emphasize that Section 14 of the Press Act of 1848 (Act XVIII of 1848), which is part of our historical constitution, provided: "Whoever communicates the documents of the National Assembly, the authorities enforcing the law, all kinds of tribunals, and other bodies constituted by law, and discloses their public meetings in a spirit of faith and truth, may not be brought to justice for the content of such communications and disclosures." The practice of civil courts is thus in line with the idea in the historical constitution that the press reporting "in a spirit of faith and truth" should be protected to some extent against being held liable.

[68] 2.5 Based on the above, it can be concluded that the civil courts link the legal consequence to the fact of the violation within the scope of the objective sanctions for the violation of personality rights. The realisation of the violation is independent of the good or bad faith or the attributability of the person asserting rumours. These aspects are assessed by the court among other legal consequences (e.g. an award of damages). The reason for this is that the purpose of the application of objective sanctions for the civil law protection personality is, for the legal policy reason referred to above (point 2.1), to eliminate the injurious situation and to provide moral satisfaction to the injured party.

[69] 2.6 The decades-long practice of the Supreme Court presented above, also in the practice of the Curia, continues in the cases decided on the basis of the previous Civil Code. The Curia therefore typically points out in lawsuits relating to the protection of the good standing of reputation that "[i]n the case of press rectification, the liability of the press body is independent of attributability and possesses an objective character as regards the reality of the facts disclosed" (Judgement No. Pfv.IV.22.100/2016/4 of the Curia).

[70] 2.7 However, a change can be observed in the practice of the Curia, based on the Civil Code effective as of 15 March 2014. Indeed, in a recent judgement, the Curia emphasised that "the case law of the European Court of Human Rights (hereinafter referred to as the "Human Rights Court") and the recent decisions of the Constitutional

Court and related recent judicial practice do indeed set a new trend in the legal assessment of rumour. According to the case-law of the Human Rights Court, in the event of a conflict of fundamental rights, a balance of interests is required. Such fundamental rights in the present case are the plaintiff's personality rights based on human dignity and, on the other hand, the fundamental constitutional right to information and the presentation of public debates." (Judgement No. Pfv.IV.22.224/2016/3. Of the Curia, paragraph 19) In view of the above, in that case the Curia agreed with the grounds for the final judgement that "if what has been stated at the press conference is accurately reported by the press body with an accurate indication of the source, without distortion, and the information gives room to the opposite (plaintiff's) position, there is no place to order a press rectification. If these conditions are fully met, the public debate on public affairs will indeed take precedence in the balance of interests, also in view of the prominent role of the press (as a public watchdog)" (Judgement No. Pfv.IV.22.224/2016/3, paragraph 22).

[71] In view of the above-mentioned decision of the Curia, I believe that it was unnecessary to formulate the constitutional requirement, because on the basis of the Curia decisions made on the basis of the current Civil Code it can be concluded that the Curia enforces the constitutional requirement. In view of this, there are no conditions that would justify the application of the legal consequence contained in Section 46 (3) of the Constitutional Court in the previous practice of the Constitutional Court. The Constitutional Court has pointed out in several decisions that "[w]here the constitutionality of a legal provision is in question due to the uncertainties in the application of the law inherent in the regulation, the Constitutional Court may also expressly determine the range of constitutional interpretation, that is, it may determine the constitutional requirements that the interpretations of the norm must comply with"{Decision 8/2015 (IV. 17.) AB, Reasoning [71]}. The Constitutional Court acted accordingly in the adoption of Decision 9/2013 (III. 6.) AB and Decision 20/2015 (VI. 16.) AB.

[72] 2.8 Based on the above, it can be concluded that the Curia already enforces the provisions of the constitutional requirement in its practice. In this context, however, I do not think that the following aspects can be ignored either.

[73] The Constitutional Court pointed out in the Reasoning for this Decision that Section 2:45 (2) of the current Civil Code regulates the right to the good standing of reputation in the same manner as Section 78 (2) of the previous Civil Code. However, in the explanatory memorandum to the draft text of the current Civil Code, the legislator explicitly emphasised that "[t]he Act makes up for a decade's gap by raising

the rule of lower protection of the personality rights of public figures to the level of an Act of Parliament, in order to enforce fundamental rights that ensure the free debate of public affairs." Accordingly, the legislator has included the following provision in the personality rights rules of the Civil Code: "The exercise of fundamental rights ensuring the free debate of public affairs may restrict the protection of the personality rights of a public figure to a necessary and proportionate extent, without prejudice to human dignity" (Section 2:44 of the Civil Code).

