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THE HUNGARIAN JUDICIAL PRACTICE RELATED TO DEFAMATION AND SIMILAR OFFENSES*

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In Hungary, the legal protection of human dignity and honour is realized on four levels. In the cases of false factual statements, or true factual statements made without legitimate interest, the concerned person may demand the protection of criminal law or may turn to the civil court for compensation by reason of the impairment of their personality rights. If the statement was published in the press, the person may also initiate a lawsuit for correction[1]. During the criminal proceeding, the defamer may be prosecuted; during the civil procedure, restitution (formerly: non-material compensation), that is, pecuniary compensation can be claimed from the defamer, while the result of the lawsuit for correction may be that the court obliges the publisher of the press product containing the defamation to apologize for the previous factual claim, and to publish a correction notice. If the violation of honour was not a consequence of factual statements, but an utterance of degrading opinion or value judgment, or a humiliating behavior, then certain cases of serious offense against personal interest may result in criminal proceedings, while in moderate cases, a misdemeanor proceeding may be initiated. Hereinafter, I will only discuss the regulation on the *criminal law* protection of honour and the practice of these rules in criminal courts[2].

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[1] These three procedures may as well be initiated in parallel.

[2] For Hungarian civil and press law matters, see e.g.: A. KOLTAY, *A szólásszabadság alapvonalai [Bases of the freedom of speech*, Budapest, Századvég, pp. 408-425 ; Q SAJÓ, *A szólásszabadság kézikönyve [Handbook of the freedom of speech]*; Budapest, MTA JTI – KJK, 2005, pp. 145-164 ; G. BENKE, « Személyiségvédelem a médiajogban [Protection of personality rights in the media law] », *in Menyhárd, Attila – Gárdos-Orosz, Fruzsina: Személy és személyiség a jogban. [Person and personality in the law.]*, Budapest, Wolters Kluwer, 2016, pp. 175-192; A. KOLTAY, « Az emberi méltóság védelmének kérdései a médiaszabályozásban és a joggyakorlatban [The protection of human dignity in the media regulation and the legal practice] », *in Menyhárd – Gárdos-Orosz, op. cit.*, pp. 193-246.

In Hungary, there were four main types of criminal cases for the protection of honour before 1994, while today there are three main types[3]. The first one is defamation, the second one is slander, and the third one is desecration. The fourth annulled case was the crime of « defamation of authorities or official persons », which was declared unconstitutional by the Constitutional Court in 1994.

As for defamation, according to both the current Criminal Code[4] and the former Criminal Code[5] being in effect prior to 2013[6] any person who, in the presence of a third party, engages in the written or oral communication of any fact that is injurious to the reputation of another person, or uses an expression which directly refers to such a fact, is guilty of *defamation*[7]. As opposed to this, the misdemeanor or the offence of *slander* can be committed by any person, who, apart from the case of defamation, « uses a degrading expression that is injurious to the reputation of another person, or commits other act in this regard »[8]. If this is committed *a)* in connection to the professional activity, public office or public activity of the victim or *b)* before the public at large, the offence of slander is committed; in any other case, the misdemeanor of slander is considered. In addition, slander can be committed by physical assault as well[9] (defamation only exists in the form of crime, and not as misdemeanor). Finally, desecration is committed by any person who violates the memory of a deceased person by the means defined in the cases of defamation and slander.

As for the crime of defamation, the protected legal interest, similarly to slander, is *honour*[10]. The Hungarian judicial practice interprets honour as having two sides: on the one hand, it is considered to be the self-esteem of a person, expressed by the category of *dignity*; on the other hand, it is the public appreciation and respect by the community for the person, expressed by the

[3] With this, the Hungarian regulation of defamatory offences, in essence, does not differ from the European mainstream. As for the European Union, for instance, 23 of the 28 member states criminalizes at least one of these acts. For the European practice concerning the crimes of defamation and slander (insult), see e.g.: Z. J. TOTH, « The regulation of defamation and insult in Europe », *in* A. KOLTAY (ed.), *Comparative Perspectives on the Fundamental Freedom of Expression*. Budapest, Wolters Kluwer, 2015, pp. 487-517.

[4] Act n° C of 2012.

[5] The statutory provisions regarding defamation and slander were rather similar to the present ones even from Hungary's first criminal code, the so-called Code of Csemegi (having become effective in 1880). See the historical evolution of the defamatory rules in Hungary: Z. J. TOTH, « The Regulation of Criminal Defamation and Insult in Hungary between 1880 – 1979 », *Journal on European History of Law*, 2018, vol. 9, n° 2, pp. 156-161.

