

## Decision 7/2021 (II. 19.) AB

### On the dismissal of a constitutional complaint seeking a finding of conflict with the Fundamental Law and annulment of Judgement No Pfv.IV.20.636/2016/4 of the Curia

In the matter of a constitutional complaint, with concurring reasonings by Justices *Dr. Ágnes Czine, Dr. Egon Dienes-Oehm, Dr. Ildikó Marosi Hörcher, Dr. Miklós Juhász* and *Dr. Balázs Schanda*, as well as with dissenting opinions by Justices *Dr. Tünde Handó, Dr. Attila Horváth, Dr. Imre Juhász, Dr. László Salamon* and *Dr. Mária Szívós*, the Constitutional Court, sitting as the Full Court, has adopted following

decision:

The Constitutional Court hereby dismisses the constitutional complaint seeking a finding of conflict with the Fundamental Law and annulment of Judgement No Pfv.IV.20.636/2016/4 of the Curia.

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

Reasoning

I

[1] In the constitutional complaint submitted to Budapest-Capital Regional Court, the petitioner sought, on the basis of Section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the Constitutional Court Act), a finding of unconstitutionality by non-conformity with the Fundamental Law and subsequent annulment of Judgement No Pfv.IV.20.636/2016/4 of the Curia, alleging a violation of Article II, Article VII (1), Article IX (4) and Article IX (5) of the Fundamental Law.

[2] As a preliminary ground for initiating the procedure, the petitioner submitted that as claimant he had brought an action against the defendant publisher for infringement of his personal rights because the publisher had published a volume with the title on its front page "Great Scrounge" (*translator's note: in Hungarian "Nagy Harácsony" – a pun on words substituting the initial letters K as in "Nagy Karácsony" meaning "Great Christmas" with H transforming the meaning of the word into the act of scrounging*), depicting an altered version of Gerard Von Honthorst's painting entitled *Adoration of the Shepherds* (1622), original characters' faces were being replaced by the faces of while Jesus' image was being replaced by a pile of gold coins. The petitioner pleaded that he had suffered a violation of his rights in connection with his adherence to the Catholic Christian community. In his action, he sought a

declaration of infringement, an order that the defendant cease and desist from further infringement, an order that the defendant publish statements of apology and a claim for HUF 500,000 in damages, plus interest and costs. His action was dismissed by the court of first instance. The court of second instance, hearing the petitioner's appeal, upheld the judgement of the court of first instance. Subsequently, the Curia, hearing the request for review, upheld the final judgement. The petitioner then applied to the Constitutional Court.

[3] The petitioner considers that his right guaranteed by the Fundamental Law was infringed because, in his view, the front page depicted the nativity scene of Jesus in an unjustifiably insulting manner, which offended religious sensibilities, by presenting Christian symbols as symbols of heresy and idolatry of money, thus violating his human dignity in view of his Christian identity as a Catholic. This is because, according to the previous case law of the Constitutional Court, religion or adherence to a community may be a decisive element of a person's personality. [Decision 4/1993 (II. 12.) AB, Decision 96/2008 (VII. 3.) AB.] In the petitioner's view, his freedom of religion, that is, his fundamental right to respect for the symbols and liturgy of his religion and its exercise in an undisturbed manner within the community, was also undermined by the court's finding that the severely offensive and unjustifiably insulting communication against the religious community was admissible on the ground of the defendant's freedom of expression.

[4] In the grounds of the petition, the contested judicial decision is contrary to the Fundamental Law because the court accepted without criticism the defendant's argument that the contested communication was intended solely to criticise the politicians concerned and had no anti-religious purpose. The proceeding courts bypassed the issue of the permissibility of the use of symbols of a religion in public discourse as a means of stigmatising behaviour deemed reprehensible; they also failed to explore the socio-historical context, ignoring both the petitioner's personal experience of religious persecution and the Soviet anti-religious propaganda images adduced in the first instance proceedings. In the submission of the petitioner, the courts had failed to consider whether the front page had used Christian symbols in such a manner as to incite hatred. The petitioner believes that it follows from the logic of the judgment under review that in every case in which the author of a blasphemous communication claims that its underlying aim was to convey a social or political message, the courts may refuse to grant legal protection, rendering inapplicable the legal provision protecting the religious community. In the view of the petitioner, the judgement of the Curia also contravenes the provisions of Article IX (4) and (5) of the Fundamental Law on the limitation of freedom of expression in order to protect the dignity of religious communities, because it should have considered the extent to which the contested communication was or was not capable, as perceived in the public eye, of infringing the respect for the dignity of the members of the communities concerned. In his opinion, the judgement also violates the relevant Section of the Civil Code because the court considered the harm to the community to be assessed not only from the point of view of the community concerned, but in the overall social, legal and political context.