[74] Thus, in the field of the legislation on personality rights, the legislator has made it clear, through legislation, that the constitutional content of the fundamental rights guaranteeing the free contestation of public matters must be enforced by the courts. Such a provision was not included in the previous Civil Code. In view of this, I do not think it can be said that the old Civil Code and the current regulations regulate the right to the good standing of reputation in the same manner. The current legislation defined discretionary aspects in the Civil Code that were not included in the previous Act.

[75] I also note that Act CXX of 2009 on the Civil Code (hereinafter referred to as the "2009 Civil Code"), which was adopted in 2009 and did not enter into force, contained an express provision on press coverage. Under this Act, the sanctions for the violation of individual rights specified in Sections 2:89 to 2:92 of the 2009 Civil Code were not applicable if a) the press reports in a verbatim manner on what was stated at the public event, specifying the person of the statement, as stated, b) publishes a statement given to the press, or c) the subject of the report is a description of official procedures or decisions [Section 2:93 of the 2009 Civil Code]. In this case as well, the legislator sought to ensure the constitutional aspects of freedom of the press by supplementing the previous legal provisions.

[76] 3. Finally, I also consider it important to highlight the following. Under the rules of the old Civil Code, in the context of the protection of the good standing of reputation, civil courts have enforced and defended a clear legal policy objective, which is decisive in the field of civil law personality protection. This is summarized in a legal literary reference, which was also considered to be relevant during the codification of the current Civil Code: "A person's reputation is determined by factual and data disclosures about the person and the person's social behaviour. It is in the public interest for these communications to faithfully characterise the person, to express reality. Only in this way can the image of the person be a realistic basis for social evaluation, only in this way can the person play a role in society corresponding to his or her true value" (Károly Törő: Személyiségvédelem a polgári jogban, Budapest, KJK, 1979. P. 353). In codifying

the current legislation, the legislator had to bring the constitutional aspects of freedom of the press into line with these legal policy aspects.

[77] At the same time, I consider it important to emphasize that the civil courts also took into account the aspects of freedom of the press on the basis of the previous Civil Code within the scope of the margin of interpretation provided by the applied norm. The liability of the press was not established if the press reported on a procedure within the competence of the National Assembly, a court or another authority. The civil courts were able to define the latter exceptions because in these cases it is not really possible to examine the untruthfulness of the statement of fact. Revealing reality is then a matter of procedure which is to be conducted within the competence of the designated body, within the framework of the substantive and procedural rules applicable to it. The obligation of the press in this case only extends to the factual coverage of the procedure in question, its stage and the motions made by those entitled to it in the proceedings (E-Court Reports, EBH 2001.407).

[78] These aspects were also emphasized by the Curia in the impugned judgement in the case. In consonance with the grounds of the judgement challenged with the constitutional complaint, "[t]here is no doubt that Resolution PK 14 of the Civil Division of the Supreme Court has been surpassed by judicial practice in that the press may impart information not only about the content of the indictment, the public hearing or the non-final criminal court verdict, but can also about the content of the report initiating the criminal proceedings and about the official procedures without the obligation to prove the reality". The Curia underlined that in this case "the given procedures include the examination of the reality of the facts also published by the press".

[79] 4. Based on the above, I believe that, subject to Article 28 of the Fundamental Law, the Curia did not err in law in this case, because it made its decision within the scope of interpretation given by the substantive legal norms applicable in the specific case. Consequently, the unconstitutionality by conflict with the Fundamental Law of the judicial decision taken by the Curia could not have been established, either.

Budapest, 5 December 2017

Dr. Ágnes Czine sgd.,
Justice

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

[80] I do not agree with the operative part of the Decision and its Reasoning.

[81] 1. The Decision, as detailed in the Reasoning, intends to safeguard the constitutionality of professional interpretations by diverting them in a direction consistent with the Fundamental Law with constitutional requirements.