[6] Act n° IV of 1978.

[7] According to the new Criminal Code, the offender is punishable by imprisonment for up to one year in principle: « The penalty shall be imprisonment not exceeding two years, if the defamation is committed: *a)* with malice aforethought or with malicious motive; *b)* libelously, before the public at large; or *c)* causing a significant injury of interest » (act n° C of 2012, art. 226, § (2)).

[8] Act n° C of 2012, art. 227, § (1).

[9] Slander is punishable similarly to the case of defamation (act n° C of 2012, art. 227, § (1)).

[10] For the possible meanings of honour in Hungarian criminal practice, see Z. SZOMORA, « A becsület mint jogi tárgy [The honour as a protected legal interest] », *in Menyhárd – Gárdos-Orosz*, *op. cit.*, pp. 247-268.

category of *reputation*. This means that honour is the general category which consists of two things: dignity and reputation. The violation of honour may occur either solely in case of violation of dignity or in case of violation of reputation alone; however, the judicial practice aims at objectifying the violation of dignity as, in this case, the main focus does not concern the *sense* of dignity but the social perception of the decline of self-esteem and its assessment by the community (hence, the violations of dignity and reputation are getting closer in practice).

The criminal conduct of defamation is the communication of a fact. Three forms of communication are possible: the assertion (that is, allegation) of a fact, transmission of a fact (passing on information derived from others), and the use of an expression directly referring to a fact. The latter (according to Justice of the Curia (Supreme Court), István Kónya) means « highlighting a characteristic aspect of a fact (...), from which (...) logically the whole event can be inferred »[11]. The asserted fact can be either false or true; in the latter case, defamation can be established if proving the truth is not permissible, or if it is permissible, but remains unsuccessful (I will discuss later what proof of truth implies). It is irrelevant whether the offender knew about the truth or falsehood of the communicated fact, and whether his/her intentions were in good or bad faith. However, the communicator of the fact must be aware that the fact he/she communicates is objectively capable of violating honour. The actual violation of the victim's honour as a result, however, is not necessarily a corollary to this crime (so defamation also occurs if, for example, no one believes the fact communicated).

The communication of a fact can be carried out not only orally or in writing, but in any other way as well, such as by depictions. The statement can be formulated not only in indicative mood, but in conditional mood as well, and even in the form of a question[12]. Defamation may be committed against anyone: not just a natural person, but also a legal person, because legal persons do not have dignity, but they do have reputation (goodwill) – based on the Hungarian practice – which may be protected by the criminal law. The victim does not have to be named for the crime to occur, but must be clearly identifiable. Defamation can only be committed « in the presence of others », which does not mean that other people should be at the same place where the assertion was made; the only requirement is that a third party be able to become aware of the stated fact[13]. If the act (the communication of a fact injurious to honour) is carried out merely against the victim, without it being perceivable by a third party, then it can only be slander.

[11] I. KÓNYA (ed.), *Magyar büntetőjog. Kommentár a gyakorlat számára [Hungarian penal law. Commentary for the legal practice]*, Budapest, HVG-ORAC, 2013, p. 872 (e.g.: « Here come the sticky fingers of the company »).

[12] E.g. « Do you still make a living out of prostitution? ».

[13] As a consequence of this, if allegations were made via email, by phone or in chat, defamation can be established as well.

It was not the Criminal Code, but the judicial practice that established that certain practices can not be considered a crime even if they correspond to the factual elements of defamation. Thus, the statement of a fact is not a crime due to the lack of unlawfulness in the following cases: if it was made in order to comply with the obligation to report or the obligation to bear witness[14], if it was made by the parties to judicial proceedings and their attorneys, by the clients or their legal representatives in a public administration procedure in a relevant matter in the given case, without unnecessary insult or reproach[15]; if it is included in a decision of an official, provided that it was necessary for determining the facts, evaluating the evidence or their legal qualification, overall, for the decision-making (including the verbal reasoning of the court order)[16]; the objective criminal report published in the press is not a crime[17]; and the characterization related to the education of a minor is not a crime either. The findings of scientific, cultural, artistic debates (e.g. a book review) are not considered unlawful either, even if they objectively violate the reputation of the other party[18].

