Köblös, Adél[1]

The jurisprudence of the Constitutional Court of Hungary in the cases related to legal relationships under private law

I. Introduction

One of the main objectives of the research project "The interpretation of fundamental rights in Europe", organised by the Mádl Ferenc Institute of Comparative Law and involving experts from Central European countries, is to explore and present the methods of interpretation and the tests of the limitation of fundamental rights applied by the constitutional courts of the countries concerned, as well as the style of constitutional argumentation. This empirical research is based on thirty constitutional court decisions selected in each country by the authors of the studies as "country reports". The selection is limited to decisions adopted in the past ten years whose majority reasoning contains a substantial reference to a judgment of the European Court of Human Rights (ECtHR). The analyses follow a predefined set of criteria, focusing mainly on the frequency, weight and role of the methods of interpretation of the law, which are considered traditional.

In connection with the research, on 29 June 2021, young researchers and PhD students gave presentations on the relationship between constitutions and fundamental rights and private law at an on-line conference entitled "Application and interpretation of fundamental rights in Europe". Some of the speakers analysed, on the basis of certain foreign decisions, the type of private law cases before the constitutional court, whether specific methods of constitutional interpretation can be identified in cases involving private law, whether the question of the horizontal scope of fundamental rights is raised in the jurisprudence, and what position the respective constitutional court takes in this respect. [2] Others presented and analysed a prominent decision of the constitutional court[3], or gave an insight into the relationship between EU law and the horizontal scope of fundamental rights[4].

In connection with the above, the present study focuses on whether there are specific elements of constitutional interpretation (interpretation of fundamental rights) in the jurisprudence of the Constitutional Court of Hungary in the context of legal relationships under private law. The primary focus of the analysis is on the reasoning of the majority decisions adopted in private law cases, from among the ones selected for the above-mentioned research project. However, I will also mention a few decisions which, although not included in the selection, are necessary to present a more complete picture. As basis of the comparison, I will first briefly outline the conclusions that can be drawn from the Constitutional Court's constitutional interpretation in general, based on all the thirty decisions. I will then review the main features of the reasoning of Constitutional Court decisions in private law cases. However, the relationship between the Fundamental Law, in particular fundamental rights, and private law cannot be characterised without touching on the much-debated issue of horizontal scope. I will therefore address this issue as well.

---

[1] Senior research fellow, University of Public Service, Department of Civilistics.

[2] See the studies below: Dakar, Roc: The Slovenian Constitutional Court as an Actor in Commercial Disputes; Sehnálek, David: The Interpretation and Application of Fundamental Rights in Civil Cases in the Czech Republic.

[3] See the study below: Bartis, Előd: Admitted exceptions of unconstitutionality regarding to the provisions of the Romanian Civil Code. The case law of the Romanian Constitutional Court.

[4] See the study below: Bektasheva, Aida: Application of fundamental rights in EU contract law: briefly overview.

II. Interpretation methods used by the Constitutional Court in a nutshell

The analysis of the selected thirty decisions showed that although Article R(3) of the Fundamental Law sets out a guideline to be followed in the interpretation of the constitution[5], and other provisions of the Fundamental Law also contain rules on interpretation[6], they do not play a prominent role in the jurisprudence of the Constitutional Court.[7] In contrast to the ECtHR, for example[8], the Constitutional Court has not made a comprehensive statement, either in a specific decision or in any other form, as to which methods it considers acceptable and which it does not, and what importance and weight it attaches to each method. Such references are rather sporadic.[9] The analysis of the reasonings for these decisions reveals a practice that is by no means set in stone.

The primary method of interpretation is to refer to previous Constitutional Court decisions. This is generally accepted and reasonable solution, although it is true that sometimes the quotations from previous decisions are too lengthy and sometimes they are only remotely related to the specific subject of the investigation. It should be emphasised that the Constitutional Court, while taking into account the specific features of each case, also strives to make – as far as possible – its interpretation of the constitution a logical system without contradictions.[10] Thus, it is not merely the similarity of a previous case that provides the basis for referring back to a previous decision, but also the following of the established doctrinal system. However, this general statement does not imply that the absence of contradictions is achieved without exception and that there are no "outlier" cases.

