

## **DECISION 1/2019 (II. 13.) AB OF THE CONSTITUTIONAL COURT**

on rejecting the constitutional complaint aimed at establishing the lack of conformity with the Fundamental Law and annulling the ruling No. 23.Szef.27/2017/3 of the Budapest-Capital Regional Court

The plenary session of the Constitutional Court in the subject of a constitutional complaint, with concurring reasonings by Justices *dr. Egon Dienes-Oehm*, *dr. László Salamon*, *dr. István Stumpf*, *dr. Marcel Szabó* and *dr. András Varga Zs.* and with dissenting opinions by Justices *dr. Ágnes Czine*, *dr. Imre Juhász*, *dr. Béla Pokol* and *dr. Mária Szívós* adopted the following

decision:

1. The Constitutional Court rejects the constitutional complaint aimed at establishing the lack of conformity with the Fundamental Law and annulling the ruling No. 23.Szef.27/2017/3 of the Budapest-Capital Regional Court.

2. The Constitutional Court rejects on formal ground the constitutional complaint aimed at establishing the lack of conformity with the Fundamental Law and annulling Section 170 of the Act II of 2012 on Offences, the Procedure in Relation to Offences and the Offence Record System.

The Constitutional Court orders the publication of its decision in the Hungarian Official Gazette.

Reasoning

I

- [1] 1. The petitioners, acting through a legal representative (dr. Tivadar Hüttl, 1136 Budapest, Tátra utca 15/b.), requested, in their constitutional complaint submitted on the basis of Section 27 and Section 26 (1) of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), the Constitutional Court to state that the ruling No. 23.Szef.27/2017/3 of the Budapest-Capital Regional Court and ruling No. 8.Sze.8736/2017/2 of the Central District Court of Pest were contrary to the Fundamental Law, and to annul them on the basis of Section 43 (1) and (4) of the ACC, as well as to examine the conflict with the Fundamental Law with respect to Section

170 of the law applied [Act II of 2012 on Offences, the Procedure in Relation to Offences and the Offence Record System (hereinafter: AO)]. In their opinion, the court rulings imposing a fine on them due to the offence of public nuisance violate the freedom of expression enshrined in Article IX (1) of the Fundamental Law.

- [2] 1.1. According to the facts of the case as laid down in the ruling by the court of first instance, on 17 April 2017, the petitioners threw balloons filled with orange paint several times at the Soviet military memorial located on Szabadság Square in the 5<sup>th</sup> district of Budapest. Their act resulted in several paint spots on the surface of the memorial. The petitioners who had been taken into detention for minor offence admitted in their testimony made at the court hearing that they had committed the act as described in the police report, but they held that their act did not qualify as a minor offence. They intended to act for the purpose of raising public attention by expressing their political opinion. They told that it was not their intention to cause any damage to the memorial, therefore, they used – and had tested in advance – a harmless paint easily removable with water. The minor offence authority verified the fact that the paint was fully removable from the surface of the memorial by using tap water, without scouring.
- [3] The court of first instance did not accept the petitioners' answer to the charge and it established that the petitioners had committed, as co-principal perpetrators, the minor offence of public nuisance under Section 170 of the AO. According to the reasoning, it was verified beyond doubt that the petitioners' conduct had a character of breaching and neglecting the norms of living together in the society as well as the rules and expectations of conduct, and, therefore, it was apparently anti-social. As held by the court, the act was also objectively suitable – beyond doubt – of causing refusal, indignation and fright in those who noted the act. Thus both conditions of the minor offence form of public nuisance were fulfilled. The court, therefore, obliged each of the petitioning persons to pay a fine of 30000 Forints, by offsetting an amount of 4400 Forints to compensate the time spent in detention for the minor offence.
- [4] 1.2. The petitioners lodged an appeal against the ruling of first instance to the Budapest-Capital Regional Court of Appeal as the court of second instance.
- [5] The court of second instance maintained in force the ruling of first instance, but it amended the reasoning with the arguments on refusing the reference to the freedom of expression. The court agreed that the political opinion can be expressed by means other than verbal ones, but at the same time the court also held as absolutely necessary that it should be clear for the bystanders: the given act, protest is directed against a measure taken by the governance. Without this, neither the opinion of the perpetrators, nor the objective they intend to achieve shall cause the desired effect. In the opinion of the court of second instance, according to the facts of the relevant

case, the bystanders were not able to interpret the petitioners' motivation. Although the opinion may also be clearly manifested by way of the unique character of the subject of the demonstration, which makes the political opinion clear for anyone, the bombarding of the relevant memorial does not present any displeasure – not even an indirect one – about the politics alleged by the petitioners to be Russian-friendly. As added by the court of second instance: although one of the petitioners explained to the bystanders what was happening, the fact in itself of explaining to those who stand nearby does not replace making the opinion and the aim clear for everyone.

- [6] Therefore, in the opinion of the court of second instance, the act of the petitioners was nothing else but blemishing a statue standing on public ground, which was apparently an anti-social act, as everyone may be expected to pay respect either to the author or to the memory that the statue presents to others, at least to the extent of refraining from dishonouring it. Indeed, the lack of this respect is suitable of generating indignation in others, and in the particular case it actually happened, as it is the only explanation of the fact that a person, who remained unknown in the procedure, reported the event to the police. Based on the above, the court of second instance held that the court of first instance had been right when it had concluded that the actual act was dangerous to the society, thus a minor offence had been committed.
- [7] 1.3. The petitioners informed the Constitutional Court that they had not submitted an application for review against the decision of the court of second instance.
- [8] 1.4. The petitioners then turned to the Constitutional Court. They explained in their constitutional complaint that the judicial decisions violate their right to the freedom of expression laid down in Article IX (1) of the Fundamental Law, as the decisions lack any real and well-founded examination of the fundamental rights, although their legal representative has pointed out to its importance all through the procedure. Thus the courts interpreted the applicable law incorrectly and they attributed a meaning to the statutory definition of public nuisance that is completely contrary to the constitutional principles elaborated by the Constitutional Court. According to the petitioners, their conduct was indeed an act of expressing a political opinion: they wanted to raise awareness about the political overture to Russia, as a tendency of foreign policy, which, in their opinion, is very dangerous. They also added that their act had precedents when the traditional forms of expressing their opinion had not been proven effective.
- [9] By applying the correct interpretation, this quality of the act shall exclude the realisation of both conceptual elements of public nuisance. On the one hand, public opinions, the criticism of exercising public power are necessary elements of a democratic system, therefore, a critical act against a government policy could never be apparently anti-social, even if it is expressed in shocking or rude form. On the

other hand, in the present case, the suitability of causing indignation or fright, as an element required in the statutory definition, has to be assessed according to an objective standard independent from individual sensitivity that implies a much higher level of tolerance.