As for the crime of slander, in Hungarian law, it has four types in principle. The first one is slander committed by statement of facts. This is similar to the crime of defamation except for the fact that, in this case, no one knows about the communication but the communicator and the victim, therefore, the insult remains in private (almost everything that was previously said in the case of defamation is applicable here, too.). The second one is the use of an expression (either in private or in public) that is injurious to honour (which is not a statement of facts, but a degrading value judgment, humiliating qualification, derogatory opinion) – this is termed « verbal slander » by the Hungarian judicial practice in a rather misleading way as this kind of value judgment can be achieved in writing or by illustration, as well. The third kind of slander is an act (or, more pecisely, a behaviour) that is injurious to honour (either in private or in public). According to the Hungarian judicial practice, the mocking imitation of disability, humiliating posture, gesture or mimicry, etc., are such examples. In the end, the fourth one is the physical slander, e.g. slapping, spitting, throwing things at someone, etc., if there is no permanent physical injury (because if there is one, the crime in question will be assault)[19] – here, it is also irrelevant whether someone else is present.

According to the judicial practice, those expressing a mere opinion or criticism are not punishable, even if they do so in a strongly worded or « tough » manner. Adopting a merely immoral, indecent, unusual, impolite conduct is not

[14] E.g.: Principled Decision of the Supreme Court of Hungary (hereinafter: EBH) 2004. 1011.
[15] E.g.: Case Decision of the the Supreme Court of Hungary (hereinafter: BH) 2004. 267.
[16] E.g.: BH 1991. 338.
[17] BH 1999. 434.
[18] For the issue of exemptions from criminal responsibility in defamatory cases, see in detail: N. KIS, M. HOLLÁN, B. GELLÉR, *A büntető törvénykönyv magyarázata II. Különös rész, 1 [Commentary on the Criminal Code II. Special Part, I]*, Budapest, Közlönykiadó, 2008, 476 p.
[19] For example, simple redness on the skin constitutes only slander (BJD 6445), while a bruise, as a result of the act, constitutes assault [Criminal Case Decision Archive (hereinafter: BJD) 6345].

considered a crime, such as simple jokes, teasing, simple mockery, disrespect, nor is swearing, cursing, rudeness, obscenity or other expression of anger.

Finally, desecration can be committed by the same conducts as defamation and slander, and the sanctions are also the same as those in the cases of defamation and slander[20]. The most significant difference is that the victim in this case is not actually the deceased person (whose memory, good reputation seems to be protected by the crime), but those living who are emotionally attached to the deceased, and his/her social memory is not indifferent to them. According to the ministerial reasoning of the Criminal Code, the protected legal interest is « the social appreciation manifested in the memory of the deceased and the sense of piety of the relatives ». Accordingly, no one can file a private motion against the perpetrator dishonoring the deceased but the relatives and heirs of the deceased[21].

The allegation of a fact thus can be 1) defamation (if a third party was present, in the sense I mentioned before), 2) slander (if the statement of facts was said in private) and 3) desecration (if the statement of facts concerned a deceased person), if this communication objectively violated the dignity or reputation of the victim. Nevertheless, the offender is not punishable if the stated fact proves to be true. However, proving the truth is not permissible in all cases; it is permissible only if the communication of the fact was justified by the public interest or the legitimate private interest of anyone[22]. This criterion implicitly prohibits the possibility to prove the statement of facts related to the private and family life if this statement of facts is both indifferent for the public, and unnecessary for the protection of others' rights. In the case of ordering – without a formal decision[23] – to prove the truth (the failure of which is a substantive infringement that may lead to the annulment of the judgment[24], and the ordering of which does not depend on the probability of success)[25], the burden of proof is reversed[26]. while the general rule resulting from the presumption of innocence is that the accuser has to prove, in the case of defamatory offenses, the accuser only has to prove that 1) the statement of facts was made, 2) it was performed by the accused person, 3) in a wilful manner – after which the defendant has to prove the truth of their allegation, namely that, regarding its essence[27], the assertion is objectively true (it is not necessary for every small detail to match exactly the reality, however, substantial deviation is not allowed). Since burden of proof is on the side of the communicator, if the defendant can not prove the

[20] Literally: « Any person who violates the memory of deceased persons by the means defined in Section 226 or Section 227 is guilty of a misdemeanor punishable as defined therein » (act n° C of 2012, art. 228).
[21] Act n° C of 2012, art. 231 § (3).
[22] See act n° C of 2012, art. 229 § (2).
[23] BH 1992, 226; BH 1994, 171.
[24] BH 2000, 285.
[25] EBH 1999, 87.
[26] From the judicial practice, see e.g. BH 1998, 412.
[27] BJD 7511.

compliance with reality of the fact communicated by him/her, the person commits defamation, slander or desecration[28].

