

**Decision 3165/2021 (IV. 30.) AB**  
**on the annulment of a judicial decision**

The plenary session of the Constitutional Court, in the subject of a constitutional complaint – with concurrent reasoning by *Dr. Ágnes Czine, Dr. Egon Dienes-Oehm* and *Dr. Miklós Juhász*, Justices of the Constitutional Court and dissenting opinion by *Dr. Balázs Schanda* Justice of the Constitutional Court – adopted the following

decision:

The Constitutional Court establishes that the judgement No. Pfv.IV.20.432/2018/7 of the Curia is in conflict with the Fundamental Law, therefore the Constitutional Court annuls it.

Reasoning

I

[1] 1 The petitioner Újpest Gymnastics Club (hereinafter: UTE), through its legal representative (Dr. Abay and Dr. Török Law Office, attorney-at-law: Dr. Péter Abay), applied to the Constitutional Court pursuant to Article 24 (2) (d) of the Fundamental Law and section 27 (1) of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC) to have the judgement No. Pfv.IV.20.432/2018/7 of the Curia as the court of review declared to be contrary to the Fundamental Law and annulled – with effect also to the judgement No. 25.P.22.953/2017/10 of the Budapest-Capital Regional Court of Appeal. In the petitioner's view, the contested court judgements are contrary to Articles VI (1), XIII (1) and XXVIII (1) of the Fundamental Law.

[2] 1.1 Based on the petition and its supplement, as well as the attached court judgements, the facts of the case on which the constitutional complaint is based can be summarised as follows.

[3] UTE has been in existence since 1885, making it the oldest sports club still active today, which operated its independent adult men's football team from the turn of the century until 1999. Since 1999, due to legislative changes, football teams can only

participate in domestic and international championship and cup competitions as a company. From that year onwards, the UTE adult men's football team, Újpest FC, operates as a sports company, with UTE as minority owner and the majority owner being a professional-financial investor. In this arrangement, UTE has provided the trademarked coat of arms and the right to compete in the championship. The coat of arms also represented UTE's financial contribution to the joint venture, which was also laid down in the respective articles of association.

[4] Currently – since 2011 – Újpest FC (officially Újpest 1885 Futball Kft.) has two members: the company Újpest Labdarúgó Kft. 100% of which is owned by a Belgian citizen, representing a 96.69% majority stake, and UTE with a stake of 3.31%.

[5] According to the articles of association of Újpest FC, the general meeting of the company has the power to change the corporate identity of the football team (team colours, coat of arms, emblem, the name "Újpest FC" used by the company), which requires a 100% voting majority.

[6] Disregarding the above rule, the managing director of Újpest FC, who is also the owner of Újpest Labdarúgó Kft., decided on 26 June 2017 to change the coat of arms of the football team and started using the new coat of arms on 3 July.

[7] 1.2 In order to protect its rights, the petitioner initiated two proceedings against Újpest FC. On the one hand, it turned to the Budapest-Capital Regional Court as the Court of Registration, initiating a legality supervision procedure under the Act V of 2006 on Company Registration, Court Registration Proceedings and Winding-up (hereinafter: "Companies Act"). By way of its ruling No Cgt. 01-17-012673/8, the Court of Registration found that there had been an infringement and ordered the defendant to pay a fine. The defendant Újpest FC did not file an appeal and thus the ruling has become final and binding. On the other hand, the petitioner brought an action for the enforcement of personality rights against Újpest FC, seeking a declaration that the defendant had infringed its right to reputation, invoking section 2:42 (1), section 2:43 (d) and section 2:45 (2) of the Act V of 2013 on the Civil Code (hereinafter: "Civil Code"), seeking the application of the legal consequence laid down in section 2:51 (1) and a declaration of breach of the articles of association.

[8] The Budapest-Capital Regional Court acting in the first instance (hereinafter: "regional court" or "first instance court") dismissed the petitioner's action by its judgement No 25.P.22.953/2017/10.

[9] The court of first instance started its work by examining whether the defendant's conduct of unilaterally changing the coat of arms of the football team it runs and using

of the new coat of arms in its activities infringed the petitioner's (plaintiff's) personality rights. With regard to the right to the integrity of image and the right to enjoy prestige, it explained that, although section 2:42 (1) of the Civil Code defines the scope of personality rights in a general clause, the protection of personality rights is only aimed at protecting the immanent core of personality and does not apply to the protection of rights that do not belong to personality. Neither the right to the integrity of one's image nor the right to the enjoyment of prestige is part of the personality of the legal person concerned. It is not possible to identify any element of personality the protection of which would be asserted by those two rights.

[10] The court of first instance found on the basis of section 2:45 (2) of the Civil Code that the change of the coat of arms cannot in itself affect the reputation of the petitioner. The reputation of a person is based on the conduct and activities of that person and the social perception of that person, not on the design of symbols and coats of arms associated with another person, or the changing of such design from time to time. Nor was the change of the football team's coat of arms capable of creating the false impression that the change was the petitioner's decision or that it had contributed to it. It was nothing more than an uncontested breach of contract which, in the present case, did not involve any breach of personality rights.

[11] The petitioner filed an appeal against the judgement of the court of first instance, in which it requested, first, that the judgement of the court of first instance be altered and the defendant be ordered to pay the costs of the action, and, second, that the judgement of the court of first instance be set aside and the court of first instance be ordered to rehear the case and issue a new decision.

[12] The Budapest-Capital Regional Court of Appeal acting in the second instance (hereinafter: "court of appeal" or "second instance court") partially reversed the judgement of the court of first instance by its judgement No. 32.Pf.21.244/2017/4-II and found that the defendant had infringed the reputation of the petitioner by changing the coat of arms of the men's football team playing in the national league NB I operated by the defendant without the consent of the petitioner and by using the changed coat of arms.

[13] The court of appeal considered that the petitioner had rightly relied on the fact that the coat of arms is an essential characteristic of the sports association and a key element of its image. Contrary to the position taken by the first instance court, the court of appeal held that the image conveyed by the coat of arms is indeed the characteristic which, in the case of a sports association or sports undertaking, expresses the essence of the organisation, and that, therefore, the need for the protection of personality rights also arises in the event of harm to the image due to the change to the coat of arms.