[5] 1. The provisions of the Fundamental Law referred to in the petition read as follows:

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

“Article VII (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one’s religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practise or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life.”

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

(5) The right to freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates their community, invoking the violation of their human dignity, as provided for by an Act.”

[6] 2. The provision of the Civil Code interpreted in the court judgement reads as follows:

Section 2:54 (5) Any member of the community shall be entitled to assert his or her personality rights in the event of a prejudice to his or her right which constitutes an essential trait of his or her personality and which, in connection with his or her membership of the Hungarian nation or of a national, ethnic, racial or religious community, seriously offends the community before the public at large or is unjustifiably insulting in its manner of expression within a preclusive time limit of thirty days from the date of the violation. Any member of the community may enforce all the sanctions for violation of the right to personality, with the exception of the surrender of the pecuniary advantage obtained by the violation.”

### III

[7] Pursuant to Section 56 (1) of the Constitutional Court Act, the Constitutional Court decides on the admissibility of a constitutional complaint in a panel sitting as defined in its Rules of Procedure, and pursuant to Section 56 (2), the panel entitled to decide on admissibility considers the substantive statutory conditions for the admissibility of a constitutional complaint, in particular the relevance of the complaint with regard to concernment under Sections 26 to 27, the exhaustion of remedies and the criteria under Sections 29 to 31.

[8] In the course of its consideration of the matter at issue, the Constitutional Court found that the petition contains an explicit request and complies with the formal and substantive statutory requirements [Section 52 (1b), (5) to (6) of the Constitutional Court Act].

[9] The petitioner did not consent to the disclosure of his own data.

[10] The constitutional complaint was received by the proceeding court within the statutory time limit. The Constitutional Court has not yet ruled on the conformity of the contested judicial decision with the Fundamental Law.

[11] The petitioner also invokes a violation of his rights guaranteed by the Fundamental Law in Article II and Article VII. Article IX (4) to (5) of the Fundamental Law lays down specific rules in relation to restrictions on freedom of expression under Article IX, explicitly in relation to the right to human dignity under Article II and, therefore, any violation of the former can be considered in the context of the assessment of a violation of the right to human dignity.

[12] The prejudice alleged by the petitioner was suffered by him as a result of the decision on the merits of the case; he was a claimant in the court proceedings and is therefore a person concerned. The petitioner has exhausted the legal remedies available to him.

[13] The Constitutional Court considered that it is a question of fundamental constitutional significance how Section 2:54 (5) of the Civil Code should be interpreted in accordance with Article II of the Fundamental Law, also in the light of Article IX (4) to (5) of the Fundamental Law (Section 29 of Constitutional Court Act).

[14] Based on the foregoing, the Constitutional Court admitted the constitutional complaint.

[15] The petitioner failed to submit a self-standing and detailed statement of grounds under constitutional law in connection with the alleged violation of his freedom of religion under Article VII (1) of the Fundamental Law; therefore, this part of the petition was not considered on the merits.

#### IV

[16] The petition is unfounded, for the reasons set out hereunder.