It is a procedural rule that there is a possibility to make counterclaims if the defamation or the slander is mutually committed by the parties; however, the practice followed in several European countries according to which, in the case of mutually committed defamation and slander, the judge may avoid to impose punishment is not possible under Hungarian law.

Finally, we merely mention that, in addition to defamation, slander and desecration, there are other defamatory crimes in the current law (« degrading treatment of vulnerable persons »;[29] « production of sound or video recording of a defamatory nature »[30] and « publication of sound or video recording of a defamatory nature »[31]; as well as the « insult of authority »[32] and « insult of subordinate »[33] regulated among military crimes), however, the practical significance of these crimes is negligible.

Until 1994, there also existed the crime of « defamation of authorities or official persons », which was, however, declared unconstitutional and annulled by Decision n° 36 of 1994 of the Constitutional Court. At the same time, since the annulment did not have a retroactive effect, this provision had to be applied for such acts committed before June 1994 (until the early 2000s, the courts issued judgments in such cases). This crime virtually punished the criminal conducts of defamation and slander if these were specifically committed against a state or some local authority (as a legal person), or against the officials of these (this crime was most often committed against police officers who were serving at the time). The Constitutional Court declared it unconstitutional because this crime contained more severe sanctions than defamation and slander. Namely, the same behavior was punished more seriously by the Hungarian criminal law norms when the victim was an authority or an official. The Constitutional Court ruled that the criminal law protection of the reputation of authorities and official persons is not unlawful, but it should be proportionate to the right to freedom of expression; and it is disproportionate if the right to free expression is more

[28] It is therefore not necessary for the fact communicated to prove to be untrue, it is enough if doubt arises with regard to the truthfulness of the fact – below the level of certainty (see BH 540, 1999).
[29] « Any person who exhorts another person by exploiting his vulnerability to engage in conduct to humiliate himself is guilty of a crime (…), insofar as the act did not result in a more serious criminal offense » (act C of 2012, art. 225 § (1)).
[30] « Any person who produces a falsified or forged sound or video recording or a sound or video recording with untrue contents with intent to injure the good name or reputation of another person or persons, is guilty of a crime (…), insofar as the act did not result in another criminal offense » (act C of 2012, art. 226/A).
[31] « Any person who makes available to the public a falsified or forged sound or video recording or a sound or video recording with untrue contents with intent to injure the good name or reputation of another person or persons, is guilty of a crime (…) » (act C of 2012, art. 226/B § (1)).
[32] « Any person who affronts the authority: *a)* of a superior officer, *b)* of a person in a position senior to his, a guard or other representative of public authority in the line of duty, in front of others or in a conspicuously gross manner is guilty of a crime (…) » (act C of 2012, art. 447 § 1)).
[33] « Any person who insults his subordinate in his human dignity in front of others or in a manifestly gross manner is guilty of a crime » (act C of 2012, art. 449 § (1)).

restricted in case of officials than otherwise (namely, if officials are protected by criminal law to a greater extent than others).

In addition, Decision n° 36 of 1994 of the Constitutional Court also included a constitutional requirement for the judicial application of the crime of *slander*, according to which: « *the sphere of expression has to be broader in relation to persons and institutions who exercise public authority and politicians who act in public than as regards other persons. An expression of a value judgement capable of offending the honour of an authority, an official person or a politician, which was expressed with regard to their public capacity is not punishable under the Constitution; and an expression directly referring to such a fact is only punishable if the commissioner (...) knew that the essence of their statement is false or did not know about its falseness because they failed to pay attention or exercise caution which had been reasonably expected of them, pursuant to the rules applicable to their profession* »[34]. Shortly: according to the Constitutional Court, *slander* can not be committed against officials or politicians in any case by a mere expression of opinion if such defamatory acts are related to their status of this context. By doing so, the Constitutional Court virtually made a legislation (according to László Sólyom, president of the Constitutional Court at the time, « the Constitutional Court wrote into the Criminal Code »)[35], while the literal text of the Criminal Code remained unchanged.