[10] In line with the above, the constitutional complaint also argues that in the course of examining the realisation of public nuisance, the courts should have established that the petitioners' act had not been dangerous to the society. The punishing of the minor offence form of public nuisance serves the purpose of protecting public peace, and according to the consistent case law of the Constitutional Court, the protection of public peace as an abstract value weighs less with respect to the restriction of the expression of political opinion as an individual fundamental right. Consequently, according to the petitioners, the political nature of the expression shall exclude the act's dangerousness to the society even when it is otherwise disturbing, shocking or rude. In the present case, the expression of the opinion has not implied force or impairment and it has not injured the rights of others, to the contrary, it was actually designed in a manner not to cause any material damage.

[11] As laid down in the constitutional complaint, the judicial rulings that established the committing of the minor offence of public nuisance in conflict with the above criteria of interpretation and that sanctioned the petitioners, violate the right to the freedom of expression.

[12] The petition also requested – by referring to Section 26 (1) of the ACC – the examination of Section 170 of the applied law, i.e. of the AO, in line with Section 28 of the ACC that allows the Constitutional Court to shift to the examination of the applied law in the course of examining a judicial decision. In the context of Section 170 of the AO, the petitioners claimed that in their opinion this case could form a basis for the Constitutional Court to examine the conflicts – they allege to exist – between Section 170 of the AO and the case law of the Constitutional Court, namely that the AO also orders the punishment of acts that should enjoy protection under the freedom of expression. They hold that the too general wording of Section 170 of the AO opens up the way for an arbitrary interpretation of the law.

## II

[13] 1. The affected provision of the Fundamental Law:

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

[14] 2. The relevant provision of the AO:

“Section 170 Any person who displays an apparently anti-social conduct aiming to incite indignation or alarm in other people is guilty of a minor offence.”

### III

- [15] 1. The Constitutional Court established primarily on the basis of Section 56 (2) of the ACC that the constitutional complaint fulfilled the formal and substantial requirements laid down in the ACC with respect to Section 27 of the ACC.
- [16] 1.1. The constitutional complaint has been lodged within sixty days following the decision of second instance. The part of the complaint built upon Section 27 of the ACC complies with the statutory requirement – on the explicit request – laid down in Section 52 (1b) of the ACC. The petition indicated the petitioner's entitlement and the statutory provision justifying the Constitutional Court's competence [Section 51 (1) and Section 52 (1b) *a*) of the ACC]; the procedure of the Constitutional Court was requested in the competence laid down in Section 27 of the ACC. The petitioners also indicated the judicial decisions to be reviewed by the Constitutional Court [Section 52 (1b) *c*) of the ACC], and the violated provisions of the Fundamental Law [Section 52 (1b) *d*) of the ACC]. They provided a detailed justification for the submission of the petition, by giving details of the violation of the rights granted in the Fundamental Law [Section 52 (1b) *b*) of the ACC]. The petitioners formed an explicit request for the annulment of the judicial decisions [Section 52 (1b) *f*) of the ACC].
- [17] 1.2. With regard to the part of the constitutional complaint alleging, on the basis of Section 27 of the ACC, a conflict between the judicial decisions and the Fundamental Law, the Constitutional Court underlined that it provides an assessment, according to Section 56 (2) of the ACC, whether or not the petition fulfils the substantial conditions required by the law for the admittance of a constitutional complaint.
- [18] According to Section 27 of ACC, persons or organisations affected in an individual case may submit a constitutional complaint to the Constitutional Court against a judicial decision contrary to the Fundamental Law, if the decision adopted in the merits of the case or another decision terminating the judicial proceedings violates the petitioner's right granted in the Fundamental Law and the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her.
- [19] In the present case, the constitutional complaint has been submitted by the persons subject to the underlying minor offence procedure against the judicial rulings adopted in the merits of their case. By the appeal submitted against the rulings of first instance, the petitioners exhausted their possibilities for ordinary legal remedy.

- [20] 1.3. In accordance with Section 29 of the ACC, a further condition of the admissibility of the constitutional complaint is to raise the possibility of a conflict with the Fundamental Law substantially influencing the judicial decision or a constitutional issue of fundamental importance. These two conditions are of alternative character, thus the existence of either of them shall form the basis of the Constitutional Court's procedure in the merits of the case {for the first time, see: Decision 3/2013. (II. 14.) AB, Reasoning [30]}.
- [21] In this respect the Constitutional Court established that the case raises constitutional questions of fundamental importance affecting the effect and the limits of the right to the freedom of expression enshrined in Article IX of the Fundamental Law. During examining the constitutionality of the judicial rulings, it should be assessed whether the act qualified in the minor offence procedure is covered by the freedom of expression. If it is indeed covered, an assessment should be made about the existence of the reasons to constitutionally restrict it. In the course of this assessment, the Constitutional Court should interpret the constitutional criteria under which the minor offence form of public nuisance may restrict the freedom of expression.
- [22] Considering the above, the Constitutional Court admitted – in its sitting of 30 January 2018 – the constitutional complaint's part submitted on the basis of Section 27 of the ACC with respect to Article IX (1) of the Fundamental Law.
- [23] 2. In contrast with the element of the petition based on Section 27 of the ACC, the constitutional complaint does not comply with the statutory requirements concerning the submission of an explicit request with regard to Section 26 (1) of the ACC namely, on the one hand, that the petitioners failed to indicate the provision of the Fundamental Law the violation of which they substantiated in the context of Section 170 of the AO, and on the other hand, they only made a general reference to Section 170 of the AO in the reasoning of their constitutional complaint, and they only initiated the examination of this provision, as – in their opinion – the constitutional review of the judicial rulings offers a good opportunity for this. With regard to the particular provision of the AO, they only stated that its wording is too general, thus offering a chance for the arbitrary interpretation of the law. One may also note that according to the petitioners, the judicial decisions were contrary to the Fundamental Law not because of Section 170 of the AO being contrary to the Fundamental Law, but because the proceeding courts inappropriately applied, in the course of their proceeding, Article IX (1) of the Fundamental Law. However, a constitutional complaint on the basis of Section 26 (1) may only be submitted to the Constitutional Court, if the petitioner's right granted in the Fundamental Law was injured due to the application, in the judicial proceeding carried out in the case, of a law contrary to the Fundamental Law. Based on the above, the Constitutional Court established that the element of the petition according to Section 26 (1) of the ACC does not comply with the requirement of submitting an explicit request and it also fails to contain a proper

reasoning. Therefore, the Constitutional Court rejected on formal grounds the element of the petition according to Section 26 (1) of the ACC.