[14] The second instance court considered that the fact that the adult men's NB I football team in question was not only associated with the defendant but also with the petitioner in the eyes of consumers and fans was of decisive importance in the case. The link between the NB I football team and the petitioner, expressed in the form of the coat of arms, was also confirmed by the company's articles of association, which provided for a unanimous decision to be taken by the general meeting of members on the issue of the change of image and coat of arms. Thus, the link established by the petitioner was also reflected in the legal reality and in the contractual provisions.

[15] In comparison, the changed coat of arms does not refer to UTE as the petitioner's sports club, the anchor representing the city district is barely perceptible, and the year of foundation is marginally perceptible to the average consumer and fan. Such a change to a well-known symbol, despite the petitioner's objections, conveys the message that the petitioner is no longer connected with the NB I football team: its past and future achievements are only a means of enhancing the reputation of an undertaking, which is independent from it. The defendant was under an obligation under the articles of association not to change in a less favourable way – without the consent of the petitioner pursuant to section 2:42 (3) of the Civil Code – the image of the petitioner, which had been created on the basis of the same image, therefore, in contrast with the above, the unlawful change of the image of the petitioner in the eyes of consumers and fans constituted an infringement of personality rights and of the petitioner's reputation pursuant to section 2:45 (2) of the Civil Code.

[16] The defendant lodged an application for review of the final decision. The Curia, as the court of review, by its judgement no. Pfv.IV.20.432/2018/7, annulled the provisions of the final judgement challenged in the application for review and upheld the judgement of the court of first instance.

[17] The Curia shared the view of the first instance court on the merits. It pointed out that the change of the coat of arms of an organisation with a legal personality, based on a decision of its own, cannot objectively cause damage to the reputation of a legal person separate from it. Even if the defendant's contested conduct is carried out by breaching the company's articles of association, this conduct cannot infringe reputation. In the case under litigation, the alteration of the coat of arms does not in itself infringe a personality right. What makes the defendant's conduct unlawful is the fact that the defendant's managing director did not comply with the articles of association of the company. However, the harm caused by the breach of the obligations relating to the operation of the company cannot be asserted in a claim for the protection of personality rights. In its action, the plaintiff practically sought to enforce the defendant's contractual conduct by applying the legal consequences of the infringement of personality rights. However, the sanctions available for infringement of

personality rights cannot be used to remedy a breach of the rules governing the operation of a company.

[18] 1.3 The petitioner requested, pursuant to section 27 of the ACC, the declaration that the judgement No. Pfv.IV.20.432/2018/7 of the Curia as the court of review – with effect also extended to the judgement No. 25.P.22.953/2017/10 of the Budapest-Capital Regional Court – violated the Fundamental Law, and its annulment for the following reasons.

[19] According to the petitioner, the first Instance court and the Curia violated its right to reputation. The Civil Code has introduced a number of innovations in the field of the protection of personality rights compared to the Act IV of 1959 on the Civil Code (hereinafter: "old Civil Code"). On the one hand, under the general clause of section 2:42 of the Civil Code on personality rights, any personality right, including those not listed, is protected. On the other hand, the law-maker has placed the right to human dignity at the centre of the private law protection of personality; this is regarded as the mother law of all listed and unlisted personality rights.

[20] According to the petitioner, it is acceptable that there is no established judicial case-law of the new general clause, but at the same time it is unacceptable that both the first instance court and the Curia ignored the rules of the Civil Code, its spirit and based their decisions on the old Civil Code and the judicial case-law adhered to it. The courts actually failed to recognise that in the case of a sports association such as the petitioner, the elements of the image form part of the personality right. This in itself infringes the right to a protected reputation guaranteed by Article VI (1) of the Fundamental Law.

[21] According to the petitioner, the preceding also points to the violation of its right to a fair trial guaranteed by Article XXVIII (1) of the Fundamental Law, since the rules of the Civil Code on personality rights were interpreted and applied both by the first instance court and the Curia by ignoring the wording of the norm, sometimes ruling contrary to it, in light of the rules of the old Civil Code and the judicial case-law related that.

[22] According to the petitioner, the fact that the Curia found, in connection with the change of Újpest FC's own coat of arms based on its own decision, that the damage to the reputation of an independent legal person (the petitioner) cannot objectively be caused by this unlawful act (Curia judgement [20]), is an interpretation of the law that violates its right to property (Article XIII of the Fundamental Law), as it ignores the fact that Újpest FC is a jointly owned sports enterprise and the petitioner has a veto right in the decision to change the coat of arms. A judicial interpretation of the law which

diminishes the gravity of the infringement of this element of the articles of association may also give rise to a concern of the infringement of judicial impartiality.

[23] The violation of judicial impartiality is further alleged by the fact that the Curia considered the breach of the articles of association as a simple breach of contract under company law, instead of examining the provisions of the company law ruling on the basis of Article 28 of the Fundamental Law and classifying the breach of the articles of association as an instrumental act of the protection of personality rights.

[24] In addition to the above (*contra legem* interpretation of the law, concern of judicial impartiality), the violation of the principle of adjudication within a reasonable time limit may also be raised, as the review procedure of the Curia took almost one and a half years, while the second instance court delivered its final decision in half a year.

[25] The petitioner also complained of the lack of a reasoned decision of the court, as in its view the Curia adopted the reasoning of the first instance judgement without any consideration instead of presenting an independent argument. As a result, the reasoning of the Curia's judgement is blatantly short and incomplete.

## II

[26] 1 The provisions of the Fundamental Law affected by the petition:

"Article VI (1) Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected. Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others."

"Article XIII (1) Everyone shall have the right to property and inheritance." Property shall entail social responsibility."

"Article XXVIII (1) Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act."

[27] 2 The provisions of the Civil Code relevant in respect of the petition are as follows:

"Section 2:42 [General protection of personality rights]

(1) Everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, his home, and to his communications made by whatever ways

or means, and the right to good reputation and not to be hindered by anyone from exercising these rights.”

“Section 2:43 [Specific personality rights]

Violation of personality rights means in particular

d) defamation or violation of good reputation;”

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

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

“Section 2:51 [No-fault sanctions]

(1) Any person whose personality rights have been violated may claim, based on the fact of violation, within the limitation period and according to the circumstances of the case

a) the establishment of the violation by the court;

b) that the violation be ceased and the person committing the violation be forbidden from continuing the violation;

c) that the person committing the violation give appropriate satisfaction, and provide for its publicity at his own expenses;

d) the ending of the injurious situation, the restoration to the situation existing prior to the violation, and the destruction of things produced through the violation or the depriving such things of their unlawful character;

e) that the person committing the violation or his legal successor relinquish the material gain obtained by the violation according to the rules on unjustified enrichment.”

