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**Examination of damaging honor in the scope of acts lacking illegality  
and danger to society  
- with particular regard to the enforcement of constitutional  
requirements**

Thesis of the Ph.D. dissertation

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## I. Summary of tasks the research seeks to achieve

Following the promulgation of Act V of 1961, the acts of defamation and slander include the factor of ‘suitable for damaging honor’. However, a number of sources of law have had effect on which manifestations could be considered as suitable for damaging honor since the entry into force of the Criminal Code of 1961. Nevertheless, from the legal historical point of view the greatest impact on the assessment of illegitimacy of manifestations were played by: primarily the constitutional revolution that took place around the change of regime and then the resolutions of the Constitutional Court set up in 1989 interpreting fundamental rights.

The Act XXXI of 1989 which amended the Constitution and was promulgated on 12 October 1989 declared the constitutional core of values protected by the acts of defamation and slander: right to human dignity and right to reputation. By expanding the meaning of these fundamental rights and the concurring right freedom of expression, the Constitutional Court progressively formulated constitutional requirements on the illegitimacy of those two acts examined in the doctoral dissertation. The so-called ‘*test of necessity and proportionality*’ on the restriction of fundamental rights was framed by the Body during its relatively early practice under Resolution No. 30/1992. (V. 26.). However, until the entry into force of the Fundamental Law the cited doctrine merely functioned as an *erga omnes* interpretation of the Constitutional Court.

The protected legal interest and the circle of the passive subjects were presumably most influenced by the Resolution of the Constitutional Court No. 36/1994. (VI. 24.). This Resolution has been passed in accordance with the practice of the European Court of Human Rights.<sup>1</sup>With its publication, the act ‘*violation against an authority or a public official*’- that had been determined in Section 232 of Act IV of 1978 - was stated as unconstitutional and was annulled. That act was part of the Hungarian jurisprudence since the entry into force of Act V of 1961<sup>2</sup>. Since the above cited Resolution, the limits of

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<sup>1</sup> The ECHR indicated in the case of *Lingens v. Austria* that [t]he limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. [F]reedom of political debates is at the very core of the concept of a democratic society. (Judgement of 8 July 1986 in *Lingens v. Austria*, application no. 9815/82, par. 42.) The Court subsequently upheld its findings in the case of *Oberschlick v. Austria: the limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual.* (Judgment of 23 May 1991 in *Oberschlick v. Austria, Application no. 11662/85*, sec. 59).

<sup>2</sup> Act V of 1961, Sections 158–159.

possibilities to express opinions have changed in the course of numerous civic dialogues. At the same time the scope of passive subjects in the acts of defamation and slander expanded by renewing a resolution that had been applied for more than three decades. Regarding the background of the Resolution, it is necessary to emphasize that Section 52 of Act XVII of 1993 amended Section 232 of the Criminal Code in effect at that time, adapting herewith the scope of criminal conducts as well as raising the sentence applied. However, shortly after that amendment the European Convention of Human Rights was promulgated in Act XXXI of 1993<sup>3</sup> and made the jurisdiction of the ECHR binding on the Convention and on all matters related to the interpretation and implementation of its Additional Protocols.<sup>4</sup> Accession to the Convention confirmed the Constitutional Court's aim of establishing consistency between the judgements of the ECHR and the domestic practice of fundamental rights, which led to the act of '*violation against an authority or a public official*' (promulgated in Section 232 of Act IV of 1978) classified as unconstitutional. As stated in the Resolution of the Constitutional Court in relation to the facts concerned as unconstitutional:

„- defamation and slander of public authorities are punished in the same wide way as acts against other persons, which is clearly contrary to the principles prevailing in the permanent case law of the ECHR;

-in public affairs the freedom of expression expressing judgment is punished which is the unnecessary and disproportionate restriction of the constitutional fundamental right;

-in relation to statements of facts it does not distinguish among true and untrue, including those knowingly false and false as a result of negligent infringement arising in professions or occupations; although freedom of expression shall be constitutionally restricted by criminal law instruments only in the latter cases.”<sup>5</sup>

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<sup>3</sup> The European Convention of Human Rights shall be applied from the date specified in Section 5 of Act XXXI of 1993.