[82] In theory, I have more problems with this approach in cases where the Constitutional Court seeks to subordinate the fundamental rights enshrined in Article VI of the Fundamental Law to the primacy of the fundamental rights specified in Article IX of the Fundamental Law with its own position statements formulated in previous decades. This approach ignores the fact that, in the changed circumstances, the primacy of freedom of opinion can be less and less maintained by a significant increase in abuses of the exercise of the right to freedom of expression and the press, and on the basis of an individual assessment of each specific case, it can only be determined on a case-by-case basis which fundamental right should bow before the other. Incidentally, I have already represented this position in my dissenting opinions and concurring reasoning, especially with regard to the debate over public affairs and the decisions of the Constitutional Court on personality cases suitable for the unfair influence of public opinion, noting that the abuse of the right to freedom of speech and of the press may, in more serious cases, also contribute to the undermining of trust in democracy and the functioning of democratic institutions {Decision 7/2014 (III. 7.) AB (87)}.

[83] In these circumstances, the role of the ordinary courts in *inter partes* proceedings is clearly emphasized that with the help of Article 28 of the Fundamental Law they develop judicial practice with the help of the relevant sectoral laws, which is able to adapt to changing circumstances and meet the requirements of the Fundamental Law. However, the latter typically does not require the Constitutional Court to provide for a constitutional requirement; it is sufficient to make the subject matter and decision of the substantive examination of the given case whether the constitutional interpretation of the judicial decision in the case challenged with the constitutional complaint is correct.

[84] The Decision in the present case required the constitutional requirement set out in point 1 of the operative part only in order to challenge the legal dogma based on the supremacy of freedom of opinion in the Curia's judgment against consistent judicial

practice based on the strict liability of the press in terms of rumours resulting in a breach of personality rights.

[85] In my view, the consistent judicial practice applied in the present case is constitutionally correct and does not need to be changed by a constitutional requirement. In particular, there is no need to lay down a requirement which seeks to steer the application of the law in a particular direction by taking over the role of legislator.

[86] 2. The judgement of the Curia in the review procedure in the case challenged with the constitutional complaint, in my opinion, meets the requirements of constitutional interpretation in all respects that can be deduced on the basis of Article 28 of the Fundamental Law.

[87] Consequently, I cannot agree with point 2 of the Decision, either.

[88] On the other hand, I fully support and agree with Justice dr. Péter Szalay's argument in support of the constitutional validity of the impugned judgement and the dissenting opinion which contains all the reasons for such argument.

Budapest, 5 December 2017

Dr. Egon Dienes-Oehm sgd.,
Justice

I second the above dissenting opinion:

Budapest, 5 December 2017

Dr. István Balsai sgd.,
Justice

Dissenting opinion by *dr. László Salamon*:

[90] I do not agree with the Decision.

[91] 1. The establishment of the constitutional requirement set out in point 1 of the operative part is, in my view, in fact legislation, for which, however, the Constitutional Court has no jurisdiction. In my view, the competence to determine a constitutional requirement provided for in Section 46 (3) of the Constitutional Court Act serves to resolve the conflict of competing interpretations by designating the constitutional framework of the interpretation, which does not include the imposition of new itemised legal norms. The narrowing of the concept in this Decision of rumour clearly accepted by judicial practice (if it were really necessary) could only be a legislative task.

[92] 2. If and to the extent that a restriction were to be considered necessary, the previous Civil Code, given that it is no longer in force, should be acted upon, which is no longer possible, either by annulling the provision in question or by finding an unconstitutionality by omission manifested by non-conformity with the Fundamental Law which, in the case of existing legislation, may serve to remedy incomplete (insufficiently detailed) legislation that violates the requirement of constitutionality.

[93] 3. I also doubt the extension of the establishment of the constitutional requirement to the Civil Code. In the case which is the subject of the constitutional complaint, the previous Civil Code had to be applied. I do not consider the limits of the authorization contained in Section 46 (3) of the Constitutional Court Act to be sufficiently discussed and clarified in principle with regard to the legislation not applied in the proceedings.

[94] 4. From a substantive point of view, the decision failed to convince me of the absolute need to narrow down the concept of rumour. In this respect, the dissenting opinion of Justice dr. Péter Szalay, which contains a detailed argument for the constitutional lack of protection of rumouring false facts, deserves serious consideration.