Another method that is very often used is contextual interpretation in the broad sense, i.e. when the Constitutional Court interprets one provision of the Fundamental Law in comparison with another. It feeds on the idea of the constitution being a coherent system without contradictions.[11]

Although the text of the provisions of the Fundamental Law is of primary importance when it comes to deciding whether the principles developed in the decisions of the Constitutional Court under the previous Constitution can be followed[12], the legal meaning of the words is of particular importance, especially when the dogmatic system behind the often very abstract and concise provisions and the legal principles applied are also taken into account.

---

[5] The referred paragraph provides for the application of the objective teleological method in the interpretation of the provisions of the Fundamental Law, and for interpretation in accordance with the National Avowal and the acquis of our historic constitution. The relationship of the methods mentioned here to each other is not clear, i.e. it is not possible to determine from this text alone what to do if some methods would lead to contradictory results.

[6] Such is the case, for example, with the provision in Article 28 of the Fundamental Law, according to which, when interpreting the Fundamental Law (and the laws), it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good.

[7] This applies even to the otherwise clear and generally accepted objective teleological interpretation, which appeared individually in seven of the thirty decisions, while in nine others it was mentioned by invoking earlier Constitutional Court decisions. Interpretation in line with the National Avowal and the achievements of our historical constitution is still rather experimental after ten years: a few vague references appear in the decisions in a rather illustrative way.

[8] See: Hungarian Helsinki Committee v. Hungary, No. 18030/11, judgment of 8 November 2016.

[9] E.g. Decisions 5/2016. (III. 1.) of the Constitutional Court and Decision 34/2017. (XII. 11.) of the Constitutional Court.

[10] See: Szente Zoltán: Érvelés és értelmezés az alkotmányjogban. Dialóg Campus, Budapest, 2013, p. 46.

[11] The Constitutional Court "shall continue to interpret and apply the Fundamental Law – in accordance with its aims – as a coherent system and will consider and measure against one another, every provision of the Fundamental Law relevant to the decision of the given matter." Decision 12/2013. (V. 24.) of the Constitutional Court.

[12] See: Decision 13/2013. (VI. 17.) of the Constitutional Court.

Due to the criteria used for the selection of decisions, the research is not suitable for measuring the weight of international conventions, in particular the European Convention on Human Rights (ECHR) and the judgments of the European Court of Human Rights (ECtHR), in constitutional interpretation. However, it can be deduced – even on the basis of the decision on the abstract competence of constitutional interpretation[13] – that the Constitutional Court, when interpreting the Fundamental Law, takes into account the obligations that come with membership of the European Union and the obligations that Hungary is subject to under international treaties.[14]

While it is accepted that international conventions, such as the ECHR, should be taken into account in constitutional interpretation, the situation is highly controversial with regard to the judgments of international courts, in particular the ECtHR. Although it is a recurring principle in the decisions that the Constitutional Court accepts the level of legal protection provided by international legal protection mechanisms as a minimum standard for the enforcement of fundamental rights[15], in reality the assessment of the ECtHR and the judgments of the ECtHR is not uniform among the members of the Constitutional Court.[16]

On the basis of the analysis of the thirty decisions, the research showed that the ordinary meaning of words, word combinations, logical interpretation, derogatory formulas, the jurisprudence of ordinary courts, Acts of Parliament or other laws, proposals and norms of other public bodies, historical interpretation, academic works on jurisprudence and non-legal values are not of paramount importance in the interpretation.

III. The characteristics of constitutional interpretation in private law cases

III.1. The decisions examined

The relation between legal relationships under private law and the constitution is a subject-matter generating much debate, in particular the question of the application of fundamental rights in legal relationships under private law. In Hungary, the development of the law in this area was significantly influenced by the introduction of the so-called genuine constitutional complaint against judicial decisions.[17] As András Téglási[18] – also following Attila Menyhárd[19] – points out, the practitioners of constitutional law are more in favour of,

[13] Decision 2/2019. (III. 5.) of the Constitutional Court.

[14] These are based on Articles Q) and E) of the Fundamental Law.