[17] 1. The Constitutional Court emphasises as a starting point for its consideration of the constitutional complaint that "pursuant to the consistent practice of the Constitutional Court, it does not consider whether the evidence and arguments presented in the statement of grounds of the judicial decision are well-founded, whether the judiciary has correctly assessed that evidence and those arguments, and whether the facts established in the specific case as a result of the judicial assessment and the conclusion drawn from them are well founded, just as it does not consider whether the interpretation of the law by the courts is correctly in accordance with the accepted rules of legal doctrine." {See Order 3207/2015 (X. 27.) AB, Reasoning [12]; and Order 3067/2016 (IV. 11.) AB, Reasoning [18]; Order 3117/2016 (VI. 21.) AB, Reasoning [16]}. Correspondingly, no assessment of the petitioner's personal experience regarding religious persecution, the Soviet anti-religious propaganda images mentioned by the petitioner could be made by the Constitutional Court in the present case, nor could it take a position on the issue of whether the specific magazine cover challenged by the petitioner

violated the Christian religious community and, through it, the petitioner's human dignity. The consideration of these questions lies well beyond the competence of the Constitutional Court. In the main proceedings, the petitioner's adherence to a religious community, the classification of such affiliation as an essential trait of his personality and the high degree of publicity of the impugned communication were not disputed; therefore, the Constitutional Court in the constitutional complaint procedure had to apply the joint interpretation of the wording an infringement "seriously offend[ing] the community [...] or [being] unjustifiably insulting in its manner of expression" in Section 2:54 (5) of the Civil Code and the relevant provisions of the Fundamental Law, and to consider the extent to which the contested judgement remained within the scope of constitutional interpretation.

[18] 2. Pursuant 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. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble to that law and the justification of the proposal for or for amending the law.

[19] On the basis of the above, the Constitutional Court first considered the manner in which Section 2:54 (5) of the Civil Code is to be interpreted in the context of the petition in accordance with Article II and Article IX (4) to (5) of the Fundamental Law.

[20] Pursuant to Section 2:54 (5) "[a]ny member of the community shall be entitled to assert his or her personality rights in the event of a prejudice to his or her right which constitutes an essential trait of his or her personality and which, in connection with his or her membership of the Hungarian nation or of a national, ethnic, racial or religious community, seriously offends the community before the public at large or is unjustifiably insulting in its manner of expression".

[21] Section 2:54 (5) of the Civil Code became part of the Code on the basis of the proposed amendment to draft Act No T/7971. The proposed amendment No T/7971/215 of the committee drafted the following provision: "any member of the community who suffers harm to a right which affects the personality of an individual shall be entitled to assert a right of personality, provided that the prejudice so suffered is capable of triggering a well-founded sense of threat to the members of the community". The explanatory memorandum to the proposed amendment stated that the provision creates the possibility of defence under civil law against collective defamation. However, the final text of the provision, which is in force today, was introduced by the adoption of proposed amendment No T/7971/226 prior to the final vote. As stated in the explanatory memorandum to the proposed amendment, "the collective protection of personality rights should only be allowed for certain fundamental rights, otherwise freedom of expression would be infringed. Collective protection of personality rights must be limited, that is, it must be ensured that only justified and flagrant violations are sanctioned."

[22] The purpose of some of the conditions restricting the possibility of enforcement was defined in the explanatory memorandum in following manner:

“(a) The insertion of the words infringement »which constitutes an essential trait of his or her personality« is necessary in order to ensure that only in serious cases and only those who are genuinely part of the community will be protected. (b) The use of the phrase »before the public at large« is intended to keep personal relations and private conversations out of the courtroom in this context. (c) The use of the phrase »seriously offensive (...) or unjustifiably insulting in its manner of expression« is necessary because a certain level of criticism must be tolerated by a community. (d) The limitation period should be limited to 30 days because of the risk of bringing lawsuits without limits, since within the limitation period, any member of the community could bring countless lawsuits under the same legal title. By introducing a time limit, the number of cases can be reasonably limited and the cases can be consolidated; given that the right sought to be enforced remains the same.”

[23] The current text of Article IX (4) and (5) of the Fundamental Law was established by the Fourth Amendment to the Fundamental Law of Hungary (25 March 2013). The explanatory memorandum to Draft No T/9929 on the Fourth Amendment to the Fundamental Law of Hungary explains that “the Draft aims to establish at the level of the Fundamental Law that human dignity may be an external limit to freedom of expression, and to create the constitutional basis for the possibility of sanctioning certain cases of hate speech by civil law in the event of violations of the dignity of communities. As the relevant previous case law of the Constitutional Court has made it clear, effective action against hate speech cannot be ensured at the level of the law, and therefore it is justified to lay down its foundations by amending the Fundamental Law. The Draft lays down the constitutional rules for the creation of legal remedies against communications that violate the dignity of the communities listed in the provision. The consistent judicial practice of the domestic courts considers an infringement of personality rights to be established only if the identity of the victim can be established directly or indirectly, but individually, from the conduct of the infringer. This way, where a person claims to be the recipient of hate speech, but his or her identity cannot be determined on the basis of the hateful manifestation, he or she forfeits the possibility of bringing a civil action. The Draft therefore specifies that the exercise of freedom of expression may not be directed against the dignity of the Hungarian nation, national, ethnic, racial or religious communities. Under the Draft, such expressions which are offensive to the communities may give rise to claims for the violation of human dignity before the courts. The Draft will open up the possibility for victims of violations of their personality rights to bring actions under civil law.”