#### IV

- [24] The constitutional complaint is unfounded.
- [25] 1. According to the consistent judicial practice of the Constitutional Court, on the basis of a constitutional complaint it shall "examine the compatibility with the Fundamental Law of the interpretation of law found in the judicial decision, i.e. whether the court enforced the constitutional content of the rights granted in the Fundamental Law. If the court acts without paying due attention to the fundamental rights affected by the relevant case and if the interpretation of the law developed by the court is not compatible with the constitutional content of this right, then the adopted judicial decision is contrary to the Fundamental Law" {Decision 3/2015. (II. 2.) AB, Reasoning [18]}.
- [26] Nevertheless, the Constitutional Court may not distract the power of the adjudicating courts to comprehensively assess the elements of the facts of the cases before them, it may only review whether the interpretation of the law underlying the weighing was in compliance with the Fundamental Law, and whether the constitutional criteria of weighing were complied with.
- [27] The Constitutional Court reviewed, on the basis of the constitutional complaint, whether the court of second instance had correctly assessed the relation between the current case and the freedom of expression. The court had to address the question whether, in the framework of the established facts of the case, the challenged act was under the scope of the freedom of expression, i.e. whether the constitutional standards securing the protection of the freedom of speech were applicable to it. With respect to the particular circumstances, the ruling of second instance dispensed with making a reference to the freedom of opinion, i.e. it held that conduct classified as a minor offence was not an expression of opinion. According to the judicial interpretation to be reviewed by the Constitutional Court, the arguments based on the freedom of expression could have only been taken into account, if the motivation of the perpetrators, namely the protesting character of the defacement of the statute had been interpretable by the bystanders.
- [28] 2. With regard to the above, the Constitutional Court first of all provided an overview on how to define the content of the freedom of opinion enshrined in Article IX (1) of the Fundamental Law, i.e. under what conditions may an act be included in the conceptual scope of the freedom of expression. In this respect, the material question is what does the "expression of opinion" mean in the Fundamental Law.

- [29] 2.1. According to the evident starting point of the judicial practice and the case law of interpreting the constitution, the everyday meaning and the meaning under constitutional law of the term “expression of opinion” do not overlap. On the one hand, the fundamental right enshrined in Article IX (1) of the Fundamental Law does not encompass all manifestations of forming an opinion, but on the other hand it also includes acts beyond oral or written communication. The Constitutional Court pointed out in the context of the former scope that the freedom of expression only applies to communications for the public – private communications, including private mails, telephone conversations, e-mail, private conversations, diary etc. do not form part of the freedom of expression, although they may otherwise represent the most important expressions, “opinions” of our life. {c.p. Decision 19/2014. (V. 30.) AB, Reasoning [42]}. With respect to the effect of the expression of opinion beyond the scope of “speech” in the everyday sense, it is important to underline that, in accordance with the earlier case law of the Constitutional Court, the person expressing an opinion may share his or her ideas not only by saying words, but also by using images, symbols or by wearing items of clothing – the symbolic speech manifested in using symbols is a classic issue of the freedom of opinion [c.p. most recently: Decision 4/2013. (II. 21.) AB].
- [30] In the present case, the most important issues to be addressed in the latter scope are as follows: can a physical – i.e. a non-verbal – expression be qualified as an expression of opinion; if it can, according to what criteria; and as a consequence, can the scope of the freedom of expression be extended to an act of pouring paint on a work of art, a monument, standing on public ground. Although, as referred to above, the earlier case law of the Constitutional Court has already extended the right to the freedom of expression to certain cases of symbolic speeches, it has not provided normative criteria for the assessment of definition-related questions that may arise in the future, therefore the Constitutional Court held that the issue should be addressed in a more comprehensive way.
- [31] 2.2. First of all, the Constitutional Court emphasizes that the effect of the right to the freedom of expression granted in Article IX (1) of the Fundamental Law, i.e. the concept of “expressing opinion” is of normative character. Its limits are not determined by expressions in the everyday sense, but by the acts that are linked to the constitutional justification of the freedom of opinion. In accordance with the interpretation laid down in the Decision 7/2014 (III. 7.) AB and reinforced several times, the justification of the freedom of speech is twofold: the freedom of the citizens to express their thoughts is rooted on the one hand in the democratic operation of the political community, and on the other hand in the need for individual self-expression. In the determination of the effect of the fundamental right to the expression of opinion, the primary aid is provided by the criterion of participation in communication in a democratic society. Accordingly, the



communicative acts used by the actors in the public social dialogue are linked to the freedom of expression.

- [32] The Constitutional Court reinforces what has already been acknowledged in its decisions interpreting the former constitution: the citizens participate in many ways in the public social dialogue, including the debates of public affairs, beyond the traditional written or oral forms, therefore, the scope of the right to the expression of opinion is wider than verbal expressions. Thus the constitutional aspects of the freedom of expression may be relevant also in respect of communicative acts other than “speeches” in the everyday sense, and such aspects may become mandatory elements of the legal assessment.
- [33] As a consequence, Article IX (1) of the Fundamental Law is considered to protect communication – typically the transfer of one’s political opinion to others – irrespectively to the form it is manifested in.
- [34] 3. However, it is important to note that assessing whether or not the relevant communicative act falls under the scope of the freedom of expression shall require the complex evaluation of several factors (for example, in the case of a collision between the freedom of expression and other fundamental rights, on the basis of the criteria laid down in Article I (3) of the Fundamental Law). In the course of determining these factors, the Constitutional Court also took note of the similar qualification criteria applied by the decisive judicial fora operating in the developed democracies.
- [35] 3.1. The Supreme Court of the United States of America was the first to point out that the freedom of expression shall be applicable in every case when the actor is motivated by conveying a specific message and it is presumable under the given circumstances that the message is interpretable by those who face it [*Spence v. Washington*, 418 U.S. 405 (1974) 410–411]. It is in particular notable with respect to the present case before the Constitutional Court that the European Court of Human Rights (hereinafter: ECHR) reviewed the issue of including communicative acts under the scope of the freedom of expression, when condemning the person who defaced the statues with paint was at stake. By widely acknowledging the possibility of handling certain physical acts as expressions of opinion, the ECHR pointed out two fundamental criteria with regard to the nature of the particular conduct: an assessment must be made of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act. Within the limits of the given facts of the case, the ECHR considered the act of defacing statues with paint to be an expression of opinion protected by the freedom of expression. One should also note that the ECHR established the injury of the right to the expression of opinion on the basis of the disproportionate nature of the sanction applied as well as of the purpose of sanctioning the perpetrator. [ECHR,