[15] See: Decision 13/2014. (IV. 18.) of the Constitutional Court, Decision 13/2020. (VI. 22.) of the Constitutional Court from among the selected decisions dealing with private law.

[16] Let me just briefly refer to the difference of principle between two former Justices of the Constitutional Court, András Bragyova and Péter Kovács [Bragyova András: Az értelmezés hatalma. Alkotmánybírósági Szemle, 2011/1. pp. 83-92.; Kovács Péter: Az Emberi Jogok Európai Bírósága ítéletére való hivatkozás újabb formulái és technikái a magyar Alkotmánybíróság, valamint néhány más európai alkotmánybíróság mai gyakorlatában. Alkotmánybírósági Szemle, (2013), 2. 73-84.; Kovács Péter: Az Emberi Jogok Európai Bíróságára és más nemzetközi egyezményekre való hivatkozás az Alkotmánybíróságon és a Nemzetközi Büntetőbíróságon: hasonlóságok és különbségek. Miskolci Jogi Szemle, 2020/1. Special edition, pp. 145-135.], and, more recently, the criticism by the Béla Pokol, Justice of the Constitutional Court – which is based not only on principle [sovereignty, etc., see e.g. his concurring reasoning to the Decision 3025/2014 (17. II.) of the Constitutional Court, but also on the statements of former Strasbourg judges [see the dissenting opinion attached to the Decision 1/2019. (II. 13.) of the Constitutional Court].

[17] Csehi Zoltán: A valódi alkotmányjogi panasz és a magánjog lehetséges jövőjéről. Alkotmánybírósági Szemle, 2012/2. pp. 126-130.; Vissy Beatrix: Támpontok a valódi alkotmányjogi panasz hatókörének megállapításához. Közjogi Szemle, 2014/2. pp. 40-46.

[18] Téglási András: A magánjog alapjogiasítása – kritikák és veszélyek, p. 167. Jogelméleti Szemle, 2020/2. pp. 164-172.

[19] Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az

while the practitioners of private law are more against the enforcement of fundamental rights in private law relations, although even among the practitioners of private law, there are some scholars who are in favour of the direct horizontal scope of fundamental rights[20]. It is by no means my intention to present or analyse these approaches in detail, but only to the extent that they contribute to a more complete picture.

Eight[21] of the thirty decisions selected relate to legal relationships under private law in the broad sense. This is a significant number in the sense that it represents a not insignificant proportion of the total of thirty decisions. However, in absolute terms, this is a low number, thus the validity of the conclusions that can be drawn from them is easily questionable. Moreover, the case concerning the constitutionality of the Act on the integration of cooperative credit institutions is a very specific one, because although the state intervened in the legal relationships between cooperative credit institutions (not in the contractual relations between cooperatives and their customers), it did so, among other things, by means of an Act, by using instruments of company law (capital increase). Of the other decisions, four concern personality protection, one relates to the law of succession and one to the presumption of paternity. The eighth case is about labour law. Three out of the four cases related to personality protection stem from the same source, shedding light to the conflict between the position of the supreme judicial forum (and the jurisprudence following it), based on civil law doctrine, and the Constitutional Court's approach based on fundamental rights, in the proceedings initiated on the basis of constitutional complaints against the judicial decisions taken under Act IV of 1959 on the Civil Code (hereinafter: old Civil Code). The fourth case is also related to personality protection, but it concerned the examination of the constitutionality of the provision of Act V of 2013 on the Civil Code (hereinafter: Civil Code). The sheer number of these cases marks the focal point where the clash between private law thinking and fundamental rights requirements takes place, and where the power struggles between the two forums (the Curia and the Constitutional Court) have erupted to the surface. This is not a necessity[22], but a reflection of the actual legal/social situation of the period under review.

In four of the eight cases, the Constitutional Court examined laws (Act on the integration of cooperative credit institutions, the Civil Code's rule on the protection of the image of a person and the rule on challenging the presumption of paternity, as well as a government decree promulgating an international convention, and a decree-law on the procedure required in the case of diplomatic or other immunity), while in four cases the Constitutional Court examined judicial decisions. In only three of the norm control procedures was a private law provision the subject-matter of the investigation, while in the fourth case, which was a judicial initiative, the question to be decided was whether the exemption from international jurisdiction based on an international convention or the binding effect on the courts of the position of the Minister of Justice on the issue of exemption violated the right to fair trial.