[24] The explanatory memorandum to the Amendment to the Fundamental Law uses the term “hateful manifestation” alongside the term “hate speech”. In this connection, the Constitutional Court points out that, in line with its case law, the right to express one’s opinion under Article IX (1) of the Fundamental Law “includes acts beyond oral or written communication”; “the person expressing an opinion may communicate his or her ideas not only in words, but also, for example, by way of images, symbols or wearing clothing, in other words, in symbolic speech, manifested in the use of symbols, may be one of the classic issues of the freedom of expression [cf. most recently Decision 4/2013 (II. 21.) AB]” {Decision 3089/2019 (IV. 26.) AB, Reasoning [25]}. As the scope of the means of expression and the right to express one’s opinion are broader than verbal expression, Article IX (4) and (5) of the Fundamental Law protects the

dignity of individuals and communities against communicative acts other than ordinary "speech". In this context, the Constitutional Court points out that "assessing whether or not the relevant communicative act falls within the scope of freedom of expression shall require the complex evaluation of several factors [...] in order to handle an act as an expression of opinion, it is a necessary but never a sufficient precondition that the actor acted for the purpose of expressing his or her opinion, although in the course of assessing an act from the point of view of the freedom of opinion, the judiciary should primarily consider the aim or the motivation the actor had when he or she performed the conduct. Nevertheless, for the applicability of freedom of opinion, it is also necessary that the selected form of communication should be an objectively suitable instrument, a medium for the communication of ideas {Decision 1/2019 (II. 13.) AB, Reasoning [36]; Decision 3089/2019 (IV. 26.) AB, Reasoning [26]}

[25] The Constitutional Court has not yet applied Article IX (5) of the Fundamental Law on the merits, but it has already interpreted Article IX (4) in several decisions. Considering that Article IX (4) and (5) of the Fundamental Law were introduced by the same amendment to the Fundamental Law, both provisions, directly or indirectly, have the protection of human dignity as their purpose, and based on the similar wording of the two provisions ("[the] right to freedom of expression may not be exercised with the aim of violating the human dignity of [others or specific communities]"), the Constitutional Court has taken as a point of departure its case law on paragraph (4) when interpreting Article IX (5) of the Fundamental Law.

[26] In its decisions interpreting Article IX (4) of the Fundamental Law, the Constitutional Court has stated that "the protection of honour, good standing of reputation [...] arising from human dignity constitute a constitutionally justifiable restriction on freedom of opinion and thus on public affairs. It is also obvious that a person does not exercise his freedom of expression in public, who uses terms that are seriously hurtful or offensive in order to humiliate another person as a human being. Accordingly, human dignity, which directly embodies human status, marks the boundary of freedom of public debate. Speech affecting public matters must yield to such unrestricted essence of human dignity, which determines human status." {Decision 13/2014 (IV. 18.) AB, Reasoning [29], Decision 3348/2018 (XI. 12.) AB, Reasoning [26]}.