### III

[28] 1 According to section 56 (1) of the ACC, the Constitutional Court shall decide on the admission of a constitutional complaint acting in the panel determined in its Rules of Procedure. Pursuant to paragraph (2), the panel shall examine in its discretionary power the content-related requirements of the admissibility of a constitutional complaint – in particular the affectedness pursuant to sections 26 to 27, the exhausting of legal remedies and the conditions specified in sections 29 to 31.

[29] 1.1 The panel of the Constitutional Court admitted the constitutional complaint on 7 July 2020, as it met the above legal requirements. The Constitutional Court considered of fundamental constitutional importance the question whether, in the case of legal persons, the elements of image can be considered an integral part of personality, so that in case of their infringement, protection of personality rights can be claimed. It also considered of fundamental constitutional importance the question of whether a constitutional complaint alleging *contra legem* application of the law, whereby the defect of the challenged judicial decision can be found in the fact that the court clearly did not base its decision on the applicable text of the norm, but on the previously applicable normative text and the judicial case-law adhered to it, can be examined on the merits. Lastly, the panel of the Constitutional Court considered that an infringement of the right to property might also be examined, since the contested court decisions had systematically disregarded the fact that the elements of the image also had or could have a pecuniary value for a sports association.

[30] 1.2 At the same time, not all the elements of the constitutional complaint as a petition correspond to the requirements of an explicit request pursuant to section 52 (1b) of the ACC. In the context of the right to a fair trial, the petitioner also invoked a violation of certain elements of it, such as the right to a reasoned decision, the principle of reasonable time and judicial impartiality. In its examination of the conditions of an explicit request, the Constitutional Court found that the petitioner had merely indicated the above-mentioned elements of the right to a fair trial in its constitutional complaint, but that the complaint did not contain “the essence of the violation of the right guaranteed by the Fundamental Law” [section 52 (1b) (b) of ACC] and “the detailed grounds of the request contained in the petition” [section 52 (1b) (e) of the ACC]. According to the case-law of the Constitutional Court, the petition is unsuitable to be judged on the merits of it, if it merely indicates the provision of the Fundamental Law that it alleges to be violated without providing a reasoning – in the form of detailed arguments – why the challenged law or judicial decision is in conflict with the indicated provision of the Fundamental Law. {Decision 3271/2018. (VII. 20.) AB, Reasoning [18]}.

[31] In its constitutional complaint, the petitioner failed to provide any constitutionally relevant reasoning to justify why the challenged court judgements violated the right to a reasoned judicial decision, the principle of reasonable time and judicial impartiality, as enshrined in Article XXVIII (1) of the Fundamental Law.

[32] In view of this, the petition does not meet the statutory requirements for an explicit request in relation to Article XXVIII of the Fundamental Law, regarding the right to a reasoned decision, the principle of reasonable time and the impartiality of the judiciary.



[33] 2 In the following, the Constitutional Court examined the merits of the petition in relation to Articles VI (1), XIII (1) and XXVIII (1) of the Fundamental Law (*contra legem* application of the law).

#### IV

[34] The petition is well-founded.

[35] 1 The Constitutional Court first reviewed its case-law in relation to the protection of personality rights, in particular the right to reputation.

[36] The Constitutional Court's case-law before the introduction of the Fundamental Law recognised that the general autonomy of action and its constitutional protection is also granted to legal persons, but only to a limited extent. The reason for this can be found in the fact that while the right to human dignity of natural persons is an absolute, unconditional and inalienable right, the autonomy of action of legal persons is granted only in relation to the purpose and function of the given organisation {Decision 24/1996. (VI. 25.) AB, ABH 1996, 107, 111 to 112.; reinforced in Decision 24/2014. (VII. 22.) AB , Reasoning [140]}.

[37] The Decision 34/1992 (VI. 1.) AB, which examined the legal concept of non-material damage, made it clear that legal persons are also entitled to protection of personality rights and that not only the infringement of their material rights enjoys legal protection (ABH 1992, 192, 200).

[38] The Constitutional Court's case-law on the protection of the fundamental rights of legal persons was also taken into account by the law-maker when drafting Article VI (1) of the Fundamental Law, according to which everyone has the right to respect for his private and family life, home, relations and reputation. Article I (4) provides that fundamental rights and obligations which, by their nature, do not only apply to man shall be guaranteed also for legal entities established by an Act.

[39] Following the entry into force of the Fundamental Law, the Constitutional Court has confirmed or further developed some of its earlier decisions on the personality right arising from human dignity. According to the Decision 32/2013 (XI. 22.) AB, the image of an individual's life (the right to reputation) also enjoys protection (Reasoning [84]). The right to one's image, as a subset of human dignity, was first dealt with in the Decision 28/2014 (IX. 29.) AB and the right to a name was the subject of the Decision 27/2015 (VII. 21.). The relationship between guardianship affecting one's disposing capacity and honour and reputation was dealt with in the Decision 11/2014 (IV. 4) AB.

The possible violation of reputation in the context of comments on the internet was considered in the Decision 19/2014 (V. 30.) AB. Decision 14/2017 (VI. 30.) dealt with the possibility of limiting employees' personality rights. The blood relationship as part of the right to self-identity was addressed in the Decision 13/2020 (VI. 22.) AB.

[40] On the basis of the above, it is clear that the Fundamental Law also protects the right of legal persons to reputation. However, a review of the Constitutional Court's decisions on the merits reveals that the Constitutional Court's case-law in relation to the right to reputation is very incomplete, and no decision has been taken to date in relation to legal persons, in the absence of a suitable petition.

[41] 2 The Constitutional Court then considered the civil law basis for the protection of personality rights, with particular reference to the protection of reputation.