*Murat Vural v Turkey*, 9540/07, judgement of 21 October 2014, par. 54 to 55 and 65 to 68]

- [36] 3.2. By taking the above into account, the Constitutional Court points out that in order to handle an act as an expression of opinion, it is a necessary but never a sufficient precondition that the actor acted for the purpose of expressing his or her opinion – although in the course of assessing an act from the point of view of the freedom of opinion, the judiciary should primarily examine the aim or the motivation the actor had when he or she performed the conduct. Nevertheless, for the applicability of the freedom of opinion it is also necessary that the selected form of the communication should be objectively suitable for conveying the message. Assessment on the basis of an objective point of view is necessary on the one hand because the members of the society exclude certain conducts from the scope of expressing opinion, irrespectively to their potential effect of communicating an opinion. On the other hand, the conduct under review should be actually suitable, under objective assessment, for being – at least hypothetically – a communication interpretable by the public. However, we should emphasize that in the assessment of the constitutional position of certain communicative acts, special aspects – as compared to traditional speeches – shall also become relevant. In this respect, the distinction between the content and the form of the expression of opinion is important, as certain active forms of communication may raise special aspects of assessment due to their character. It is in particular true when the application of a regulation of general force restricts a specific form of the expression of opinion without the aim of the restriction being – according to careful scrutiny – the content of the communication.
- [37] 3.3. Nevertheless, in addition to the above, the adjudicating courts should also take into account – in the course of assessing an act to be handled as an expression of opinion – the (real or seeming) collision between the freedom of expression and other fundamental rights, in particular its relation to the right to property. In this regard, first we need to differentiate the case when exercising the freedom of expression collides with the right to property from the case when active expression of opinion exerted on the property results in the injury of reputation or honour.
- [38] The freedom of expression and the right to property are in a real collision when the active expression of the opinion causes a physical damage in the property, it decreases the value of the property (such a collision shall not take place through a verbal expression: i.e. the “abuse” of a subject of property does not violate the right to property). In such a case, the collision should be resolved with due care and it should be noted that any expression of opinion damaging the subject of property can only be constitutionally justified in exceptional cases. In the course of examining the above, it should be taken into account on the one hand – on the basis of Article I (3)

of the Fundamental Law – whether, with regard to the necessity of restricting the right to property, the expression of the actor’s opinion by way of physical conduct was justified (or it could also be expressed by using other tools – e.g. speech, banner, boards etc. –, to cause the same weigh of raising public attention as the one caused by the physical action). On the other hand, it should be assessed whether the restriction of property resulting from the expression of opinion carried out with the action was proportionate with the aim of the opinion-expressing action. In this respect, the court should first examine whether the affected person’s action aimed at expressing his or her opinion restricts others’ right to property to an extent that results in the autotelic damaging of the property, exceeding the limits of communicating the opinion, and which is either irreversible or only reversible at a significant cost.

[39] In the context of the above, the collision shall be regarded as a seeming one when although the expression of the opinion is aimed at a subject, it does not aim and does not result in physically damaging the property. In this case, the freedom of expression shall not compete with the right to property, but with another fundamental right, for example with personality rights.

[40] 4. The Constitutional Court holds that the above arguments should be applied in the present case of constitutional complaint as follows.

[41] 4.1. The works of art and memorials placed on public ground play a diverse role in the life of a community. The emphases of these diverse social functions change from memorial to memorial (from statue to statue), but all works of art and memorials placed on public ground – from the works that have a direct political aim to the votive memorials – have one thing in common: they convey a social message. It is indeed the meaning of erecting a memorial that the persons who erect it want to eternalize their message for the present and future generations of the community. As with their placement on public ground these works become part of the life the whole community, it is a natural phenomenon that with the passing of time the meaning of the memorial may become even more complex: not only those who erected it but also other members of the community shall associate meanings and messages with it. This way, works of art and memorials placed on public ground shall self-evidently become parts of community dialogue interpreted in the broad sense; some memorials may fulfil this role to a larger extent than others, but it is a common feature of this form of art that they are living parts of the social discourse by conveying strong communicative meanings. Consequently, the expressions of opinion related to them may also be important manifestations of the social dialogue.

[42] It is a special feature of monuments that they express in physical form their message addressed to the community. This special feature shall be applicable not only to the single act of erecting them (a works of art needs to be formed and erected), but it

shall also influence the subsequent manifestations that affect them: a memorial may be veiled, unveiled, wreathed, covered with flowers, a flag may be put on it etc. It is also natural that some people try to put in a physically interpretable form the negative sentiments, protests they may have in relation to the memorial. However, actually due to the physical existence of the memorial, the communication of this negative opinion may have individual limitations not applicable in the case of merely verbal communications (and these limitations are to be taken into account in the assessment of the proportionality of the restriction of the right to property when the freedom of expression competes with the right to property). The mutilation or pulling down of memorials may qualify as impairment, or the acts related the works of art placed on public ground may affect public order in other ways as well, which may render the physical expression of the opinion disproportionate. It is another special feature of the assessment that memorials, as pieces of art and as the conveyors of messages are subject to special rules of living together in the society, compared to other objects on the street.