However, the judicial practice did not follow the standards set by the Constitutional Court. This requirement was clear: the obligation of politicians to endure criticism is greater than that of ordinary citizens, and those who criticise them can not be punished for their defamatory opinions; only the assertions against them may be punished (and only if the statement is objectively false, or true, but is not related to the official activity or politician status of the victim). Nevertheless, the ordinary courts confronted the instruction of the Constitutional Court, and they continued to sanction in their practice the excessive, offensive, defamatory opinions and other acts (as if the Constitutional Court had not determined any constitutional requirement). The courts thus actually continued their practice from before 1994, according to which there is a « defamatory threshold » or « limit of offense »[36] beyond which an opinion can not go, even in

[34] CC Decision n° 36 of 1994 (VI. 24.), Constitutional Decisions' Archive (hereinafter: ABH) 1994, 219, operative part 1.
[35] G. A. TÓTH, « A "nehéz eseteknél" a bíró erkölcsi felfogása jut szerephez. Beszélgetés Sólyom Lászlóval, az Alkotmánybíróság elnökével [In "hard cases", the judge's moral sense prevails. Conversation with László Sólyom, President of the Constitutional Court] », *Fundamentum*, 1997, vol. 1, pp. 31-43. In addition: « [i]n fact, these crimes were actually modified » (L. SÓLYOM, « Kölcsönhatás az Emberi Jogok Európai Bíróságának esetjoga és a szólásszabadság védelme között Magyarországon [Interaction between the case law of the European Court of Human Rights and the protection of the freedom of expression in Hungary] », *Állam- és Jogtudomány*, 1996–1997, vol. 3-4, p. 170).
[36] See Z. SZOMORA, « Az alkotmányos követelmények hivatkozási tipológiája becsületsértési és rágalmazási ügyekben hozott büntetőítéletekben [Reference typology of constitutional requirements in criminal convictions in defamation and slander cases] », *Jogtudományi Közlöny*, 2014, vol. 10, pp. 469-476.

the case of a public figure or an official – although, according to the Constitutional Court, there is no such limit, and politicians must always endure the diatribes expressed in certain opinions (if these opprobrious expressions concern their status of politician and not that of private person).

However, there were two problems with this court practice that remained from before 1994. One is that the Supreme Court did not set any standard regarding these cases whether a particular utterance can be considered an opinion or a statement of facts. For this reason, it was up to the court or, in many cases, to the personality of the judge whether a particular communication was considered a statement of facts (that is, defamation) or an abusive expression of opinion (that is, slander). The other problem was that there was no standard either to measure the degree of exaggeration, provocation and reproach that would make an opinion punishable for slander. For these two reasons, the judgments of the courts were inconsistent.

I will discuss only a few specific examples. The Supreme Court evaluated as a *lawful* expression of opinion the case in which a journalist wrote about a far-right politician that he was « anti-Semitic », as well as « lunatic ». The court evaluated as a statement of fact (*punishable* defamation) the case in which a critic of a local government politician said that he was « uneducated ». It was considered a *lawful* expression of opinion when a journalist was said to be a « liar ». The statement according to which the victim is a « real criminal » was considered *unlawful* expression of opinion, and thus slander. It was *not punishable* to read a musician's poem on the radio, in which the following were said about the director at the time of the administrative office of Budapest: « Or there is the half-witted László Grespik, put a rope around his neck, and let him hang! » – according to the court, the musician did not commit defamation or slander[37], because a politician is expected to tolerate even exaggeration and provocation[38]. So it seems to be obvious that the Hungarian criminal courts could not decide where this threshold should be drawn.

In one of the most important criminal procedures in Hungary, it was evaluated as a statement of facts (and therefore defamation was established) when a journalist wrote about the former parliamentary representative Imre Mécs, a revolutioner sentenced to death after the revolution against the Soviets in 1956, that he had escaped from death penalty in the end because he had betrayed his fellows, and that some of them were executed as a result of his betrayal. It is interesting that this was the only judgment after the political transformation of 1990 in which the offender (not the journalist himself, but the editor-in-chief of the newspaper, András Bencsik) was sentenced to enforceable imprisonment (however, this was modified later to suspended imprisonment in the second

[37] See Case Decision of the third instance of the Court of Appeal of Budapest, Bhar, 200/2008/5.

[38] By the way, the same uncertainty also occurred in civil law matters. Some examples from lawsuits for the protection of personality are: The following statements were found to be lawful by the courts: « liar », « fraudulent », « soulless », « traitor »; but « evil person with AIDS », « paranoid », « cockroach », « coming from a questionable background », « raffish figure » were considered unlawful.

instance, and the Supreme Court ultimately reduced the sentence to fine). Every court concluded that this utterance was a statement of facts that was made in a matter of public interest, but the editor-in-chief was not able to prove the truth of this allegation[39].