<sup>4</sup> Paragraph b Section 3 of Act XXXI of 1993.

<sup>5</sup> Constitutional Court Resolution No. 36/1994. (VI. 24.); Constitutional Court Decision No. 1994. 219., 228.

Following the Constitutional Court Resolution No. 36/1994. (VI. 24.) the judicial practice of defamation and slander harmful to society has transformed. However, in the issue of factuality the manifestations suitable for damaging honor were still not examined in the context of fundamental rights.<sup>6</sup> The duality that has resulted this way and which appears in the definition of manifestations suitable for damaging honor and the definition of the protected legal interest honor and social esteem, also raises relevant issues to legal literature and jurisprudence.

As the aim of my doctoral dissertation is to examine the protected legal interest and facts of defamation and slander from a dogmatic and practical point of view, I considered it a part of the research to determine the legal interest protected in those two crimes (and the description of the fundamental rights' background), to determine the facts lacking factuality and danger to society, and the effects of the constitutional requirements on legal literature and legal practice. The tasks thus established necessarily induced the comparison of defamation and slander with the civil law instruments right to reputation and right to integrity, as well as the definition of a proceeding ensuring a more favorable outcome for the aggrieved parties. The dogmatic examination of the involved facts is completed by the Resolution of the Supreme Court No. 4/2014 that raised a barrier to the question of admissibility of justifiable defense against verbal criminal offences. In connection with this issue, I considered it essential to take into account the constitutional requirements.

## **II. Brief description of the examinations and analyses performed during the research; methods of processing**

### **1. Brief description of the examinations and analyses performed during the research**

In the first part of the dissertation I described the transformation of defamation and slander, showing their legal historical development beginning with our first codified criminal code till the constitutional revolution. In terms of the dissertation, special emphasis deserves to be put on the Act II of 1950 incorporating into the Hungarian legal system the legal institution of danger to society; Act V of 1961 recreating the relevant

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<sup>6</sup> Judicial Decision No. 2013.8.204.

criminal act provisions and the fact of ‘suitable for damaging honor’; as well as the so-called constitutional revolution around the time of the change of the regime. The brief analysis of those are already described in the first chapter, but their relevance is reflected several times throughout the dissertation.

In the next structural unit, I examined the protected legal interest of defamation and slander, whereby I paid special attention to the constitutional aspects. This part of the dissertation also includes a brief presentation on the fundamental rights protected by the protected legal interest and the right to freedom of expression concurring with it, as well as some descriptions of ECHR Resolutions carrying a domestic relevance.

In the second chapter of the dissertation, I presented the legal literature approach defining the protected legal interest of the examined acts, followed by my own critical remarks, then I determined in a constitutional-conformed way the protected legal interest of defamation and slander.

In the IV. chapter of the dissertation, I put special emphasis on the issue of suitability for damaging honor whilst describing the criminal conduct of the acts. In connection with this issue I conducted a deep analysis on the judicial practice, examining the enforcement of the test of necessity and proportionality. Furthermore, I discussed the practice on insults and usage of abusive language from the aspect of constitutional requirements.

The longest structural unit of the dissertation is the examination of the illegality of manifestations that are objectively suitable for damaging honor. Throughout the description of the issue, I presented grounds for the preclusion of illegality based on the Csemegi Codex, grounds for the preclusion of danger to society – specifically related to these two acts – developed during the subsequent development in law and became over time part of the judicial practice, as well as the impact of Constitutional Court Resolution No. 36/1994. (VI. 24.). In connection with the latter I examined the manifestations concerning public affairs applying the resolutions of the Constitutional Court and the decisions of the ECHR. A further interesting issue from a theoretical point of view was the dogmatic reasons of manifestations not harmful to society in official procedures – also an integral part in this unit. Thereby I also examined the different legal literature statements and positions.

In the next two chapters, throughout the comparison of freedom of expression’s criminal- and civil law barriers I compared the acts of defamation and slander with their civil law

counterparts. Moreover I researched the subsidiary form of the infringement slander. I deeply analyzed the law enforcement decisions on insults from the prospect of the two branches of law regarding the first one; and the judgment of emotions with regard to the latter.