- [43] 4.2. Based on all that, the defacement of a memorial, e.g. pouring easily removable paint on it, may be considered in the given case as a symbolic act falling under the right to express opinion. Beyond the personal intention of communicating one's opinion, such an act may also be considered, on an objective basis, a suitable tool for conveying thoughts, since – in contrast for example with the case of violence against another person – there is no objective point of view, based on the judgement of the society, that would result in excluding such acts from the scope of the freedom of expression without the examination of further circumstances. To the contrary, under certain circumstances, such an act may be considered an important expression of opinion in public affairs. However, the particular act of defacing, pouring paint on public works of art, memorials may also fall outside the scope of acts protected by the right to express one's opinion. Actually, according to the rules of living together in the society connected to memorials as works of art and as works conveying a message, defacing a memorial is considered in many cases as vandalism and not as an act of free speech.
- [44] It is the duty of the courts to judge in the particular case, on the basis of the individual facts of the case – with account to the above criteria – whether the relevant act was a conduct to be assessed in the scope of the freedom of expression or an act of vandalism. In this respect, it is an important element whether the particular conduct was an act of communication interpretable – at least hypothetically – by the public both according to the subjective intention of the person “expressing the opinion” and according to an objective assessment. If the relevant conduct was an act of expressing opinion both according to the aim of the communicating person and under objective assessment – by taking into account, among others, the location of the act (as the relation between an act and the freedom of expression may be

judged differently, if it is targeted at a memorial standing on a busy public ground, or if it is erected, for example, in a graveyard), its time, its relation to current events and the directness of the relation between the expression of the opinion and the relevant memorial –, then its lawfulness should be decided about according to the standards of the freedom of expression. However, in the absence of such circumstances, the act should to be assessed according to the customary rules of the society applicable to works of art or memorials. In this case, the defacement of a memorial may be qualified as an act of vandalism that requires sanctioning under the laws of general force [such as, for example, the AO or the Act C of 2012 on the Criminal Code (hereinafter: Criminal Code)]. Nevertheless, in the course of assessing the case, attention should also be paid to the fact that although the Criminal Code and also the AO links (among others) the evaluation of the certain conducts' dangerousness to the society to the violation or the endangerment of the constitutional order (of the society, of the economy or of the State in accordance with the Fundamental Law), if a conduct qualifies as exercising a fundamental right protected by the Fundamental Law (for example, it falls into the scope of the freedom of expression), then its dangerousness to the society is *per se* excluded.

- [45] 5. The Constitutional Court stated on the basis of the above that the interpretation of the law provided by the court of second instance, i.e. that the aspects of the freedom of expression are only applicable under certain conditions to the case of pouring paint on a statue, is compatible with the requirements stemming from Article IX (1) of the Fundamental Law. The Constitutional Court also established that the court had not violated the constitutional criteria applicable to assessing the facts of the relevant case, when it failed to include the particular act within the scope of the freedom of expression.
- [46] For the above reasons, the Constitutional Court has rejected the petition that had been based on Section 27 of the ACC.
- [47] 6. The Constitutional Court ordered the publication of the decision in the Hungarian Official Gazette on the basis of the second sentence of Section 44 (1) of the ACC.

Budapest, 4 February 2019.

*Dr. Tamás Sulyok*  
President of the Constitutional Court

*Dr. István Balsai*  
Justice of the Constitutional Court

*Dr. Ágnes Czine*  
Justice of the Constitutional Court

*Dr. Egon Dienes-Oehm*  
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*Dr. Béla Pokol*  
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*Dr. László Salamon*  
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*Dr. Marcel Szabó*  
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*Dr. Péter Szalay*  
Justice of the Constitutional Court

*Dr. Mária Szívós*  
Justice of the Constitutional Court

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

Concurring reasoning by Justice *dr. László Salamon*

[48] I agree with both points of the holdings of the decision but with regard to point 1 (the formal rejection of the constitutional complaint submitted on the basis of Section 27 of the ACC), I do not share the reasoning of the decision.

[49] The arguments of the reasoning on dispensing with the application of the Act of Parliament take a lenient approach, which is – in my opinion – in discrepancy with the principle of the rule of law: it allows for the possibility of accepting, in certain cases (under the circumstances detailed in the reasoning) the committing of the criminal offence or minor offence of public nuisance as the relevant form of expressing an opinion.

[50] It is finally the duty of the court to decide whether a certain conduct is apparently anti-social and whether it is suitable of inciting indignation or alarm in other people (i.e. whether the minor offence or the criminal offence of public nuisance has been realised). The legal basis of these decisions are the provisions of the applicable Acts of Parliament.

- [51] In my view, if a conduct implements any act prohibited in the AO or in the Criminal Code, the judge may not dispense with the application of the AO or the Criminal Code by referring to the freedom of expression. A procedure to the contrary would be incompatible with the principle of the rule of law and of the State governed by the rule of law.
- [52] If the Constitutional Court holds that the relevant Act of Parliament is deficient with respect to taking into account the freedom of expression (e.g. by considering it problematic that the Act fails to qualify the exercising of this freedom as a cause excluding punishability, or by otherwise holding the regulation of the Act to be too general), then it should take action against the Act of Parliament with the tools at its disposal, as it has the possibility to do so, but in the present case it held that the preconditions and the necessity of taking such action has not been fulfilled. According to the regulations in force, the prohibition of public nuisance as a minor offence and as a criminal offence forms a legitimate restriction of the freedom of expression by way of these Acts of Parliament.
- [53] I agree with rejecting the constitutional complaint submitted on the basis of Section 27 of the ACC with due account to the above.

Budapest, 4 February 2019.

*Dr. László Salamon*  
Justice of the Constitutional Court

Concurring reasoning by Justice *dr. István Stumpf*

- [54] I agree with several statements made in the majority decision, however, I hold that some essential points of the reasoning justifying the decision can be found elsewhere.
- [55] I support the approach taken in the decision by stating that in order to handle an act as an expression of opinion, it is a precondition on the one hand that the actor should act for the purpose of expressing his or her opinion; on the other hand, the selected form of the communication should be objectively suitable for conveying the communication of thoughts. (Point IV. 3.2., Reasoning [36]).
- [56] It is plausible that expressing an opinion in the form of certain acts may effectuate the statutory definition of committing certain criminal or minor offences. Exercising the freedom of expression in the form of acts may collide with other fundamental rights or constitutional values, therefore, with account to the foregoing, its restriction may be considered necessary.