Regarding the defamatory *expressions of opinion*, the judicial practice was even more unstable. As I have mentioned, according to the Constitutional Court, politicians and officials were expected to tolerate reproach in all cases (*unless the reproach would violate the unrestrictable core of human dignity*)[40], but the judicial practice considered the existence of a « diatribe threshold », thus the seriously offensive opinions or other acts were actually punished by Hungarian courts. The base decision of this judicial practice was a judgement from 1995[41], according to which: « Disparaging, degrading, vituperative or opprobrious utterences which seriously violate human dignity made against authorities or officials – as a result of the decision of the Constitutional Court – constitute the crime of slander at most, which is punishable on a lawful private motion ». Later the criminal courts always referred to this decision seeing it as a quasi-precedent, though it was not made by the Supreme Court, but merely a provincial court of appeal[42]. In the end, however, this practice was also approved by the Supreme Court in 2001 when it declared in a case: « The crime of slander is established if, in relation to the official operation of the mayor (at the same time, parliamentary representative) as a private plaintiff, the defendant uses expressions that go beyond the exercise of the constitutional rights related to the expression of opinion, exceed the degree the toleration of which is expected of public figures and politicians due to their status, and which are injurious to the human dignity and reputation of the victim »[43].

However, there were great differences between courts regarding where this border should be drawn. For example, the *crime of slander* was established in a concrete case because of a statement that contained that the insulted policeman

[39] Otherwise, in Hungary, no prison sentence was ever enforced lawfully for defamatory crimes – as opposed, for example, to the practices from Italy, Austria or Germany, where this sometimes happens. Even suspended imprisonment is rare in such cases, typical is fine, but even more the probation, which (in addition to the establishing of having committed the crime) implies in Hungarian law the postponement of imposing the sentence.

[40] For example, in an election case, the Constitutional Court ruled that *identification of persons (even politicians) with animals infringes the unrestrictable core of the fundamental rights of these persons.* In this case, during the campaign of the parliamentary elections in 2014, a candidate wanted to have a TV company broadcast a political advertisement in which he depicted two prime ministers (his political rivals: Viktor Orbán and Ferenc Gyurcsány) as monkeys. More precisely, in this TV spot, a monkey hangs on the voice of the two prime ministers, rapping and dancing while taking a large pile of bananas around him. The TV company rejected to fulfil the candidate's request; and later this rejection was qualified by both the election committees and the Supreme Court as legitimate. The candidate turned to the Constitutional Court against the decision of the Supreme Court, but the Constitutional Court held that this decision is not unconstitutional as the identification of humans with animals dehumanises the persons concerned. See CC Decision 3122 of 2014, (IV. 24.), Reasoning, [17].

[41] BH 1995, 6.

[42] Baranya County Court.

[43] BH 2001, 99.

was a « communist hireling, henchman of ÁVO, bastard »[44], while in another case the expression of « asshole policeman » had the same result[45]. However, the court did *not* find the expression of « cocksucker policeman »[46], nor that the insulted mayor was « corrupt » defamatory[47]. However, nothing could be done for a long time with this incoherent, divergent judicial practice, because the Constitutional Court had no power to annul concrete judicial decisions that violated the constitutional requirements it had set. This was the case until 2012, when the so-called « real constitutional complaint »[48] was introduced into the Hungarian legal system, which made it possible for interested people to turn to the Constitutional Court not only against unconstitutional laws, but against unconstitutional judicial application of laws and individual judicial decisions as well[49]. This enabled the Constitutional Court to control judicial decisions and the judicial practice.

[44] ÁVO (State Protection Department of the Hungarian State Police) was the secret service of the communist regime.

[45] Case Decision of the third instance of the Court of Appeal of Szeged, Bhar.I.103/2012/4.

[46] Case Decision of the third instance of the Court of Appeal of Pécs, Bhar.II.99/2011/7.

[47] Case Decision of the third instance of the Court of Appeal of Budapest, 5.Bhar.213/2008/12.