[42] 2.1 The current Civil Code, like the old Civil Code, protects personality rights in a general way (Part Three of Book Two, sections 2:42 to 2:54). This means in practice that section 2:42 of the Civil Code contains a general clause under which all personality rights – including those not listed – enjoy protection. The above should be understood to mean that in the future, new personality rights may arise which will automatically be covered by the legal protection. This also means that the instruments of legal protection provided for in the Civil Code will also be available for the non-listed personality rights, too. The above general rule is reinforced by the fact that, unlike in the old Civil Code, it is no longer directly followed by an illustrative list of the types of conduct which may infringe personality rights. Another novelty compared to the old Civil Code is that the Civil Code derives personality rights from human dignity [section 2:42 (2) of the Civil Code]. At the same time, section 3:1 (2) of the Civil Code – as a kind of manifestation of Article I (4) of the Fundamental Law – stipulates that the legal capacity of a legal person extends to all rights and obligations which, by their nature, cannot be attached solely to a human being. In the context of the protection of personality, this means that civil law also recognises that legal persons are also entitled to personality rights, but of course only those which, by their nature, are not confined to human beings. Indeed, the protection of reputation is clearly a right which is not exclusive to natural persons.

[43] 2.2 Violation of good reputation means in particular misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts [section 2:45 (2) of the Civil Code]. It also follows that it does not constitute an attack on reputation if an untrue fact alleged or rumoured about a person is not offensive to

that person (BH2001. 469.). Likewise, stating true facts or expressing an opinion is not prejudicial to good reputation (BH2019. 13.). At the same time, in order to be considered as an attack on reputation, the communication must be capable of being prejudicial to the social image of the person concerned. However, the finding of an infringement is not conditional on verifying that this negative perception has actually occurred (BH2010. 294.).

[44] The right to a good reputation thus aims at ensuring that the image (or the emerging image) of a person in society is based on real facts. However, this does not mean that this image cannot be wrong or incorrect, since the right to reputation merely ensures that this image is the result of inferences drawn from real facts. It is important to emphasise that the Civil Code only highlights, by way of examples, the most common, typical defamatory conduct (stating or disseminating a fact, or misrepresenting a true fact), which implies that it is unlawful to commit defamation of reputation in any way. In other words, communication in this context must be understood in a broad sense and may be any conceivable and appropriate means of expressing an idea, including, in addition to the typical oral or written transmission of information, expression by means of a drawing, a figure, a sculpture, a painting, a photograph, a gesture, an action, etc. (BH2002. 261., BH2013. 266.).

[45] 3 In the following, the Constitutional Court had to answer the question whether the judgement of the Curia violated the right to reputation guaranteed by Article VI (1) of the Fundamental Law.

[46] In accordance with Article 24 (2) (d) of the Fundamental Law, the Constitutional Court "shall review, on the basis of a constitutional complaint, the conformity with the Fundamental Law of a judicial decision". When assessing this, the Constitutional Court first of all examines the question of whether the court has recognised the fundamental rights implications of the case. As laid down by the Constitutional Court in the Decision 3/2015. (II. 2.) AB: "According to Article 28 of the Fundamental Law, in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. This provision of the Constitutional Court lays down as a constitutional requirement for the courts in the course of the application of law to interpret the laws primarily in accordance with the Fundamental Law [...]. Based on this obligation, the courts should identify the fundamental rights' aspects of the relevant case within the limits of interpretation provided by the laws, and they should interpret the laws applied in the judicial decisions with due account to the constitutional content of the affected fundamental right.

The constitutional complaint allowing the constitutional review of judicial decisions (Section 27 of the ACC) is a legal institution that serves the purpose of enforcing Article

28 of the Fundamental Law. On the basis of such a complaint, the Constitutional Court examines 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" (Reasoning [17] to [18]).

[47] At the same time: "It is not within the competence of the Constitutional Court to judge whether the decision of the court is the only correct decision that can be taken in the case, or whether the interpretation of the law, the weighing of the evidence and the conclusions drawn from it are correct. The review of judgements made in the context of judicial discretion falls outside the Constitutional Court's constitutional review powers as guaranteed by the Fundamental Law {similarly, e.g.: Ruling 3013/2016. (I. 25.) AB, Reasoning [18]; Ruling 3221/2014. (IX. 22.) AB, Reasoning [14] to [15]}." {Decision 7/2020. (VII. 17.) AB, Reasoning [47]}

[48] In its judgement No. Pfv.IV.20.432/2018/7, the Curia found the final judgement of the second instance to be unfounded for two – interrelated – reasons. On the one hand, it pointed out that the change of the coat of arms of an organisation with an independent legal personality (Újpest FC, the defendant in the litigation), based on a decision of its own, cannot objectively cause damage to the reputation of a legal person separate from it (the plaintiff UTE). On the other hand, it explained that an injury essentially caused by a breach of contract, that is to say, a breach of the obligations arising from the company's articles of association, cannot be asserted in the context of a claim for the protection of personality rights.

[49] In the case at hand, the Constitutional Court did not have to decide whether the above interpretation of the law by the Curia was correct, but whether it took into account the fundamental rights involved in the case – i.e. whether it conducted as the court of second instance the fundamental rights investigation – to find out whether the petitioner's personality right to (reputation) could have been violated. The Curia did not dispute the finding of the court of second instance that the list of conducts giving rise to the infringement of reputation was not exhaustive and that, therefore, the infringement of reputation could also be caused by other conduct not included in the list, i.e. that, in the case at issue, the alteration of the coat of arms could also give rise to such an infringement. However, it excluded in principle the possibility of the protection of personality rights. On the one hand, it did so by taking the opinion that the applicant intended to use the allegation of damage to its reputation as a mere means of enforcing compliance with the company's articles of association. On the other hand, the Curia considered the dispute between the petitioner and Újpest FC as a

dispute within the joint company, i.e. it confused the internal and external relations of the company. In the final analysis, the Curia considered that the case at hand was nothing more than a company law dispute concerning a breach of the articles of association, without any personality rights implication.

[50] The Constitutional Court notes that it was raised in the lawsuit that the petitioner could have brought an action before the court under section 3:35 of the Civil Code for breach of the articles of association against the decision of the defendant's managing director, seeking its annulment. Thus, according to the reasoning of the judgement of the first instance, there was a legal remedy, in addition to the protection of personality rights, which the petitioner could have invoked. However, section 3:35 of the Civil Code is only applicable where one of the organs of the legal person took a decision that can be the subject of such review. In the case at hand, however, no such decision existed, as the change of the coat of arms was a one-person (and informal) decision of the managing director of the majority owner, which cannot be considered a decision of Újpest FC. This is also supported by the fact that in the present case, the petitioner initiated a legality supervisory procedure for the unauthorised change of the coat of arms and the procedure was conducted by the Registry Court. Pursuant to section 74 (3) of the Companies Act, a legality supervision procedure shall be carried out only if the claim cannot be asserted in a civil action provided for in sections 65 to 70 of the Companies Act or in another civil action or administrative procedure.