- [57] The courts that acted in the basic case reviewed in the decision established the committing of the minor offence of public nuisance the protected subjects of which are public peace and public order rather than property. For this reason, I hold that the majority reasoning dealt excessively with the issue of collision between the right to express one's opinion and the right to property, as the merit of the case is not related to that (c.p. Point IV. 3.3., 4.1., Reasoning [37]–[39], [41]–[42]).
- [58] It is an important statement made in the decision that works of art and memorials on public ground are parts of "community dialogue interpreted in the broad sense", therefore "the expressions of opinion related to them may also be important manifestations of the social dialogue". As the memorials "express in physical form their message addressed to the community", "it is also natural that some people try to put in a physically interpretable form the negative sentiments, protests they may have in relation to the memorial". Based on all that, for example, pouring easily removable paint on a memorial, may be considered in the given case as a symbolic act falling under the right to express opinion (Point IV. 4.1 to 4.2., Reasoning [41]–[44]).
- [59] It should be underlined that when an opinion is expressed in a way, which, at the same time, effectuates a conduct described in the statutory definition of a minor offence, the authorities and the courts should not make a choice between applying the Fundamental Law or the AO, as they can assess in the scope of weighing the conduct's dangerousness to the society whether the given act was aimed at exercising the freedom of expression, with due account to whether or not the act endangered the order of the State, of the society or of the economy, or the rights of others in accordance with the Fundamental Law (c.p. Section 1 of the AO).
- [60] In this respect, serious doubts may arise about the injury of the order according to the Fundamental Law caused by a conduct, which expressed a negative opinion – without any physical damage – aimed at and related to a so called "memorial of Soviet heroes", in particular with regard to Article U) (1) *b*) of the Fundamental Law, which explicitly condemns thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II. Does a restriction like that qualify as a necessary measure in a democratic society?
- [61] In line with our established case law, the majority decision lays down that "nevertheless, the Constitutional Court may not distract the power of the adjudicating courts to comprehensively assess the elements of the facts of the cases before them, it may only review whether the interpretation of the law underlying the weighing was in compliance with the Fundamental Law, and whether the constitutional criteria of weighing were complied with" (Reasoning [26]). If the court has not violated the constitutional criteria applicable to the assessment of the facts of the case before it, there is no ground to annul the judicial decision. The Constitutional Court may not review whether or not the court applied correctly the law interpreted



also with due account to the Fundamental Law to the elements of the particular historical facts of the case.

[62] This is the basis on which I supported the rejection of the constitutional complaint.

Budapest, 4 February 2019.

*Dr. István Stumpf*

Justice of the Constitutional Court

Concurring reasoning by Justice *dr. Marcel Szabó*

[63] I agree with the holdings of the decision, but I put forward a different reasoning.

[64] I consider that the approach, which extends the expression of opinion under Article IX (1) of the Fundamental Law also to physical opinions (not expressed in words) is acceptable, with the provision that in these cases the circumstances of the physical “expression of opinion” should be examined with particular scrutiny, as well as the identifiability of the conduct’s meaning by external viewers and the effect exerted by the act on other fundamental rights (including primarily the right to property).

[65] In the case, however, when the physical action qualifies, at the same time, as a criminal or minor offence (including in particular the cases of impairment, public nuisance), the proceeding court should rely on the (rebuttable) presumption that the conduct under review is primarily an act explicitly prohibited by the legislator and it can only secondarily, exceptionally qualify as an expression of opinion. In such cases, the proceeding court shall not assess, as a general rule, whether the relevant conduct can be qualified as an expression of opinion and therefore becomes exempted from the consequences under criminal law or the law applicable to minor offences, but the fact whether or not, on the basis of a very justified and undoubtedly verifiable circumstance, the relevant conduct may still qualify as falling under the statutory definition of a criminal or minor offence. In a particular case, such a very exceptional circumstance may be, for example, the symbolic nature of the conduct, or the very limited level of the material injury and/or of the injury of interests, the obviously negligible effect of the physical expression of opinion exerted on other fundamental rights. This assessment should be primarily performed by the proceeding court or authority in the framework of the conduct’s dangerousness to the society, and the Constitutional Court may only review it under very exceptional circumstances.

Budapest, 4 February 2019.

Concurring reasoning by Justice *dr. András Varga Zs.*

- [66] I supported the holdings of the majority decision and the majority part of its reasoning. At the same time, I hold that the differentiation between verbal and non-verbal “expressions of opinion” should have been laid down more explicitly than it was put in point IV.4.2. of the reasoning (Reasoning [43]–[44]).
- [67] The freedom of expression – the freedom of speech, according to a more traditional and more expressive term – is a communication right. It is aimed at formulating, communicating and putting thoughts into opposition, as well as to discuss public affairs. Consequently, I hold that granting constitutional protection for the expression of one’s opinion in the form of actions (burning, painting, impairment etc.) should only be accepted in very exceptional cases. These acts typically do not convey thoughts, as they are thought-induced and often emotionally driven actions (thus, if we use this argument consistently, we should also accept the collision of “physical” opinions, for example in the form of a fight).
- [68] I hold that the physical “expression of opinion” is only protected by the Fundamental Law as long as it does not restrict the fundamental rights of others. Indeed, as follows from the right to property, it is actually prohibited even to touch a piece of property owned by another person (unless the law allows it, the owner provided consent to it, or the owner’s conduct refers to providing consent). The constitutional protection does not apply to any other case.
- [69] The majority decision fails to provide this clear differentiation and the substitute it applies instead of it, i.e. the existence of the absence of material damage caused by the physical intervention affecting another person’s property is insecure on the one hand and it is not *prima facie* verifiable, on the other hand. Nevertheless, in the course of exercising the public expression of opinion – in particular when it is connected to the right of assembly – the police forces guaranteeing the security of the given event should be able to differentiate instantly and very exactly between the allowed (thus to be protected and secured by the police) and the prohibited (i.e. requiring immediate action by the police) situations. Only the judge (the minor offence authority, or the prosecutor in the case of a criminal procedure) may assess whether or not, in addition to the realisation of a statutory definition in the specific part of the Criminal Code or of the AO, the further conditions of the existence of a criminal or minor offence – culpability and (material) unlawfulness – may be established. Beyond doubt, exercising a constitutional fundamental right may, in a given case, exclude illegality, which may lead to establishing the lack of a criminal

offence. However, no such assessment shall be expected on the site of committing the conduct. Therefore, the Constitutional Court should have applied a standard that offers clear guidance not only for the proceeding judge (and other authorities) but also for the police forces guaranteeing the order on-site.