[48] For the real constitutional complaint, see in detail: J. Z. TOTH, « Az egyéni (alap)jogvédelem az Alkotmányban és az Alaptörvényben (I-II. rész) [The Protection of (Fundamental) Rights in the Constitution of the Republic of Hungary and the Fundamental Law of Hungary (Part I and II.)] », *Közjogi Szemle*, 2012, vol. 3, 2012, vol. 4, pp. 11-19 and 29-37. For certain parts of the new competencies and practice of the Constitutional Court, see e.g.: Z. BALOGH, « Alkotmánybíróság [Constitutional Court] », *in* L. TRÓCSÁNYI, B. SCHANDA (eds.), *Bevezetés az alkotmányjogba [Introduction to constitutional law]*, Budapest, HVG-ORAC, 2012, pp. 343-374; C. CSERVÁK, « Sajátos alkotmánybíráskodási modellek [Specific Models of Constitutional Jurisdiction] », *Jogelméleti Szemle*, 2015, vol. 3., pp. 59-66, esp. pp. 60-62; J. T. KOVÁCS, « Vélemény- és sajtószabadság [Freedom of speech and press] », *in* L. CSINK (ed.), *Alkotmányjog [Constitutional law]*, , Budapest, Novissima, 2014, pp. 44-54; B. BITSKEY, B. TÖRÖK, *Az alkotmányjogi panasz kézikönyve [Handbook of the constitutional complaint]*, Budapest, HVG-ORAC, 2015, 290 p.; A. TÉGLÁSI, « The Protection of Fundamental Rights in the Jurisprudence of the Constitutional Court of Hungary After the New Fundamental Law Entered into Force in 2012 », *in* Z. SZENTE, F. MANDÁK, Z. FEJES (eds.), *Challenges and Pitfalls in the Recent Hungarian Constitutional Development: Discussing the New Fundamental Law of Hungary*, Paris, L'Harmattan, 2015.

[49] Interestingly, the introduction of the constitutional complaint against « real » court judgments has already occurred during the change of regime, however, due to the resistance of the Supreme Court and the indifference of the Opposition Roundtable (as they considered the introduction of the erga omnes procedure, that makes it possible for everyone to initiate a posterior abstract norm control than that of the « real » constitutional complaint which would serve as the means of the individual /basic/ legal protection), it was eventually removed from the agenda of constitutional issues. (see: The Introduction of Sólyom László, p. 19, *in* G. HALMAI, Gábor – G. A. TÓTH (eds.), *Emberi jogok [Human rights]*, Budapest, Osiris, 2003, pp. 13-20.) After this, the idea of introducing the « real » constitutional complaint was raised from time to time, most recently by the Constitutional Court and its president who formulated at the beginning of the constitutional process the need to ensure an institution that would protect individual legal rights – concurrently with the abolition of the possibility of posterior abstract norm control – thus the constitutional body would be the one that constituted the « real » constitutional complaint (for details see: The letter written by Paczolay, Péter, the president of the Constitutional Court addressed to Salamon, László, the president of the commission founded for the elaboration of the Constitution, on September the 29th 2010: http://www.parlament.hu/biz/aeb/info/ab.pdf.) The introduction of this legal institution was also promoted by several other constitutional lawyers [see for instance: G. HALMAI, « The constitutional complaint – present and future? », *Bírák Lapja*, 1994, vol. 3-4, pp. 45-50; K. KOVÁCS, « Essential Content of Constitutional Jurisdiction », *Alkotmánybírósági Szemle*, 2011, vol. 1, pp. 93-99;

The first such decision made in a case of criminal defamation was brought in April 2014[50]. In this case, the ordinary court had to make a decision in a public debate from a small town (Siklós). The debate was between the mayor and one of the municipal representatives of the city, going on for years by the time; as one of its stations, the local representative stated the following: « While they do not feel sorry about spending the money of taxpayers on themselves and manage it as if it was theirs, the (...) town administration (...) came up with a drastic austerity package (...) ». According to the court of first instance[51], the statement that they manage the money of the city as if it was theirs was an expression which directly referred to a fact, based on which the representative essentially accused the mayor of embezzling the money of the town. However, he could not prove this, thus he committed the crime of defamation, and therefore the court sentenced the offender to a fine. The court of second instance agreed with the court of first instance and upheld its decision[52].

The convict turned to the Constitutional Court, and the Constitutional Court found that the courts violated the local representative's right to freedom of expression. The statement was made in a matter of public interest (it was about the criticism of the wealth management of the local government), and the addressee of this statement was a politician, who has a greater obligation of enduring criticism, and who has to tolerate indefinitely the opinions even if these opinions are intensified or offensive. According to the Constitutional Court, the text did not actually contain any factual statement, only a very negative value judgment, and everyone should have the right to this against a politician, otherwise the free, fearless public debate would be impossible (here, the Constitutional Court explicitly refers to the practice of the European Court of Human Rights, and the danger of the « *chilling effect* » within it[53]).

Finally, in this case, the Constitutional Court also defined in principle the aspects that have to be examined by ordinary courts in cases of defamation. According to these, it is first necessary to decide whether a given statement was made in a public debate; and if so, then secondly, whether it was a factual statement or only a value judgment (the latter is not constitutionally punishable)[54]. Thus, this decision of the Constitutional Court provided aspects applicable for the courts[55], moreover, the Constitutional Court clearly stated that,

M. BIHARI, « Mihály: Constitutional Court and Constitutional Jurisdiction », *Magyar Jog*, 1999, vol. 4, pp. 200-214, esp. p. 212.