[51] In this context, the Constitutional Court notes that a supervision of a decision of a legal person may only take place if the legal person has taken a decision which may be subject to such a review. If the legal person commits an infringement by not adopting a necessary decision, i.e. by remaining silent in a situation requiring some action or expression of will, judicial review of the decision cannot take place in the absence of a decision. This principle can also be inferred from the judicial case-law (e.g. BDT2019. 4101., BDT2017. 3636.). The question of whether there is a reviewable decision is also important because it may determine whether a legality supervision procedure can be conducted. Indeed, if there is a reviewable decision, this precludes a legality supervision procedure, whereas if there is no such decision and therefore no room for judicial review of the decision, conducting a legality supervision procedure may be considered.

[52] In the present case, pursuant to section 3:35 of the Civil Code, no litigation could be brought because of the dispute between the petitioner and the majority owner Újpest Labdarúgó Kft. over the breach of the articles of association, and the rules of company law were not suitable to repair the infringing conduct. (The fine had no deterrent effect, which is proven by the fact that Újpest FC did not appeal the ruling of the court of registration, but at the same time it failed to restore the lawful operation.)

[53] It can therefore be concluded that either no judicial remedy (company law) was available to the petitioner, or the judicial protection (company proceedings) availed of was not suitable to remedy the infringement of rights caused by the use of the coat of arms in external legal relations.

[54] Undoubtedly, the unilateral and unlawful alteration of the coat of arms by the majority owner of the joint company has implications for company law. The judgement of the Curia rightly states that personality rights cannot be availed of to resolve disputes in other areas of the law. However, this way the fact that there are other types of conduct which (also) infringe other laws and which also constitute an infringement of personality rights is overlooked. In the case at hand, therefore, it was not primarily the company law aspects of the case that should have been examined, but whether the defendant's conduct could have infringed the plaintiff's personality right (reputation) by interfering with the petitioner's protected characteristics.

[55] The Curia, however, upheld the judgement of the first instance court, including its finding that a person's reputation is based on his or her conduct, activities and the image that society has of him or her as a result. Consequently, the alteration of a symbol associated with another person cannot infringe that person's personality right.

[56] However, since these organisations are inanimate entities, the essence of their personality can be defined primarily by elements that are perceptible to the outside world. These may include, in particular, the name of the entity, the symbols which identify it, the main elements of its image and the actual information relating to it (by virtue of which it is identified), in other words, the characteristics which make it visible to the outside world and by virtue of which it can be identified beyond doubt by third parties. In the case of legal persons, it is therefore their appearance and the image they project of themselves which is decisive and which indicates their uniqueness to third parties. In the light of the foregoing, they constitute constituent elements of the essence of a legal person and, as such, are eligible for protection as personality rights. In other words, the image and the rights deriving from it form an integral part of the personality of every legal person.

[57] Section 35 (5) of the Act IV of 2004 on Sport (hereinafter: "Act on Sport") until the entry into force of the Civil Code – until 15 March 2014 – provided that the protection of the reputation and the personality rights of the athlete, the sports organisation, the sports association, the public sports body shall be governed by the provisions of the old Civil Code. This provision was repealed by the Act CCLII of 2013 amending certain laws in connection with the entry into force of the new Civil Code. According to the reasoning of the Bill, the amendment was necessary because the Civil Code lists reputation among personality rights, which makes its inclusion in the Act on Sport superfluous.

[58] Thus the law-maker considered it important to emphasise that sports organisations also have the right to a good reputation, and this provision was deleted from the Act on Sport only for the sake of terminological clarity when the Civil Code entered into force. It is important to point out that the repealed rule was incorporated in Chapter V – entitled commercial contracts – of the Act on Sport. Among commercial contracts, the Act on Sport recognises the legal institution of merchandising, which allows the user (typically a business company) to use the existing reputation of athletes, sports organisations and sports associations for marketing purposes (image building). Under a merchandising contract, for the purpose of influencing consumer decisions, the user uses the name, image of an athlete, or the name, logo of a sports organisation, sports association or public sports body or uses other sports-related intangible assets on billboards, merchandise objects, souvenirs, clothing, other items and electronically to influence consumer decisions.

[59] It should also be emphasised that section 38 of the Act on Sports separately regulates the use and protection of Olympic symbols. In this context, the Hungarian Olympic Committee (hereinafter: MOB) is responsible for the protection of Olympic symbols and emblems in the interests of the Olympic movement [section 38 (3) (e) of the Act on Sport]

[60] The MOB shall also be responsible for the display, use, and authorization of the display, use by others – including the exercising and disposing of property rights related to the foregoing – of the elements of the Olympic property as defined in the rules of the International Olympic Committee, in particular the Olympic symbol, flag, motto, flame, torch, the names “Olympics” and “Olympic”, and any translation thereof into any language, in any manner and form. (Displays that are similar to, comparable to, or implicitly but unambiguously refer to the elements of the Olympic property in a form that is clearly identifiable as such shall be deemed to be a representation of the elements of the Olympic property.)

[61] Based on the above, in the world of sport, symbols and emblems play a privileged role, and their use and exploitation also have property law implications. Therefore, these symbols and emblems are protected by law.

[62] This is the legislative context in which the protection of the personality rights of athletes and sports organisations should be assessed, and the protection of the elements of image, especially with regard to merchandising contracts, enjoys here a prominent role.

[63] The case at hand does not concern a merchandising contract within the meaning of section 35 of the Act on Sport, but the law-maker's intention to place the image elements of sports organisations within the scope of the protection of personality rights cannot be ignored. The amendment of the Act on Sport does not indicate a

change in the law-maker's position, but merely that, in order to avoid duplication of legislation, the legislator considered it sufficient to order the provisions of the Civil Code on the protection of personality rights, in particular the protection of reputation, be applicable in the event of an infringement of the elements of the image.