Alaptörvény hatálybalépését követő első három évben – különös tekintettel a tulajdonhoz való jog alkotmányos védelmére. p. 150. Jogtudományi Közlöny, 2015/3. pp. 148-157.

[20] Tamás Lábadi was one of them, who advocated the direct horizontal scope of fundamental rights, as Renáta Bedő points out in her study. See: Bedő Renáta: Az alapjogok érvényesülése magánviszonyokban Magyarországon – Fókuszban a fórumrendszer. p. 59. Fundamentum, 2018/1. pp. 58-69.

[21] Decision 7/2014. (III. 7.) of the Constitutional Court, Decision 20/2014. (VII. 3.) of the Constitutional Court, Decision 28/2014. (IX. 29.) of the Constitutional Court, Decision 36/2014. (XII. 18.) of the Constitutional Court, Decision 5/2016. (III. 1.) of the Constitutional Court, Decision 16/2016. (X. 20.) of the Constitutional Court, Decision 34/2017. (XII. 11.) of the Constitutional Court, Decision 13/2020. (VI. 22.) of the Constitutional Court.

[22] In several cases, the Constitutional Court has examined the Curia's uniformity of law decisions in connection with the so-called foreign currency loan contracts and the legal provisions interfering with these contracts. Decision 3167/2014. (VI. 3.) of the Constitutional Court, Decision 34/2014. (XI. 14.) of the Constitutional Court, Decision 2/2015. (II. 2.) of the Constitutional Court, Decision 7/2015. (III. 19.) of the Constitutional Court, Decision 3057/2015. (III. 31.) of the Constitutional Court.

In connection with the latter decision, it should be pointed out that in a very large proportion of constitutional complaints submitted in private law disputes, the petitioners complain of the violation of their right to fair trial. Some of these do indeed allege unfairness of the procedure as such, but a very significant number of others challenge – through the right to fair trial – the court's interpretation of the (substantive) law. For a long time, Constitutional Court has refrained from ruling on the merits of such complaints on the grounds that it did not wish to play the role of a super-court, as its task is to decide constitutional issues rather than simple questions of interpreting the law, the latter being ultimately the competence of the Curia.[23] This categorical seclusion was later loosen up in a civil law case (damage caused by wild game) in 2017[24], when it explained that a court that does not comply with the relevant legislation is essentially abusing its independence, which may in some cases lead to a violation of the right to a fair court trial. A court judgement that disregards the law in force without good reason is arbitrary, cannot be conceptually fair and is incompatible with the rule of law.[25]

Although protection against arbitrary action by public authorities is the main purpose of fundamental rights, the above approach could be a way for the Constitutional Court to (also) exert a significant influence in the interpretation and application of private law rules. It should be stressed that the right to fair trial does not guarantee the right to the right decision[26], making a distinction between arbitrary and wrong (erroneous) decisions is not easy, and the set of criteria developed so far by the Constitutional Court is far from compete.[27]

The right to fair trial, even in procedures of private law disputes, concerns the relationship between individuals (or their organisations) and the State as the judicial authority, and sets requirements in relation to that legal relationship.[28] Today, this legal relationship is considered to be of a public law nature[29]. The fact that the proceedings take place in a private law dispute (between persons juxtaposed according to substantive law) is relevant with regard to the scope of the requirements arising from the right to fair trial, in terms of the content of that right. With this in mind, I will leave the analysis of the decision dealing with the right to fair trial out of the further examination.

As regards the remaining judgements, none of them concern the law of contracts, which is characterised by dispositive nature, but instead concern cases in the fields of personality protection, the law of succession and family law. Looking at the cases decided on the merits in recent years by the plenary session, one can conclude that cases concerning the

[23] E.g.: Decision 3356/2021. (VII. 28.) of the Constitutional Court

[24] Decision 20/2017. (VII. 18.) of the Constitutional Court.