[27] In line with the case law of the Constitutional Court, "[f]reedom of opinion opens the door not only to certain perceptions or ideas, but also to the opportunity for expression. [...] In order to control public power or the persons exercising public power and to inform and draw the attention of the public, they may also include a certain degree of exaggeration and provocation. This is what provides the basis for pluralistic and diverse democracies. However, in view of the provisions of Article IX (4) of the Fundamental Law, the Constitutional Court stresses, in comparison with the previous practice of the Constitutional Court, that the limit of freedom of opinion is the protection of honour and the good standing of reputation arising from the human dignity of others. That is to say, freedom of expression no longer provides protection against self-serving communications, such as those relating to private or family life, which are outside the scope of public affairs, and which are intended to be mere humiliation or the use of offensive or offensive terms {cf. with the Reasoning [34] to [36] of this Decision and Decision 7/2014 (III. 7.) AB, Reasoning [62]}. Furthermore, it does not protect the opinion expressed in the public debate if its content violates the unrestricted core of human dignity,

thus embodying an obvious and serious contempt for human status {*cf.* with the Reasoning [29] to [32] of this Decision and Decision 7/2014 (III. 1.) AB, Reasoning [60] and [62]}..” {Decision 13/2014 (IV. 18.) AB, Reasoning [40]; reaffirmed in Decision 3145/2018 (V. 7.) AB, Reasoning [59] and [65]}

[28] In a recent decision interpreting Article IX (4) of the Fundamental Law, the Constitutional Court also pointed out that “the provision marks the limit of freedom of expression, but such limit is not an insult to someone, but an insult to human dignity. Expressions which subjectively offend the personality but do not amount to an affront to human dignity are protected by Article IX of the Fundamental Law.” {Decision 3048/2020 (III. 2.) AB, Reasoning [31]}

[29] In the light of the wording and purpose of Article IX (5) of the Fundamental Law and the above-quoted case law of the Constitutional Court, it can be concluded that in order to protect the dignity of the Hungarian nation, national, ethnic, racial and religious communities, freedom of expression and thus speech on public affairs may be subject to constitutional restrictions. Freedom of expression no longer protects self-serving statements about communities which are outside the scope of the discussion of public affairs and which are intended to cause mere hatred, to degrade the human dignity of members of the community, to use seriously offensive or abusive language or to otherwise cause prejudice to certain rights. The exercise of freedom of expression may not be directed to such ends. Nor should the expression of an opinion in a public debate entail a violation of the inalienable core of human dignity, and thus a manifest and grave denigration of the human status of the persons belonging to the community. The limit to freedom of expression is not, however, an insult to a community (or of the individuals belonging to it), but an insult to the dignity of the community. An affront to the dignity of a community is not the same as an affront to the community, still less an affront to the feelings of individual members of the community. The violation of the human dignity of an individual belonging to a community in the very context of his or her belonging to that community naturally results in the violation of the individual’s subjective sentiments. Conversely, however, this is not a matter of course: the violation of the subjective value judgements, emotional orientation or possible sensitivity of a member of the community does not necessarily result in a violation of his or her human dignity or the dignity of the community. Expressions which may subjectively offend individuals belonging to the communities referred to in Article IX (5) of the Fundamental Law, but which do not amount to an offence to their human dignity, are protected by Article IX (1) of the Fundamental Law.

[30] Section 2:54 (5) of the Civil Code may be interpreted in accordance with the Fundamental Law in the light of the above findings. In view of the foregoing considerations, a communication can necessarily be classified as “seriously offensive” or “unjustifiably insulting in its manner of expression” if it violates the inalienable core of the human dignity of the members of the community or if it is otherwise aimed at arbitrarily violating the dignity of the community or its members.

[31] However, the question of when an opinion expressed for the purpose of discussing a public matter is to be considered “unjustifiably insulting in its manner of expression” requires further consideration. According to a possible approach, the above condition is deemed to be fulfilled if the party expressing the opinion could have sought a form of expression that was neutral or



non-offensive to the community in question. However, it is easy to argue against this approach on many grounds. First of all, imposing a disproportionate restriction on freedom of expression would lead to a situation where only opinions expressed in the least offensive style and form conceivable would be lawful. Secondly, this approach ignores the fact that, even in the case of verbal communication, the thought content and the form of the communication are closely linked, and that in the case of images and communicative acts, it is precisely the combination of the two, often inseparable, that constitutes the opinion. Thirdly, this approach cannot be supported by the wording of the Civil Code, which does not grant protection against all offensive or abusive communications, but only against those that are seriously offensive and those that are unjustifiably insulting. According to another possible approach, in the case of discussing a public matter, especially if the aim is to control public power or those exercising public power and to inform and draw the attention of the public, the chosen form and style of expressing an opinion may not be inconsistently or excessively offensive, but criticism, irony, a certain degree of provocation, and, where appropriate, mildly offensive or insulting statements shall remain protected by freedom of expression. This interpretation is in line with the wording of the Civil Code, takes into account the freedom of style of the party expressing the opinion and does not lead to disproportionate restrictions on freedom of expression. The Constitutional Court also draws the attention of the courts applying the provision to the necessity to assess with due care the message, the purpose and the degree of offensive nature of, or harm caused by, a given communication, not only in relation to the content and form of the communication in question, but also in relation to the context within the relevant medium and the social environment. Where a community in our country has historically suffered serious violations, or is subject to recurrent assaults in the present, then the dignity of that community within society may be considered more vulnerable.