[95] There is no doubt that strict liability in relation to the operation of the press concerned may pose a serious risk of damage to the press, which bears some resemblance to the pursuit of an activity involving an increased risk. This similarity could even serve as an example for the design of a risk mitigation or exclusion scheme by creating comprehensive liability insurance. What is certain, however, is that the seldom unpredictably serious human, moral or existential consequences of rumours of false facts ("making it publicly available") cannot remain without reparation that is effective and guaranteed in terms of enforceability.

[96] 5. As the Curia's judgement complied with the law and was based on consistent judicial practice based on it, I also disagree with the annulment of the judgement (paragraph 2 of the operative part of the Decision).

Budapest, 5 December 2017

Dr. László Salamon sgd.,
Justice

Dissenting opinion by *dr. Péter Szalay*:

[97] 1. I do not agree with the annulment of the Judgement No. Pfv.IV.20.624/2016/9 of the Curia as a court of review held in point 2 of the operative part, nor do I consider the constitutional requirement set out in point 1 of the operative part to be sufficient for an exhaustive settlement of the fundamental constitutional issue raised in the case and excluding the possibility of abuse, in the case of reports on the press conference of public actors, the criteria of the liability of the press deriving from the Fundamental Law for the verification of the truthfulness of the published facts.

[98] In my view, the judgement challenged in the petition is not contrary to the Fundamental Law; in the judgement, the Curia compared freedom of the press laid down in Article IX (2) and the right to privacy and the good standing of reputation enshrined in Article VI (1) based on human dignity, and interpreted them in relation to one another in accordance with the rule of interpretation contained in Article 28 of the Fundamental Law and following the test of restriction of fundamental rights in Article I (3). For this reason, I consider that the annulment of the Curia's judgement by a majority decision and the constitutional requirement set out in the operative part, based on the test of necessity and proportionality, as regards the restriction of the fundamental right to the right to the good standing of one's reputation, does not only goes beyond proportionality but it is not even considered necessary.

[99] 2. As stated in Part I, point 2.3 (Reasoning [8]) of the majority opinion to the description of the petition and the main proceedings, in connection with the facts under review, reports issued by the petitioner on a press conference on tobacco products concession tenders held by members of the Hungarian Socialist Party and a member of the presidency of the Szombathely organisation of the above party, "the Curia concluded that the press was objectively liable for the accuracy of the factual statements it published or rumoured. […] [I]n line with judicial practice, the press can only report on official proceedings without the obligation to prove veracity […]. The press, which reports on a press conference involving a political or public debate, disseminates more widely what is said by public figures, and thereby rumours the

statement of facts. If this statement of fact is untrue and offensive, the liability of the press can be established. With regard to the statements made at the press conference, the press can decide for itself whether to publish them, thus assuming liability for any infringement. If it chooses to disclose, it will not be relieved of its strict liability for complying with any laws or press ethics that apply to its activities."

[100] This legal interpretation of the Curia is based on the rule of civil law personality protection, according to which damage to the good standing of reputation is committed not only by the person who asserts an untrue fact against another person, but also by the person who rumours or passes on such a fact formulated by the other person [old Civil Code. Section 78 (1) and (2) of the previous Civil Code and Section 2:45 (2) of the current Civil Code]. This interpretation of the law is, according to the majority decision, inconsistent with the constitutional requirements arising from the right to freedom of the press, because the general considerations and arguments concerning rumour are overshadowed by specific constitutional aspects related to the operation of the press. Assessing such aspects, the Decision, quoting the previous decisions of the Constitutional Court, the achievements of our historical constitution—Act XVIII of 1848, the Press Act—and the findings of the Human Rights Court, concludes that the press can report on the press conference of public figures without the obligation to prove reality, provided that certain conditions are met (faithful communication of the wording, clear indication of the source, omission of a separate assessment carried out on its own and presentation of the position of the person concerned).

[101] I do not agree with the basic premise of majority reasoning, that is, the necessity of narrowing the concept of rumour in the case of press conferences of public figures, nor with the reasons given in support of this and the conditions set out in the constitutional requirement as a conclusion. I believe that the decision of the Curia, in addition to complying with the rules of the Civil Code and the applicable judicial practice, complies with the provisions of the Fundamental Law. In my view, therefore, the aspects included in the constitutional requirement in the context of rumours may, at the discretion of the judiciary, at most nuance the gravity of the violation, the level of sanctions - but do not change its illegality.