[50] CC Decision n° 13 of 2014 (IV. 18.)

[51] District Court of Siklós, 4.B.85/2012/16.

[52] Regional Court of Pécs, 4.Bf.276/2013/7.

[53] CC Decision n° 13 of 2014. (IV. 18.), Reasoning, [30].

[54] The difference between the two is that « as opposed to value judgments, the statements of facts always contain concrete facts the reality of which can be justified and verified by proof » (CC Decision n° 13 of 2014 . IV. 18.), Reasoning, [41]).

[55] This decision followed the 4th amendment of the Fundamental Law of Hungary of 2013 which amended the constitution with the following text: « The right to freedom of expression may not be exercised with the aim of violating the human dignity of others » (Art. IX par. (4) of the Fundamental Law). However, according to the Constitutional Court, this modification did not caused any real change in the constitutional approach to the contradiction between the right to dignity and the right to

in the future, it will exercise its new competence for annulling those ordinary judicial decisions that are contrary to the constitutional criteria. Furthermore, Decision n° 13 of 2014 of the Constitutional Court included another important innovation: instead of *public figure* it placed *public affair* in the center of constitutional examination, thus the focus shifted from subjectice aspects to objective ones; so it is no longer important whether the criticized person is generally a public figure (e.g. a politician), but instead whether the statement is made in relation to a public affair[56].

Thus, the Constitutional Court applies certain elements of the criteria elaborated by the European Court of Human Rights for the judgments of ordinary courts[57] and it expects the implementation of this from the Hungarian courts since 2014. Since then, there has been only one criminal case in which the courts deviated from the constitutional requirements: in this case, a private individual criticized the local notary in a Facebook post, classified her as a « clan » member, claiming that the notary is « racist » and discriminates the Roma. This was considered a crime (partly defamation and partly slander) by the court of first instance, the court of second instance, and the Supreme Court, as well, however, according to the Constitutional Court, the ordinary courts violated the defendant's right to freedom of expression, thus it declared these judgements unconstitutional[58]. However, beyond this one case, since 2014, there has been no criminal case in which the conflict between the right to freedom of expression and the right to human dignity would have been judged by the ordinary courts in a way contrary to the constitutional criteria[59] – and in the light of the current judicial practice we can expect that this will remain in the future as well.

freedom of expression. (see A. TÉGLÁSI, « András: Véleményszabadság vs. emberi méltóság – Egy rejtélyes alaptörvény-módosítás nyomában [Freedom of speech vs. human dignity – In the trace of a mysterious constitutional amendment] », *Acta Humana*, 2015, vol. 6, pp. 25-47.

[56] See also CC Decision n° 28 of 2014 (IX. 29); CC Decision n° 31 of 2014 (X. 9).

[57] For these criteria and the practice of the ECtHR related to defamatory cases, see in detail: Z. J. TÓTH, « A defamatorikus deliktumokkal kapcsolatos részes állami büntetőbírósági döntések megítélése a strasbourgi bíróság gyakorlatában. [Judgement of the decisions of the Member States' criminal courts concerning defamatory cases in the practice of the European Court of Human Rights] », *in* A. KOLTAY, B. TÖRÖK (eds.), *Sajtószabadság és médiajog a 21. század elején 4 [Freedom of the press and media law at the beginning of the 21st century]*, Budapest, Wolters Kluwer, 2017, pp. 309-423.

[58] CC Decision n° 3263 of 2018 (VII. 20.).

[59] However, this claim is not true for the cases concerning the protection of the likeness of police officers. In the course if this, the Constitutional Court had to repeal several ordinary courts' decisions since some of those favoured the personality rights of police officers over the freedom of the press – in opposition to the constitutional requirement set up by the Constitutional Court (for more details, see, e.g.: J. Z. TÓTH, « Rendőrképmás: sajtószabadság és képmáshoz való jog a polgári jogi és az alapjogi jogosultságok keresztútján. [Likeness of police officers: Freedom of the press and the right to facial likeness at the crossroad of civil and fundamental rights] », *Pro Futuro*, 2017, vol. 2., pp. 110-128; E. ORBÁN, « A (rendőr)képmás és kerete: az alkotmánybírósági határozatok helye a jogrendszerben. [The facial likeness of police officers and its framework: the place of the decisions of the Constitutional Court in the legal system] », *Jog Állam Politika*, 2018, vol. 2, pp. 41-58.

CONCLUSIONS GENERALES