[25] However, this practice is not limited to the realm of private law. In the Decision 23/2018 (XII. 28.) of the Constitutional Court, the Constitutional Court confirmed its above position in a constitutional complaint procedure initiated by the National Bank of Hungary following an administrative court action brought on the basis of a decision by the National Bank of Hungary, while the Decision 12/2021 (IV. 14.) of the Constitutional Court dealt with a social security case.

[26] Decision 9/1992 (I. 30.) of the Constitutional Court.

[27] In the Decision 12/2021 (IV. 14.) of the Constitutional Court, the elements of this were summarised by the Constitutional Court as follows: "a judicial decision is *contra legem* – and also *contra constitutionem* – if: (1) the reasons given by the court before which the case was brought did not state why it disregarded the provisions of the law in force governing the legal matter in question; (2) it did not take into account the legal norms governing the case; (3) it based its decision on a jurisprudence the normative basis of which had already been repealed by the law-maker". In a previous decision of No. 24/2020 (X. 15.) of the Constitutional Court, the five-member panel of the Constitutional Court explained that the *joint* existence of the above conditions may lead to establishing a conflict with the Fundamental Law (although in the case concerned the Constitutional Court failed to present the examination of the third condition). According to the legal literature, the role of a genuine constitutional complaint can be found in the handling of so-called *Justizmord* cases. See: Csehi: supra p. 129.

[28] See the argument of András Téglási on the fundamental rights of processual character. Téglási 2020: supra p. 172.

[29] Kengyel Miklós: Magyar polgári eljárásjog. Osiris, Budapest, 2012, p. 36.

law of contracts arise relatively less frequently before the Constitutional Court, but personality protection is a hit topic.[30]

III.2. Methods of interpretation used in Constitutional Court decisions concerning legal relationships under private law

The analysis of the seven Constitutional Court decisions examined showed that, even in private law cases, the primary approach is to refer to previous Constitutional Court decisions as well as interpretation in a broad contextual sense, i.e. by taking into account another provision of the Fundamental Law. Interpretation based on the legal meaning of words, including interpretation on the basis of dogmatic and legal principles, also played a prominent role. The legal principles *favor testamenti* and social publicity are examples for the above.

In about half of the decisions, in the interpretation, the Constitutional Court relied on the objective purpose of the provision of the Fundamental Law (in particular, the double justification of this right in the context of freedom of expression)[31], foreign legal solutions and the jurisprudence of ordinary courts. In this context, the decision on the law of succession deserves special mention[32], as it presents in detail the private law rules and the resulting consistent case law of the notaries public and the jurisprudence, as well as the findings of the same content found in civil law commentaries and academic jurisprudential literature. From all this, one can conclude that the judicial decision challenged in the complaint falls within the exceptional cases where the court adopted an "incorrect" (unlawful) decision. However, the Constitutional Court stressed that its decision is not based on the substantive rules of civil law and the related jurisprudence, but on the provisions of the Fundamental Law: the violation of fundamental rights does not result from the infringement of the statutory law (*contra legem* interpretation), but from the violation of the fundamental right to succession.[33]

In two cases, there was a reference to academic works of jurisprudence, exclusively referring to sources on private law (e.g. commentaries on the Civil Code). The examination of the thirty decisions also showed that the use of the legal literature – the number of which is actually very low overall – is not related to constitutional law issues, but to the application and interpretation of the law in the relevant branches law. Two decisions also contain *ad absurdum* interpretations: both relate to the conflict between freedom of the press and human dignity in the field of personality protection. The reference to statutory rules also played a role in two cases: first, in the case concerning the integration of cooperative credit institutions, where the Constitutional Court identified the constitutionally acceptable public interest as the purpose of the restriction of ownership on the basis of the preamble of the relevant Act, and secondly, in the above-mentioned case concerning succession, where it presented the civil law provisions on the freedom of disposal of the owner.

Compared to the total of thirty decisions, the examination of the seven decisions affecting private law does not reveal any major differences in the methods of interpretation used. Perhaps the only difference that should be highlighted is the more frequent reference to

[30] Bedő: supra p. 60.