[102] 3. The majority's explanatory memorandum emphasises in several places that the constitutional mission of the press is to publish information of public interest, to disseminate the statements and views of public figures and, more generally, to make public authorities and public officials accountable to the public and politicians {Reasoning Part III. Points 2.1 and 2.2 (Reasoning [22] to [32]) and point 3

(Reasoning [41] to [53]}. Stressing the correctness of the statements of principle already formulated in previous decisions of the Constitutional Court {e.g. Decision 7/2014 (III. 7.) AB, Reasoning [48]; Decision 13/2014 (IV. 18.) AB, Reasoning [25] and Decision 3/2015 (II. 2.) AB, Reasoning [25]}, I would like to emphasise that the practice of the Constitutional Court is consistent from the early stages of its operation that provably false facts are not in themselves constitutionally protected {e.g. Decision 7/2014 (III. 7.) AB, Reasoning [49]}. It also follows logically that "[t]he 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" {Decision 13/2014 (IV. 18.) AB, Reasoning [40]}.

[103] It is indisputable, therefore, that the rumouring of false facts does not belong to the tasks and constitutional functions of the press defined by the Fundamental Law. On the other hand, a false statement in itself can be almost nothing, however, it is precisely by mediating the publicity of the press, thereby intensifying, that it can become accessible to others, and this is the explanation for the fact that the law requires not only the assertion of a false fact but also its sanctioning.

[104] 4. As pointed out in Decision 7/2014 (III. 7.) AB, also cited in the majority reasoning, in the case of politicians at the forefront of public debate, it cannot be ignored that "any criticism and qualification about their personality are handled differently by the public, regarding it as a necessary element of democratic debates, typically as a piece of information to be interpreted in the framework of different political interests." (Reasoning [57]). However, the "criticism and qualification" mentioned here cannot, in my view, also apply to false statements of fact, which cannot be seen as a necessary part of the democratic debate. Even the "the interests of promoting public debate as freely as possible" (Reasoning [50]) according to the standard referred to in this Decision cannot constitute an exemption from the legal consequence of rumours of untrue facts if, as in the present case, a comparison of the freedom of the press with the right to the right to the good standing of one's reputation derived from human dignity constitutes an unnecessary or disproportionate infringement of the right to the right to the good standing of one's reputation under Article I (3) of the Fundamental Law.

[105] In my view, therefore, the correct and relevant wording of Decision 28/2014 (IX. 29.) AB, holding that "[a]s long as any information does not constitute an abuse of freedom of the press, a reference to a violation of individual rights in the context of the protection of human dignity rarely justifies a restriction on the exercise of freedom of the press" (Reasoning [42]), refers to precisely this, ie the

public disclosure of untrue facts infringing the right to good repute, as a "rare" exception to the possible gound for restriction of the exercise of freedom of the press.

[106] 5. There is no doubt that, subject to Article R (3) of the Fundamental Law, the achievement of our historical constitution is, in particular, the liberation of the press, particularly as a result of the revolutionary events of March 1848, the achievement of freedom of the press. In confirmation of this, the majority reasoning also quoted Section 14 of Act XVIII of 1848—the Press Act—which enshrined the freedom of communication of documents and public meetings of the National Assembly, legislative authorities, tribunals, "other bodies constituted by law" in a "in a spirit of faith and truth".

[107] In this connection, I would also like to point out that, given that the communication at issue in the present case was not a report on what was said in the course of the detailed and mostly adversarial work of the legislature or law enforcement bodies, it would have been more appropriate to recall Sections 11 and 12 of Chapter I of the Press Act on press offences. These sections provide for the imposition of imprisonment and fines on anyone who, on the one hand, "slanders" a public servant or acting on behalf of a public official in respect of his official acts and, on the other hand, an individual. Thus, it can be seen that, in view of the achievements of our historical constitution, the expectation against the press not to rumour untrue facts that offend the good standing of reputation is not without precedent, not to mention the saying attributed to Ferenc Deák, known as an anecdote, according to which: "If it depended on me, there would be only one section in the press law: thou shalt not lie."