[64] With regard to the case at hand, it can be concluded that the image – presented to third parties – of the petitioner UTE as a sports club, and its veracity, is protected by the right to reputation. According to section 2:45 (2) of the Civil Code, as already stated above, it is not only untrue statements of fact that may infringe one's reputation. This also includes the case where the image of a legal person is damaged by unlawfully depriving it of the characteristic which underpins its business or other reputation through the use of symbols expressing its image, thus creating an image of it in the mind of third parties which is different from the real one and which hinders its effectiveness.

[65] The Curia should therefore have examined whether the unilateral and arbitrary change of the coat of arms of the NB I football team operated by Újpest FC by the managing director of the majority owner had an impact on the image of the petitioner sports club. The examination should also have covered whether the image of the petitioner thus created could have had a negative impact on its reputation, having regard also to the fact that the coat of arms of the NB I football team, protected by a trade mark, including the use of the name UTE, is a personality and image element for UTE.

[66] The image elements of a sports association are thus on the one hand a guarantee of self-identity, on the other hand they make the sports organisation distinguishable for the outside world, and, thirdly, they enable the fans to identify with the club or association. Although the latter was not the subject of the litigation, but it is important to point out that sport is not only a motor activity, but also a community-building (communication) activity. There is a constant interaction between the sports organisation (association, club) and the fans, in which symbols play an important role.

[67] Sometimes the symbols go beyond the relationship between associations and supporters. For example, the communist dictatorship, which imposed itself on society at all levels, did not tolerate freedom of association and saw a threat in the use of association names and symbols. The importance of this is underlined by the fact that the merger of the popular UTE – which won championships in the spring of 1945 and in the 1945-46 and 1946-47 seasons – with the sports club of the Ministry of the Interior was announced in March 1950 by János Kádár, who was the head the Ministry of the Interior. That merger was the first to deprive UTE of its symbol, and renamed it to Budapest Dózsa SE, as the old coat of arms of the club was replaced by the red starred "Dózsa" emblem, breaking with all traditions.



[68] Pursuant to Article R (3) of the Fundamental Law, the Constitutional Court in the present case, when interpreting Articles VI (1) and XIII (1) of the Fundamental Law, kept in mind that in Hungary the legal protection of associations operating football sports clubs cannot be narrowed down to the enforcement of the provisions on the right to physical health under Article XX of the Fundamental Law or the right to run a business under Article XII, since in Hungary's history, particularly during the 1956 revolution, the establishment and operation of football sports clubs was inextricably linked to the right of association and freedom of expression. Consequently, the change of the coat of arms challenged by the petitioner cannot be judged without taking into account the historical facts concerning the name UTE and the coat of arms of the sports club, which are factors to be assessed in the context of the applicant's right to personality protection.

[69] The Constitutional Court points out that in the case at hand, it was also taken into account that the Fundamental Law focuses more on community objectives and functions than the previous Constitution. Consequently, in the present case it considered sports associations as a specific form of community existence and self-organisation.

[70] 4 According to the petitioner, the unilateral change of the coat of arms by the defendant can be considered as a step that foreshadowed the petitioner's intention to secede from the sports association, and which may have implications in terms of personality rights on the one hand, and property rights on the other. In its judgement, the Curia rejected in principle the applicability of the protection of personality rights and, according to the petitioner, this way his right to property was also infringed. As one of the owners of Újpest FC, the petitioner not only provided the coat of arms of the football team, which is protected by a trade mark, but also, as the owner, was entitled to use the coat of arms and enjoy the benefits. However, the Curia did not address the question of whether the change of the coat of arms as an element of its image could have adverse consequences for the petitioner.

[71] According to the consistent case-law of the Constitutional Court on the violation of the right to property: "[...] Article XIII of the Fundamental Law basically »guarantees the right to property in two respects. On the one hand, it protects acquired property against deprivation and, on the other hand, it protects property which has already been acquired against restriction« {Decision 3115/2013. (VI. 4.) AB, Reasoning [34]}. However, in this context, the Constitutional Court has also explained that »the scope and the method of the constitutional protection of property shall not necessarily follow the concepts of civil law, and it cannot be identified with the protection of the abstract property under civil law. [...]« {Decision 3209/2015. (XI. 10.) AB, Reasoning [64]}. [...] »the

protection of property [...] may extend not only to property in the civil law sense but also to other rights of pecuniary value, Article XIII of the Fundamental Law thus also provides for the protection of other rights of pecuniary value in the context of the protection of property« {Decision 3199/2013. (X. 31.) AB, Reasoning [13]}." {Decision 3090/2019. (V. 7.) AB, Reasoning [41]}

[72] However, the hope of future gains from the business activity, the expected profit resulting from it, cannot be considered as a property expectation recognised and protected by the constitutional right to property {Decision 3194/2014. (VII. 15.) AB, Reasoning [24]}. However, the issue in the present case is not the loss of future profit from not using the original coat of arms, but the infringement of the partial rights of ownership – the right of use and the right of disposal.

[73] The Decision 18/2015 (VI. 15.) AB stated in relation to the constitutional protection of partial property rights that: "According to the consistent case-law of the Constitutional Court, the protection of the fundamental right to property also extends to partial property rights and their exercisability, and they can only be restricted in accordance with the relevant rule of the Fundamental Law." (Reasoning [20])

[74] 5 Based on the above, the Constitutional Court found that the Curia had completely disregarded the fundamental rights implications of the case. It failed to take account of the fact that the protection of the personality of legal entities created by law, by their very nature [Article I (4) of the Fundamental Law, section 3:1 (3) of the Civil Code], must be interpreted differently from that of natural persons, given that their essence – their personality in fact – can be captured in the image they present to the outside world. Consequently, the Curia ruled out the existence of an infringement of personality rights and did not examine whether the change of the coat of arms of Újpest FC had a negative impact on the petitioner's reputation. Furthermore, the Curia also failed to examine whether the petitioner's right to property as a minority owner of the joint company was infringed by the change of the coat of arms, in particular in view of the fact that it holds a trademark right to the coat of arms, the use of which it had transferred to Újpest FC by the articles of association.

[75] In the light of all these aspects, the Constitutional Court found that the judgement No. Pfv.IV.20.432/2018/7 of the Curia was contrary to the Fundamental Law and annulled it as set out in the holdings of the decision.