[31] E.g. Decision 7/2014. (III. 7.) of the Constitutional Court: freedom of expression serves both the fulfilment of individual autonomy and, from the community side, the possibility of creating and maintaining a democratic public opinion.

[32] Decision 5/2016. (III. 1.) of the Constitutional Court.

[33] In this way, protection as a fundamental right has been granted the deceased's right of testamentary disposition to give a right of usufruct to the person named in his will (his heir) in the event of his death.

jurisprudence, which appeared in slightly more than half (four cases) of the seven decisions examined.

III.3. The horizontal scope of fundamental rights

The Constitutional Court of Hungary recognises the horizontal scope of fundamental rights.[34] As explained in the Decision No. 8/2014 (III.20.) AB based on the Government's motion for an abstract interpretation of the constitution in relation to "foreign currency loan contracts"[35]: "the debate whether *fundamental rights and State objectives* have an influence on private law is today limited to the question of how the constitution-statute affects private law relationships. In other words, the methods and intensity of the impact are the matter for debate. Under the doctrine of indirect effect, however, the legal relationships under civil law remain civil even after the constitution-staute has been enforced. The *rights enshrined in the Fundamental Law* can filter into the system of private law through the general clauses of private law. Therefore, where even a general clause cannot be applied, constitutional rights cannot have a direct effect in private law either. In relation to foreign currency based contracts, the Hungarian Constitutional Court has interpreted the question of horizontal scope not as a question of whether certain contracts may be directly contrary to the Fundamental Law, but as a question of whether the court has taken the provisions of the Fundamental Law duly into account in its application and interpretation of the law. *And what is enshrined in the Fundamental Law can be fundamental rights, State objectives or constitutional values*. (...) Article 28 of the Fundamental Law expressly states that in the application of the law, "courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law." *(emphasis mine)*

The above quotation argues in favour of indirect horizontal scope: fundamental rights provisions can be enforced in the field of private law through the so-called general clauses. However, it is not clear from the highlighted passages and the wording whether this refers only to fundamental rights or also to other provisions of the Fundamental Law, such as Article M)[36], from which no fundamental rights but constitutional rights (may) follow. Neither is it clear what the role of the general clauses is in the relationship between the Fundamental Law (fundamental rights) and the legal relationships under private law: whether they are the only way in which fundamental rights can infiltrate into the world of private law or other provisions are also capable of achieving this result..

The Decision No. 7/2014 (III.7.) AB, which was issued only a few weeks earlier and was included in the selected decisions, was adopted in a procedure of abstract norm control and it failed to take into account the above ideas. The previous Constitutional Court decisions cited in support of the argument regarding the conflict between the fundamental right to freedom of expression/press versus the fundamental right to human dignity have been adopted in criminal cases. The Constitutional Court, however, considered the arguments to be guiding ones not only to criminal liability, but also to the legal consequences under civil law, since the wide scope granted for the application of aggravated damages could constitute a serious deterrent to participation in public debate. The differences in the various branches of law did

[34] Gárdos-Orosz Fruzsina – Bedő Renáta: Az alapvető jogok érvényesítése a magánjogi jogviták során – az újabb alkotmánybírósági gyakorlat (2014-2018). pp. 6-7. Alkotmánybírósági Szemle, 2018/1. pp. 3-15.; Téglási 2020: supra p. 164.

[35] The Constitutional Court expressed its quoted position on the following question: the conflict of a contractual term with the Fundamental Law cannot be directly deduced from Article M)(2) of the Fundamental Law.