[32] With regard to religious communities, the Constitutional Court emphasises in particular that the protection afforded by Article IX (5) of the Fundamental Law extends not only to religious communities which are in a minority within society, but also to a community whose members may constitute a majority in relation to society in its entirety. This also follows from the principles of equality before the law and non-discrimination under Article XV (1) and (2) of the Fundamental Law, which require the law to treat all persons concerned as persons of equal dignity. The Fundamental Law expresses in the National Avowal that “[w]e recognise the role of Christianity in preserving nationhood” and “[w]e value the various religious traditions of our country”. In the light of these considerations, the same degree of legal protection is undoubtedly accorded to the dignity of Christian religious communities, irrespective of their numerical size, as is accorded to other religious communities.

[33] 3. The Constitutional Court subsequently considered in line with the constitutional standard described above whether the interpretation of the law contained in the judgment of the Curia was consistent with the protection of the right to human dignity guaranteed by Article II of the Fundamental Law and, in conjunction with it, Article IX (5) thereof, in the context of the specific case on which the constitutional complaint was based.

[34] According to the interpretation of the court of first instance, the unlawful conduct under Section 2:54 (5) of the Civil Code must in any event be directed against the community

concerned, which presupposes a certain level of consciousness in this context; without direct intent, such an infringement can hardly be imagined to have been committed by accident or negligence. In contrast, the court found that the subject matter of the front page consisted solely in the conduct of the leading politicians featured; the front page merely used religious symbols as an analogy, which the court held could not in itself be unlawful. The court did not contest the fact that some people were outraged or offended by the front page, but this does not necessarily amount to an offence to the community.

[35] The judgement of the court of second instance stated that the provision does not expressly contain a purpose, but its application requires that the harm suffered by the community be "radiated" to the person bringing the action. However, the court found that the claimant, as a member of the Catholic community, suffered no harm as a result of the publication of a headline mocking politicians.

[36] In its judgement, the Curia pointed out that due to the novelty of Section 2:54 (5) of the Civil Code, no extensive judicial practice concerning the provision had been developed as yet, and it was the first case for the Curia to hear such a case. The statement of grounds for the judgement reiterated that, in accordance with the case law of the Constitutional Court, freedom of expression protects opinions expressed regardless of their value, the expression of opinion may also be strident and shocking. In the interpretation of the Curia, the law does not require having intent in order for the infringement to be committed, it is essentially a "result-focused" regulation; having said that, it must be assessed not only from the point of view of the given community, but in the entire social, legal and political context. The Curia concurred with the final judgement in that the communication at issue was not to be assessed from the point of view of the subjective sensitivity of the claimant, but on the basis of an external and objective approach. On this basis, the disputed front page is essentially a characterised expression of opinion on the persons and activities of public politicians (that is, it expresses the authors' view that the persons depicted have an air of religious devotion to material gain); however, neither the front page nor the internal content of the page addresses religious life, the behaviour or the perception of believers. The Curia held that, applying an external objective approach, the opinions expressed and the manner in which they were presented were not intended to degrade the Christian religion, the community of believers, nor were they offensive to the religious community (see the Curia's judgement, Statement of Grounds [4] to [6], [7], [11], [13] to [15]).