Budapest, 4 February 2019.

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

[70] I join the concurring opinion.

Budapest, 4 February 2019.

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

Dissenting opinion by Justice *dr. Ágnes Czine*

[71] I disagree with the decision of the Constitutional Court, I could not support the decision due to its reasoning, however, I hold that the statements made in the challenged court decisions were correct.

[72] The particular constitutional problem has been raised in the context of the minor offence form of public nuisance. In the course of establishing the liability for the minor offence, the law-applying body, in the case concerned, the court assesses in the minor offence procedure the realisation of the elements of the relevant statutory definition. During this assessment, it should not disregard Article 28 of the Fundamental Law, according to which, in the course of applying the law, the court should follow the interpretation of the law, which is in line with the Fundamental Law.

[73] In the context of the freedom of expression, the law-applying bodies may enforce, in the minor offence procedure, the requirements laid down in the Constitutional Court's case law in the framework of examining the elements of the facts of the case. The mere fact of exercising the right to the expression of opinion shall not and may not exempt the person subject to the procedure from establishing his/her liability for committing a minor offence. Neither may the Constitutional Court set down such a requirement. The maximum what the Constitutional Court may do is to provide a guideline about the elements of the facts of the case in the framework of which the aspects of the right to the expression of opinion may be examined, as well as to

specify the potential results of this assessment, deemed to be in line with the provisions of the Fundamental Law.

- [74] Both the particular final decision of the court and the present decision of the Constitutional Court contain references to potentially identify the dangerousness to the society, as an element of the facts of the case the examination of which may result in “infiltrating” the aspects of constitutionality into the application of the law by the courts.
- [75] Section 1 (1) of the AO provides a definition of minor offence. According to it, a minor offence is an activity or omission that the Act on Minor Offences orders to punish and which is dangerous to the society. The AO also provides a definition of dangerousness to the society by stating that “for the purpose of the application of this Act, an activity or omission shall be held dangerous to the society that violates or endangers the social, economic or State order according to the Fundamental Law, the personality or the rights of natural persons, legal entities or unincorporated bodies to an extent lower than the one needed for ordering the punishment of it as a criminal offence.”
- [76] In the course of examining the minor offence or the criminal offence of public nuisance, the court shall determine, in the course of examining the dangerousness to the society, whether the given conduct qualifies as a minor offence or a criminal offence, or indeed, in the absence of any danger to the society, the relevant conduct shall form neither a minor offence nor a criminal offence.
- [77] In other words, it may be assessed within the concept of dangerousness to the society regulated in Section 1 of the AO – and in Section 4 of the Criminal Code – whether, also with regard to the fundamental right or the constitutional value protected by the conduct, the relevant conduct falls into the realm of protecting another fundamental right or constitutional value, and whether they collide or not.
- [78] Indeed, the reasoning of the present decision of the Constitutional Court does contain a guidance of this kind in its part IV point 4.2. (Reasoning [43]–[44]), i.e. it lays down that “if a conduct qualifies as exercising a fundamental right protected by the Fundamental Law (for example, it falls into the scope of the freedom of expression), then its dangerousness to the society is per se excluded”.
- [79] I cannot agree with this conclusion.
- [80] The fact of certain conduct falling into the scope of protection of the freedom of expression – or, as necessary, of any other fundamental right – shall not necessarily result in the exemption from liability under the law applicable to minor offences. In my view, the dangerousness of the relevant act to the society can only be established by examining the collision between the affected fundamental rights and constitutional values.

- [81] Part IV point 3.3. of the decision's reasoning (Reasoning [37]–[39]) also refers to the potential collision between the right to express one's opinion and other fundamental rights as well as to the need to examine such collision. However, it fails to carry out these examinations regarding the particular court decisions. Therefore, I hold the reasoning of the Constitutional Court's decision to be deficient.
- [82] The court of second instance was right to indicate that the court of first instance had failed to provide a reasoning about dispensing with making a reference to the freedom of expression of the persons subject to the procedure.
- [83] At the same time, however, an examination of the collision would have also been necessary. In the framework of that examination, the Constitutional Court should have assessed the mutual influence of the fundamental rights and the constitutional values protected by the relevant statutory definition of minor offence. In the framework of the examination of the potential collisions, the right to the expression of opinion could have been examined primarily in the context of another fundamental right or constitutional value protected by the particular statutory definition of minor offence. In the present case, it is public peace, while for example in the case of impairment it is the right to property.

Budapest, 4 February 2019.

*Dr. Ágnes Czine*

Justice of the Constitutional Court

Dissenting opinion by Judge *dr. Imre Juhász*

- [84] Despite of agreeing in principle with the rejection and the rejection on formal ground of the constitutional complaint, I do not support the majority decision, as I can agree neither with the direction nor with the content of the reasoning. Contrary to my fellow-justices of the Constitutional Court who supported both the holdings and the reasoning of the decision, I hold that when a conduct qualifies as a minor offence or a criminal offence, the court – along with establishing the above – may not assess whether or not the perpetrator's conduct falls in the protected scope of expressing one's opinion. Due to the strong conceptual difference, I can support neither the holdings of the decision nor the reasoning of it.
- [85] In my view, the members of the Constitutional Court may also form a dissenting opinion when they disagree with the totality of the reasoning, as in this way, also in principle, it would be impossible to support the holdings of a decision without a foundation called objective reasoning. In the present matter as well, we face such a (border-line) case, as my opinion is fundamentally different, even with regard to the

starting point, from the concept presented in the majority decision about expressing an opinion in physical form.

Budapest, 4 February 2019.