[108] 6. Section 10 of the Press and Media Act provides: "All persons shall have the right to receive proper information on public affairs at local, national and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation. The media system as a whole shall have the task to provide authentic, prompt and accurate information on such affairs and events." Paraphrasing Ulpianus's famous theorem, among the requirements for the press here concerning credibility (but also the constitutional function of the press in general), according to which "the thief is always a debtor in arrears" ("semper enim moram fur facere videtur", Ulp. D. 13.1.8.1.), it can be argued that the press conveying untruth is never free.

[109] Thus, the press without credibility cannot be free, and it follows, in my view, *a contrario*, among other things, that freedom of the press does not include the transmission of untruths to the general public. However, the reasoning of the majority

decision, which, by referring to freedom of the press, restricts the concept of civil law rumour in the case of press conferences concerning public figures, is precisely contrary to the criterion of the credibility of the press.

[110] For this reason, I do not support the annulment of Judgement No. Pfv.IV.20.624/2016/9 of the Curia and the establishment of the constitutional requirement.

Budapest, 5 December 2017

Dr. Tamás Sulyok sgd.,
Chief Justice of the Constitutional Court
on behalf of Justice
dr. Péter Szalay
prevented from signing

I second the above dissenting opinion:

Budapest, 5 December 2017

Dr. Egon Dienes-Oehm sgd.,
Justice

Dissenting opinion by dr. Mária Szívós:

[112] Pursuant to my powers under Section 66 (2) of Act CLI of 2011 on the Constitutional Court, I attach the following dissenting opinion to the decision of the Constitutional Court.

[113] For the following reasons, I do not agree with the constitutional requirement adopted by a majority decision or the annulment of Judgement No. Pfv.IV.20.624/2016/9 of the Curia, either.

[114] 1. Pursuant to the general provision of the Fundamental Rights Chapter of the Fundamental Law, the rules concerning fundamental rights and obligations are established by an Act of Parliament. A fundamental right may be restricted in order to

enforce another fundamental right or to protect a constitutional value, to the extent strictly necessary and proportionate to the aim pursued, while respecting the essential content of the fundamental right [Article I (3) of the Fundamental Law]. Article IX (4) of the Fundamental Law, which expands on this general rule in the field of freedom of the press and of expression, provides that the exercise of freedom of expression must not be aimed at violating the human dignity of others. In the practice of the Constitutional Court, human dignity is a maternal right; thus, the right to the right to the good standing of one's reputation also emanates from it.

[115] Both the old Civil Code and the Civil Code, on the one hand, extend the scope of protection of the rights of a person to the protection of the good standing of reputation on the basis of the above rules of the Fundamental Law; on the other hand, it provides that it is also an affront to the good standing of reputation of someone to hear an untrue fact about another person that offends that person. The Press and Media Act, in connection with the scope of the protection of the rights of the individual, therefore allows the publication of a rectification press release demanded by anyone who is rumoured to be untrue in any media content, thereby causing a violation of their personality rights. The operation of the press, such as free provision of information and the disclosure of social issues, by its very nature often results in a situation where the publication of a media content also infringes human dignity, the right to privacy, the right to the good standing of reputation or another fundamental right.

[116] In press rectification lawsuits, civil law regulation is filled with the practice of ordinary courts. The Constitutional Court designates the scope of interpretation of the relevant provisions of the Fundamental Law, thus assisting judicial practice.

[117] The Constitutional Court has attached great importance to the social significance of the press in connection with freedom of expression from the very beginning of its operation. The press is not only a means of free expression of opinion, but also of information, that is, it has a fundamental role in obtaining information that is a condition for forming opinions [Decision 37/1992 (VI. 10.) AB, ABH 1992, 227, 229.]. The exercise of freedom of the press was "assisted" by the Constitutional Court with several decisions, so I supported myself, for example, the decisions in which the body decided to annul court judgements prohibiting the disclosure of recordings of police actions [Decision 28/2014 (IX. 29.) AB, Decision 16/2016 (X. 20.) AB, Decision 17/2016 (X. 20.) AB and Decision 3/2017 (II. 25.) AB]. In its decisions, the Constitutional Court stated that as long as information is not an abuse of the exercise of freedom of the press, a reference to a violation of the rights of the individual rarely justifies a restriction on the exercise of freedom of the press. An image of a person

brought to the public's attention may normally be disclosed without his or her permission, provided that it is not subject to abuse of freedom of the press (such as self-serving disclosure) or that the protection of human dignity is more important (such as a recording of the suffering of an injured police officer in a recording of an event of otherwise public interest).