[37] In the Constitutional Court's view, the courts in the main proceedings underlying the review of constitutionality at issue here correctly recognised the importance of the consideration of the purpose of the communication [since Article IX (5) of the Fundamental Law sets limits to opinions aimed at infringing the communities named therein]. However, it is not in accordance with the Fundamental Law for the court of first instance to conclude that, if the expression of an opinion is intended to discuss public affairs, any use of the symbols of a particular religion in this context is necessarily lawful. An affront to the dignity of a religious community may not be committed solely for such a purpose, but in principle also in the context of the discussion of a public matter, whether in the case of direct criticism of the religious community or in the case of instrumental use of religious content (or symbols). In comparison,

the Curia correctly clarified the interpretation to the extent that Section 2:54 (5) of the Civil Code can be applied even in the absence of express intent, and the communication, regardless of its direction, cannot result in serious insult or humiliation of members of the religious community. On the basis of the “external and objective approach” applied by the Curia as a method of investigation, on the one hand, the sense of offence of the members of the community does not necessarily lead to establishing an infringement; on the other hand, courts cannot deny legal protection merely because the author of a communication that seriously offends the community or is unjustifiably insulting in its expression claims that its underlying purpose was to convey a social or political message. Having considered the front page in question, the Curia found, first, that it was neither aimed at insulting Christians nor did it convey a negative value judgement of believers. On the other hand, the Curia identified the specific political opinion conveyed by the authors, the form of expression of which, namely the religious simile depicted in the visual representation, was not found to be arbitrary or unjustified in relation to the content of the opinion. Since the Constitutional Court had not yet applied Article IX (5) of the Fundamental Law on the merits before, the courts in the main proceedings could obviously not have been able to take into account the interpretative aspects set out in detail in the present decision, which are relevant for future court decisions. However, in the light of the reasons given for the judgement by the Curia, it can be stated that the challenged judgement remained within the scope of constitutional interpretation.

[38] 4. On the basis of the above, the Constitutional Court found that the Curia’s decision did not violate the petitioner’s right under Article II and Article IX (5) of the Fundamental Law, and therefore dismissed the petition.

[39] The Constitutional Court reiterates that, due to the limitations of its material competence, the Constitutional Court did not establish in its decision whether or not the actual front page complained of by the petitioner seriously offended or unjustifiably insulted the Catholic religious community and, through it, the human dignity of the petitioner.

[40] At the same time, the Constitutional Court also points out that, under Article IX (1) of the Fundamental Law, any person, including members of the community concerned, the press or public figures, may express their critical opinion in relation to statements not contrary to Section 2:54 (5) of the Civil Code, but which are slightly injurious or offensive to a community, and which may be considered unethical or distasteful.

[41] 5. As explained in detail in the reasoning of the this Decision, the Constitutional Court emphasises that the expression of opinions that self-servingly insults or otherwise seriously offends religious symbols or the object of religious veneration may be restricted in order to protect the dignity of the religious community or its members, on the basis of Article IX (5) of the Fundamental Law. However, in the context of a discussion of public affairs, which may be critical, it is not inherently unlawful to use religiously related content in a visual form that is reasonably appropriate to the content of the opinion expressed, but the manner of expression of the communication must not be unjustifiably insulting to the religion or religious community concerned.

[42] The Constitutional Court reiterates that freedom of expression and freedom of the press, as well as freedom of conscience and freedom of religion, are among the fundamental values of European civilisation and the Hungarian constitutional tradition. In applying Section 2:54 (5) of the Civil Code, the courts and, as the supreme judicial body, the Curia, and ultimately the Constitutional Court, regarding the issue of interpretation in accordance with the Fundamental Law, are responsible for maintaining public discourse at the centre line of fairness and moderation that ensures both the democratic discussion of public affairs and the peaceful coexistence of religious communities in society.

[43] 6. The Constitutional Court ordered the publication of the decision in the Hungarian Gazette pursuant to the second sentence of Section 44 (1) of the Constitutional Court Act in order to promote the development of a judicial practice in accordance with Article IX (5) of the Fundamental Law.

Budapest, 2 February 2021

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

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

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

Dr. Tamás Sulyok sgd., Chief Justice of the Constitutional Court on behalf of Justice dr. Egon Dienes-Oehm prevented from signing

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

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

Dr. Tamás Sulyok sgd., Chief Justice of the Constitutional Court on behalf of Justice dr. Ildikó Hörcherné dr. Marosi prevented from signing

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

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

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

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