*Dr. Imre Juhász*

Justice of the Constitutional Court

Dissenting opinion by Justice *dr. Béla Pokol*

- [86] I do not support the rejection of the petition in the holdings of the majority decision, as I hold that it was a manifestation protected by the constitutional freedom of expression to act against the monument that stands, despite of the connected horrific events, as a public memorial of the Soviet occupation, which was one of the greatest traumas for the Hungarian society in the 20<sup>th</sup> century.
- [87] Although pouring paint extends beyond the verbal expression of opinion and it is within the realm of expressing one's opinion by way of physical action, under certain conditions, it shall remain – as laid down in part IV point 5 of the reasoning (Reasoning [45]–[46]) – within the fundamental right protected by Article IX (1) of the Fundamental Law. By arguing further in line with the above correct part of the reasoning, in the context of the present case, the conditions should have been elaborated that form the relevant framework, and this way we could have differentiated between the freedom of expression that may be exercised constitutionally and the constitutionally unacceptable manifestations recently experienced in the field of public political expressions. Thus pointing to the fact that the physical expression of opinion took place against a public statue of a historical event that divides millions of people in the Hungarian society, and that the action did not go as far as to impair the statue, since the pouring of removable paint was a symbolic demonstration, would have presented the limitations of the physical expression of opinion. The constitutional acceptance, by emphasizing the above, would have also underlined that pouring paint on the walls of public institutions or any physical act against state buildings are beyond the limits of protecting fundamental rights. In my opinion, the fact that the reasoning explicitly points to the constitutionality of the physical expression of opinion under certain circumstances, but then it simply declares the relevant act to be outside this scope, increases the constitutional uncertainty in the field concerned.
- [88] I also disagree with incorporating into the reasoning the decision of the Strasbourg-based ECHR (see part IV point 3.1. of the reasoning, Reasoning [35]). Actually there is a fundamental problem – that has become public recently – with the functioning of the ECHR, namely that its decisions are not elaborated by the competent judicial panels on the basis of the European Convention on Human Rights, but by an

apparatus of some 300 human rights experts that has developed throughout the years, with the manifest lack of judicial independence. (See for example, among others, the study by Matilde Cohen from 2017 entitled “Judges or Hostages?” presenting the complete absence of the independence of the Strasbourg judges: “*Judges or Hostages? In: Nicola/Davies eds: EU Law Stories. Cambridge University Press 2017, 58–80. p.*) The Copenhagen professor and former Strasbourg judge David Thór Björgvinsson also formed, in an interview he gave in 2015 after the expiry of his mandate, sharp criticism about the researchers for not noting the complete vulnerability of the judges of the ECHR by the apparatus of lawyers permanently residing in Strasbourg for decades [see *Utrecht Journal of International and European Law* (Vol. 81.) 2015. No.31.]. It is the duty and the responsibility of the ministries of foreign affairs and of justice of the States participating in the international treaty to eliminate this situation and to develop an operation guaranteeing the independence of the judges of the ECHR, but I hold that we, justices of the Constitutional Court, also bear a responsibility, and based on this declared responsibility we shall not rely, in our decisions, on any explicit reference to the decisions of the ECHR as authentic court decisions. Actually, these decisions are made by the lawyer-apparatus of Strasbourg and the judges delegated by the Member States are only used as a camouflage. Therefore, I hold that we should not take these decisions, as court decisions, into account as long as this situation exists. Although I can support, in the course of preparing our decisions in *pro domo* form, the observation of these materials as simple lawyers’ opinions without any authenticity, I propose to leave them out of the texts of our public decisions in the future.

Budapest, 4 February 2019.

*Dr. Béla Pokol*

Justice of the Constitutional Court

Dissenting opinion by Judge *dr. Mária Szívós*

- [89] Based on my powers granted in Section 66 (2) of the ACC, I attach the following dissenting opinion to the decision.
- [90] I cannot agree with the majority decision despite of holding that the legal consequences of rejection and formal rejection in the holdings are correct. Nevertheless, the reasoning to be used as a precedent in the assessment of future cases contains arguments that I hold unacceptable.
- [91] According to the majority decision, it is a constitutional question “whether the act qualified in the minor offence procedure is covered by the freedom of expression”

(Reasoning [21]), just like the interpretation of “the constitutional criteria under which the minor offence form of public nuisance may restrict the freedom of expression” (Reasoning [21]). In my opinion, the reasoning of the majority decision fails to adequately address the above questions for the following reasons.

- [92] 1. First I would like to point out that the statutory definition of the minor offence form of public nuisance – unlike the criminal offence form of public nuisance – does not require implementing any force (either against a person or against a thing) by the committed conduct, thus, regarding the minor offence examined in the basic case, the possibility of a damage is conceptually excluded. As the pure protected legal subject matter of this minor offence is public peace, the collision of the freedom of expression and the right to property may not even come into the picture.
- [93] Still, in the reasoning, the majority decision deals extensively with the collision between the right to property and the freedom of expression, although it is irrelevant in the present case, and in one of its earlier decisions the Constitutional Court has already defined the scope of the criteria to be examined in the course of the collision of the two fundamental rights {c.p. Decision 3132/2018. (IV. 19.) AB, Reasoning [36]–[42]}.
- [94] Although the decision also underlines that if the expression of the opinion is aimed at an object, but it does not result in any damage, then the expression of opinion shall be considered to compete with a fundamental right other than the right to property; nevertheless, in the constitutional assessment of the particular court decision it still refers to the right to property. Moreover, the decision describes as vandalism the acts examined in the basic case – provided that they do not enjoy the protection of the freedom of speech –; however, the general meaning of this terms also includes causing a damage.
- [95] Thus, in my opinion, the reasoning of the majority decision failed to lay down a clear set of criteria for the examination of the collision between the minor offence – explicitly violating public peace – investigated in the basic case and the fundamental right referred to in the decision.
- [96] 2. I hold that, in addition to the problem described in point 1 of my dissenting opinion, the constitutional guidance laid down in the majority decision is ambiguous also for another reason.
- [97] Actually the decision makes, in the course of the evaluation of the fundamental rights, statements that reflect uncertainty, by saying that a conduct “may be considered in the given case as a symbolic act falling under the right to express opinion” or it is “considered in many cases as vandalism” (Reasoning [43]).



[98] On the other hand, in my view, the decision should have clearly stated that when an act fits into the statutory definition of a minor offence or a criminal offence (even if the offence is performed by making a reference to the fundamental right of the expression of opinion), the perpetrator may only be exempted on the basis of the provisions of the AO or the Criminal Code from liability under criminal law or the law applicable to minor offences. Accordingly, when a conduct (either a verbal or a physical one) implements a minor offence or a criminal offence, and there are no obstacles of criminal liability or liability under the law applicable to minor offences, the person who performed the conduct shall not be held to exercise his or her right to the freedom of expression.

Budapest, 4 February 2019.

*Dr. Mária Szívós*  
Justice of the Constitutional Court

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