[36] According to Article M)(2), Hungary shall ensure the conditions for fair economic competition. Hungary shall act against any abuse of a dominant position, and shall protect the rights of consumers.

not affect the further course of the argument at all. It has been pointed out in the legal literature that the greatest novelty of this decision is precisely that it extends to civil law the jurisprudence of the Constitutional Court based on the New York Times rule, which has been applied until now in Hungary only in the field of criminal law.[37]

However, abstract constitutional interpretation and the procedure of ex-post norm control are less likely to highlight the tensions of the collision between private law doctrine and fundamental rights.[38] The real arena for this is the procedure under a genuine constitutional complaint.[39] The Decision No. 28/2014 (IX.29.) AB and the subsequent repeated judicial and recent Constitutional Court proceedings and decision(s) in this respect certainly deserve special attention. The appeal against the court's decision was filed by the publisher of the online news portal after the courts upheld the plaintiffs' claim brought for the infringement of their right to their image as a person-related (now personality) right. The plaintiffs secured a political demonstration as police officers and their photographs were published as the illustration for an electronic newspaper article about the demonstration. The photographs showed the police officers in a recognisable way.

The Decision 28/2014 (IX. 29.) AB established the standard for resolving the conflict between the right to human dignity and freedom of expression (press) in the field of personality protection by stating that "as long as a piece of information is not an abuse of exercising the freedom of press, the invocation of a violation of personality rights in the context of the protection of human dignity rarely constitutes a basis for a restriction on the exercise of freedom of the press. Photographs of a person who has come to the public's attention in connection with a current event may normally be published in connection with the event without their permission."

The disclosure of a photograph according to the wording used in the judicial procedure requires the consent of the person concerned, except in the case of public appearances.[40] According to the interpretation of the Curia[41], a person performing his duty of service or work in a public place or in a public area is not a public figure in the course of performing his activity, and therefore his consent is required for the publication of a portrait depicting him in an identifiable and specific way. Despite the facts of the specific case, this was somewhat overshadowed (namely: to what extent the police officers can be considered public figures or the pictures taken of them as a crowd shot, i.e. how far these civil law concepts can be extended). It is no coincidence that the need to amend the Civil Code has arisen[42], and it has

---

[37] Balogh Éva: Az Alkotmánybíróság határozata a közéleti szereplők bírálhatóságáról – A véleménynyilvánítás szabadsága, demokratikus vita és az emberi méltóság. p. 11. Jogesetek Magyarázata, 2014/3. pp. 3-11.

[38] According to the reasonings that emerges in the decisions of the Constitutional Court, the Civil Code (or private law norm in general) is intended to ensure a balance of interests between the contracting parties as subjective beneficiaries and subjective obligated parties as well as to protect the weaker party. [see Decision 3009/2012 (VI. 21.) of the Constitutional Court]. This may also indicate that in this weighing of interests the law-maker takes into account the fundamental rights provisions of the Fundamental Law and delimits the relative scope of protection of the conflicting fundamental rights. As Beatrix Vissy points out: "Civil law protects the objective values expressed in fundamental rights by means of its own rules, above all the general clauses, and consequently a judge who fails to take these values into account is misinterpreting civil law and not constitutional law." Vissy: supra p. 44.

[39] Vissy: supra p. 40., Molnár András – Téglási András – Tóth J. Zoltán: A magánjogi és az alapjogi érvelések együttélése – feszültségek és dilemmák. p. 1. Jogelméleti Szemle, 2012/2. pp. 1-33.

[40] Section 80 (2) of the old Civil Code. The relevant provision of the current Civil Code is not entirely identical. Thus, for example, the Civil Code has included in the normative text the category of "crowd shot" as elaborated by the jurisprudence.

[41] 1/2012 Criminal-administrative-labour-civil uniformity of law decision. After the entry into force of the Civil Code and until the adoption of the Decision No. 28/2014 (IX. 29.) AB, the Curia's uniformity of law panel did not decide on maintaining it. However, in the light of the decision of the Constitutional Court, this uniformity of law decision was annulled (1/2015 BKMPJE).

[42] The motion to annul 1/2012 BKMPJE: "Finally, the uniformity of law motion also called for the amendment

also been pointed out in the legal literature that the Constitutional Court in its decision actually "added" a third exception to the Civil Code.[43] It is clear from these opinions that in this decision the Constitutional Court has moved strongly in the direction of a direct horizontal scope.[44]

The majority reasoning of the Decision 28/2014 (IX. 29.) AB did not mention the intrusion of fundamental rights into private law through the general clauses, the argumentation focused on section 1:2 (1) of the Civil Code and Article 28 of the Fundamental Law, i.e. that the courts interpret the text of laws primarily in accordance with their purpose and the Fundamental Law (constitutional order).