[118] However, for the purposes of deciding the present case, the constitutional standard is, in my view, Decision 7/2014 (III. 7.) AB, in which the Constitutional Court stated that "[m]anifestations of expression containing a statement of fact are also part of freedom of speech. On the one hand, the communication of certain facts can express personal opinion and, on the other hand, the forming opinion would become impossible without communicating facts. In the course of drawing the limitations on freedom of speech and of the press it is justified, however, to make a distinction between the protection of value judgements and of the statements of fact (ABH 1994, 219, 230.). While in the case of opinions the proving falsehood is incomprehensible, facts that can be proven to be false do not enjoy constitutional protection" (Reasoning [49]).

[119] The practice of ordinary courts also falls within this constitutional scope of interpretation. Resolution PK 14 of the Civil Division of the Supreme Court, adopted in 1984, states that it is for the press body to prove the reality of the statement of fact objected to in the press release. The press body is also usually obliged to prove the reality of a press release that faithfully communicates another person's statement of facts, statement, or takes over the press release of another body (press body). However, according to the resolution, there is no place for a press rectification if the press body actually informed its readers about the content of the indictment, the public hearing or the non-final criminal court verdict before the final conclusion of a criminal proceeding. Judicial practice has meanwhile gone beyond this in that the press can already inform about official proceedings without the obligation of proving reality.

[120] Under further judicial practice: the press is also responsible for information obtained from others, the violation is also realized by passing on and rumouring information obtained from others (Court Reports, BH 1990. 332); the press (editorial board) is also obliged to press rectification for the paid press release if it states a false fact (Judgement No. Pfv. IV. 23. 131/1998/5 of the Curia); in the case of a press rectification, the responsibility of the press body is impartial and objective in nature for the reality of the reported facts (Judgement No. Pfv.IV.22.100 / 2016/4 of the Curia); it also follows from the strict conditions for exemption from liability for rectification that, if obvious inaccuracies are identified in a public press conference which can be

established without a separate investigation, its realistic transmission shall not relieve the press body of the liability for rectification or other liability for personality rights (Judgement No. Pfv.IV.22.224 / 2016/3 of the Curia).

[121] Thus, a press rectification is also due to an untrue press release that misinterprets true facts, which otherwise faithfully communicates the statement, statement of another person (body), or takes over the press release of another body (press body). It is therefore up to the press to decide whether or not to publish a statement, but in the event of publication, it must assume liability for any potentially infringing content.

[122] 2. With the adopted constitutional requirement, the majority decision disproportionately expands the interpretive framework promoting the exercise of freedom of the press, thus upsetting the balance between the fundamental rights competing in press rectification lawsuits.

[123] By adopting the constitutional requirement, the majority decision rewrote the statutory content of both the old Civil Code and the Civil Code for breach of the good standing of reputation by rumour, and in fact codified a rule of exception. The exceptions set out in judicial practice, such as reporting on criminal proceedings and official proceedings, where the proceedings themselves are aimed at examining the facts reported by the press, have been arbitrarily extended, disregarding the role and responsibility of the press in shaping public opinion.

[124] I consider this to be particularly dangerous because, under the current rules, in the case of judgements in press rectification lawsuits, the rectification itself can be well "hidden" and the enforcement of judgements is essentially impossible without consequences, as an enforcement fine is not a sufficiently effective instrument to this end. I therefore disagree with the constitutional requirement.

[125] 3. The judgement of the Curia followed the interpretation of the Fundamental Law described in point 1 of my dissenting opinion and, in making its decision, it interpreted Article IX of the Fundamental Law as provided for in Article 28 of the Fundamental Law governing the courts. The majority decision holds the Curia accountable for the now adopted constitutional requirement and, on that basis, considers the legal interpretation of the Curia contrary to the Fundamental Law. Because of the above, I do not agree with this position, so I could not support the annulment of the Curia's judgement, either.

Budapest, 5 December 2017

Dr. Mária Szívós sgd.,
Justice