[76] 6 The petitioner also invoked the violation of Article XXVIII (1) of the Fundamental Law in connection with the application of the law *contra legem*. In view of the fact that the Constitutional Court annulled the judgement of the Curia Pfv.IV.20.432/2018/7 for

violation of Article VI (1) – and in connection therewith Article XIII(1) – of the Fundamental Law, it no longer examined the violation of Article XXVIII (1) on the basis of its established Constitutional Court case-law.

Budapest, 13 April 2021.

*Dr. Tamás Sulyok,*  
President of the Constitutional Court

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Ágnes Czine* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Egon Dienes-Oehm* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Tünde Handó* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Attila Horváth* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Ildikó Hörcherné dr. Marosi* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Imre Juhász,* rapporteur, unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Miklós Juhász* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Béla Pokol* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. László Salamon* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Balázs Schanda* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Marcel Szabó* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Péter Szalay* unable to sign

*Dr. Tamás Sulyok,* President of the Constitutional Court on behalf of Justice *dr. Mária Szívós* unable to sign

Concurring reasoning by Justice *Dr. Ágnes Czine*

[77] I agree with the decision laid down in the holdings and the reasoning, but at the same time I also hold it important to point out the following.

[78] 1 According to the consistent interpretation of the Constitutional Court, Article 28 of the Fundamental Law lays down as a constitutional requirement for the courts in the course of the application of law to interpret the laws primarily in accordance with the Fundamental Law. Based on this obligation, the courts should identify the fundamental rights' aspects of the relevant case within the limits of interpretation provided by the laws, and they should interpret the laws applied in the judicial decisions with due account to the constitutional content of the affected fundamental right {Decision 7/2013. (III. 1.) AB, Reasoning [33]; Decision 28/2013. (X. 9.) AB, Reasoning [29]; Decision 3/2015. (II. 2.) AB, Reasoning [17]}.

[79] In the case-law of the Constitutional Court, it is also consistently interpreted that Article I (1) of the Fundamental Law imposes on all bodies exercising public power the obligation to guarantee, in their legislative and law enforcement activities, the enforcement of the requirements arising from the rights enshrined in the Fundamental Law to private persons and their organisations {Decision 14/2017. (VI. 30.) AB, Reasoning [20]}. Following the entry into force of the Fundamental Law, the Constitutional Court has made it clear that fundamental rights require indirect enforcement in private law relationships. According to the Constitutional Court's understanding, while respecting contractual freedom, the fundamental rights requirements deriving from the Fundamental Law can ultimately serve as a constitutional standard for the assessment of legal relations between private parties through the general rules of private law {Decision 8/2014. (III. 20.) AB, Reasoning [56], [64] to [66]; Decision 34/2014. (XI. 14.) AB, Reasoning [94]}.

[80] 2 In the present case, the petitioner alleged a violation of its right to reputation based on section 2:45 (2) of the Civil Code. The courts had therefore to examine the fundamental rights relevance of the case through this provision.

[81] The focus of the protection of reputation is on the protection of the social image of the person concerned, and therefore it basically provides protection against infringements that adversely affect the social image of that person. These infringements typically take the form of communications, but they may also take the form of other conducts. Thus, in judicial case-law, the use of a person's image, a phonogram or a specific manner of greeting used by the person concerned constitutes an infringement of his or her reputation (BH 2002.261).

[82] In the case-law of the Constitutional Court, the aforementioned aspects of interpretation gain a fundamental rights dimension. The right to privacy granted in Article VI (1) of the Fundamental Law is in fact not limited to the inner or intimate sphere also protected by Article II of the Fundamental Law, but is also extended to privacy in the broad sense (keeping contacts) and also to the spatial sphere where one's private and family life evolves (home). In addition to the above, in the case-law of the

Constitutional Court, the image of an individual's life (the right to reputation) also enjoys individual protection {Decision 32/2013. (XI. 22.) AB, Reasoning [84]}.

[83] In my view, the above criteria required an assessment of the extent to which the use of the coat of arms giving rise to the dispute affected the social perception of the petitioner. In that context, I agree with the second instance court's finding that the coat of arms is an essential feature of a sports club, which is a key element of its image: it is one of the most important points of reference for the identity and identification of the supporters and fans of a football team and of the sports organisations associated with that team. The image conveyed by the coat of arms is the very characteristic that expresses the essence of a sports club or sports enterprise.

[84] The present case is therefore not a company law dispute, but a question of the self-identity of a legal person. In my view, the emblems and symbols of sporting associations have a significant added value compared with the trade marks and brand marks of legal persons engaged in commercial activities, because they convey the intense sense of belonging together, the ideals, identity, emotional harmony and traditions of a community. This is also a feature that establishes the fundamental rights relevance of the dispute.

Budapest, 13 April 2021.

*Dr. Tamás Sulyok,*  
President of the Constitutional Court  
on behalf of Justice *dr. Ágnes Czine*  
unable to sign

Concurring reasoning by Justice *dr. Egon Dienes-Oehm*

[85] 1 I fully agree with both the holdings and the reasoning of the decision.

[86] Competitions in sport are subject to national and international legislation and autonomous regulations of sports federations. With regard to the right to reputation of economic undertakings and associations participating as legal persons in championships and cup competitions organised by sports federations, I am making additional observations on the precedent-setting decision of the Constitutional Court in the present case in the form of a concurring reasoning only to make it possible in the course of the continuation of the judicial proceedings to get acquainted with the details of the position I took in the course of making the decision, fully supporting the majority decision. These observations therefore relate to matters on which a dissenting opinion or a concurring reasoning has been delivered which may be interpreted differently from certain findings of the decision.

[87] 2 Paragraph IV/3 of the decision's reasoning (Reasoning [45] et seq.) deals with the decisive question of the case underlying the constitutional complaint, whether the court that finally decided the case recognised the fundamental rights implications of the case. This is the basis for determining whether the petitioner's personality right (to reputation) could have been constitutionally infringed at all.

[88] Well, in this respect, it can be stated, first of all, that in the three-stage civil proceedings, only the Budapest-Capital Regional Court of Appeal, which issued a final judgement at the second instance, took into account the fundamental rights aspect of the present case, as the decision indicates. Only the Budapest-Capital Regional Court of Appeal applied the new general clause of the Civil Code and concluded on the basis of that clause that the image elements of sports associations convey the intense cohesion and emotional harmony of a community, both in a broader and in a narrower sense. Accordingly, in the present case, the coat of arms dispute the subject-matter of which is the coat of arms used by Újpest FC and enjoying the petitioner's trade mark protection, including the name "UTE", expressing its co-ownership and historical role, embodying and symbolising the personality rights of the "parent company", too.