The reasoning set out in the Decision 8/2014 (III.20) AB is not referred to in the other Constitutional Court decisions included in the list of selected decisions. In other decisions, however, one may encounter it rarely. For example in the Decision No. 34/2014. (XI. 14.) AB also related to foreign currency loan contracts, the Decision No. 3052/2016. (III. 22.) AB on distant heating service or the Decision No. 14/2017. (VI. 30.) AB dealing with labour law. Of these cases, two were the result of a norm control procedure rather than a genuine constitutional complaint procedure. In the decision last cited, the Constitutional Court confirmed its interpretation also with the judgements of the ECtHR. According to this, Article 1 of the Convention requires all States Parties to ensure to all persons within their international jurisdiction the enjoyment of the freedoms set forth in the Convention. The Convention thus recognises not only the obligation to respect human rights, but also the obligation to protect them. Accordingly, the ECtHR always require in conjunction with Article 1 of the Convention that the Contracting States ensure also in the realm of the private sphere the enforcement of the rights deriving from the relevant articles of the Convention.

IV. Summary

From the analysis of the small sample, it can be concluded that there are no significant differences between the interpretation methods used in private law cases and in all the decisions examined. Although this general finding may be confuted by way of a broader analysis, it can be deduced even from this research of narrow scope that (also) in the case of private law disputes, the previous decisions of the Constitutional Court and the broad contextual interpretation are of paramount importance. In general, the Constitutional Court rarely takes an explicit stance on the scope, role and weight of interpretative methods, and no such specific statement concerning private law disputes can be found.

Reference to previous decisions of the Constitutional Court often serves the purpose of reinforcing the established dogmatic system. However, it is difficult to orientate when these dogmatic foundations are muddled. Such is the question of the "horizontal scope" of fundamental rights/Fundamental Law (?). There is uncertainty as to whether there is a distinction between fundamental rights and other provisions of the Fundamental Law (values, principles, objectives) in terms of their infiltration into legal relationships under private law,

---

of the new Civil Code in order to make section 2:48 (2) of the new Civil Code qualify the publication of the portrait of a person exercising public authority, but who, according to the judicial interpretation of the law, cannot be considered a public personality or "public figure" as an exception to the general rule." (1/2015 BKMPJE)

[43] Téglási 2020: supra p. 168.

[44] On direct horizontal scope see: Gárdos-Orosz Fruzsina: Alkotmányos polgári jog? Az alapvető jogok alkalmazása a magánjogi jogvitákban. Dialóg Campus, Budapest-Pécs, 2011. pp. 46-47., 67-71. On the emergence and critique of direct horizontal scope in ordinary judicial practice, see: Vékás Lajos – Vincze Attila: A Legfelsőbb Bíróság döntése az alapvető jogok polgári jogviszonyokban való alkalmazásáról – Gyülekezési jog birtokháborító jellegű gyakorlása. pp. 13-14. Jogesetek Magyarázata, 2011/4. pp. 9-14.

and the role of general clauses is also unclear. On the one hand, an image of a doctrine of indirect horizontal scope limited to general clauses emerges, which, however, is not reflected in all the decisions on legal relationships under private law, not even in any of the decisions examined. It is perhaps most often used in arguments in the decisions concerning the law of contracts, both in norm control and genuine constitutional complaint procedures. On the other hand, based in particular on Article 28 of the Fundamental Law, the Constitutional Court expects the interpretation of the law to be in conformity with the Fundamental Law, regardless of the level of abstraction of the private law norm. Indeed, in some solutions, there is even a shift towards direct horizontal scope. However, by emphasising the constitution-conform interpretation based on Article 28 of the Fundamental Law, there is no guarantee that private law dogmatics – even beyond the general clauses – will remain free from the determining influence of fundamental rights. This way, the Constitutional Court will become a so-called super-court.

The super-court character of the Constitutional Court is also manifested when it arrives at the annulment of a challenged judicial decision through the violation of the right to fair trial, because the judge arbitrarily applied/interpreted a private law norm.