[89] The arbitrary alteration of the coat of arms was thus a contractually and legally unlawful act of the majority co-owner and was therefore capable of causing an unconstitutional injury in both substantive (Articles VI and XIII of the Fundamental Law) and procedural (Article XXVIII of the Fundamental Law) terms. It is therefore not simply a question of an unlawful act of the majority owner in the internal legal relations of Újpest FC, which the court of first instance and the Curia misinterpreted by referring the case to a company law route. Those courts failed to recognise the constitutional aspects, i.e. that the infringement committed in the joint sports enterprise of the parties resulted in damage to the applicant's reputation in the external legal relationship, in the eyes of all parties, most painfully for the association itself and more broadly the "Újpest community".

[90] 3 In view of the specific historical background of sports associations and the sensitivity of society to the successes and failures of Hungarian sport, and the role of the relevant association in this, the reasoning of the decision in fact justifies – also in the aforementioned paragraph IV/3. (Reasoning [45] et seq.) – the special protection of the elements identifying sports associations (e.g. coat of arms, logos, other symbols) on the basis of the self-identity of the association members, athletes, fans and supporters. This is also in line with the spirit of the Fundamental Law, since sports associations, by virtue of their integrating capacity and organisational strength, are capable of mobilising people who live and work for the community and are enthusiastic about their successful heroes, for the same goal, while preserving the dignity of the individual.

[91] In order to substantiate the foregoing in detail, I refer to the statements and arguments contained in the petitioner's constitutional complaint in the present case, which summarize the allegations contained in its appeal against the first instance judgement, emphasized on the basis of the petition for review. (The points and arguments, and in some cases the statements of fact, which I myself represented in the process of considering the decision, can be found in the indent of paragraph 8 on pages 7-8 of the constitutional petition.) These are the basis of the present decision, as well as of the approach of the Budapest-Capital Regional Court of Appeal delivered in line with the constitutional criteria. I would emphasise that all of this demonstrates that the State can and does have a constitutional duty to protect the fundamental rights deriving from Article VI, in particular the right to reputation of legal persons, in the complex area of the application of the private law relations of sports associations which play a significant and useful role and are prominent in the community.

[92] 4 In the course of the decision-making process, I myself accepted – in the expectation and hope of the annulment of the Curia's decision based on Articles VI and XIII of the Fundamental Law – that no examination of the procedural violation of fundamental rights (Article XXVIII) would be necessary on the basis of the “bell rope” principle, although, in my view, such a violation has clearly taken place. My expectation has been fulfilled, and I therefore merely note that I also agree with the petition that the three breaches of fundamental rights occurred conjunctively in the case of the Curia. The Curia had at its disposal not only the final court decision but also the final decision of the registry court, therefore the complete disregard of Article 28 of the Fundamental Law, despite the plaintiff's request, turned the substantive breach of Fundamental Law into an instrumental act and, consequently, it was also carried out at the procedural level.

Budapest, 13 April 2021.

*Dr. Tamás Sulyok,*  
President of the Constitutional Court  
on behalf of Justice *dr. Egon Dienes-Oehm*  
unable to sign

Concurring reasoning by Justice *dr. Miklós Juhász*

[93] I agree with the holdings of the decision, however, in my view, dignity – and its elements, including “personality” and “identity” – are characteristics of natural persons. I see another way to justify the constitutional protection – beyond the right to property – of the reputation of non-natural persons, including their image and symbols. The decisive factor in the present case is that the legal person in question, as a sports association, has an important community-building and integrative role, and thus

contributes to the development and maintenance of the self-image and self-identity of natural persons. This feature is unquestionable in the case of the petitioner in the present case, which ultimately leads to the same conclusion as the one laid down in the majority reasoning.

Budapest, 13 April 2021.

*Dr. Tamás Sulyok,*  
President of the Constitutional Court  
on behalf of Justice *dr. Miklós Juhász*  
unable to sign

Dissenting opinion by Justice *Dr. Balázs Schanda*

[94] In my view, the petitioner brought a purely private law dispute before the Constitutional Court, and the Constitutional Court should have dismissed the constitutional complaint for lack of a constitutional issue.

[95] Although the outstanding, overall sports results of the club (in the 120-year history of domestic men's football championships, Újpest has won twenty championship titles – only Ferencváros and MTK have won more) may be relevant information in this case, and I appreciate and respect these results and the commitment of the fans – regardless of whether they are the results of UTE's sport departments or Újpest FC – these results do not affect the constitutional assessment of the case. As the reasoning of the decision outlines, Újpest FC has been operating as a separate legal entity from UTE sports association since 1999, and since 2011 UTE has only had a minor shareholding in Újpest FC. The two entities are separate legal entities, with UTE being a mere minority shareholder in the FC. Of course, between two legal entities (in particular where one has an ownership stake in the other), a number of legal issues and contracts can arise and exist (e.g. agreements on the adoption and transfer of various elements of the corporate identity), the interpretation or breach of which (e.g. changing the coat of arms in a way that UTE as minority owner did not agree to) can lead to litigation. However, the resolution of this dispute raises primarily questions of lawfulness (legality) and not of constitutionality.

[96] According to Article I (4) of the Fundamental Law, statutorily established legal entities, including sports associations, are also guaranteed fundamental rights which, by their nature, do not apply only to human beings. I do not dispute the fundamental rights of the petitioner, as comprehensively set out in the decision, but its fundamental rights claims under Article VI (and, by extension, Article XIII) of the Fundamental Law are to be enforced against the State and not against another fundamental rights entity.



Turning a private law dispute into a constitutional issue is jurisdictional activism, an extension of the horizontal scope of fundamental rights. In my view, the dispute on which the case is based did not raise a fundamental rights issue and, in view of this, I did not support the annulment of the judgement of the Curia.

Budapest, 13 April 2021.

*Dr. Tamás Sulyok,*  
President of the Constitutional Court  
on behalf of Justice *dr. Balázs Schanda*  
unable to sign