Justifiable defense against verbal acts is an integral and unmissable part of the research topic, the limitation of which was formulated in Resolution No. 4/2014. of the Supreme Court. In this part of the dissertation I studied the legal institution of justifiable defense and its constitutional requirements, I formulated my own conclusions on the issue as well.

In the final part of the dissertation, in addition to explaining my conclusions I formulated my propositions for law enforcers and legislators in order to promote the coherence of the legal system.

## 2. Methods of processing

### Legal historical examination

My conclusions regarding the protected legal interest and factuality made the legal historical approach of my research essential. In my dissertation I presented all the relevant legal regulations dating back to the Csemegi Codex. I also described the necessary conclusions of legal literature and court decisions related to these regulations.

### Dogmatic analysis

The topic of the dissertation necessitated the analysis of several dogmatic issues. In a mere non-exhaustive manner, in my dissertation the theoretical analysis of the legal interest protected, the notion of fact, the difference between the infringement and criminal forms of slander as well as of manifestations lacking danger to society made before authorities was essential.

### Application of Constitutional Court resolutions

The constitutional grounds for defamation and slander made the application and brief description of the relevant Constitutional Court resolutions essential. Throughout the dissertation I strived for the processing of the most relevant Constitutional Court

resolutions concerning the topic, as well as for the statement of their critical remarks from a criminal legal point of view. Throughout the research I paid special attention to apply the Body's resolutions ruled both during its early practice as well as recently. I studied the resolutions of the Body mainly through the perspective of the legal interest protected, the critique on the practice of criminal courts of acts with no danger to society, and of the analysis of public affairs.

#### Examination of the judicial practice

An important focus was put on the analysis of judicial practice in the research carried out whilst preparing the dissertation. As I pointed it out in the legal historical examination, I also processed the decisions reached under the scope of the Act II of 1950 and Act V of 1961 in order to form my point of view. In order to formulate a well-founded conclusion, I have analyzed the decisions of several courts of first, second and third instances as well as judicial reviews on several issues. Due to the issues raised as the task of the research, there was need to review civil law and infringement law decisions as well, in addition to the criminal law practice. Processing the orders of infringement courts required the request of some actual courts. In order to prepare the dissertation, I processed the orders ruled on the infringement of slander of the Central District Court of Pest, the Gödöllő District Court and the Eger District Court. I would like to thank the President of the Budapest-Capital Regional Court, the President of Budapest Environs Regional Court and the President of the Eger Regional Court for granting my research request and thereby insuring the processing of infringement cases.

#### Interdisciplinary approach

The most entire description of the acts defamation and slander necessitated the consideration of requirements of other branches of law as well. All chapters of the interpretation deal with constitutional requirements. One of the aims of the dissertation was to establish the coherence of the legal system, as well as the appropriate interpretation of the constitutional requirements of the two acts examined. In addition to constitutional law, I committed a separate chapter to compare defamation and slander with their civil law counterparts and the infringement form of slander. Beyond their judicial practice I also processed the legal literature on the related issues.



### Comparative jurisprudence

With regard to comparative jurisprudence, I described the case law of the European Court of Human Rights in two ways. Given that the presentation of the ECHR's case law had already been addressed by a number of other authors, I did not consider it necessary to explain it in details. Nevertheless, since competition between the right to human dignity and right to reputation, and freedom of expression necessitates criminal protection, I described some of the less processed proceedings initiated against Hungary. I also formulated my conclusion on the period in question. Beyond this chapter I examined and cited the resolutions of the ECHR with the practice of criminal courts and the Constitutional Court for the purpose of comparative jurisprudence.

### **III. Summary of jurisprudential results and possibilities of their utilization**

In my doctoral dissertation I aimed at examining the acts of defamation and slander with factuality but at the same time with no danger to society in the light of the legal regulation's current constitutional requirements. Given our criminal court practice the law enforcer excludes culpability in the absence of danger to society

1. in the performance of rights and obligations arising from the exercise of professional activities, in this context opinions exempt from unnecessary abuse and disparagement,
2. in manifestations and statements made by the client in order to clarify the matters in pending proceedings before the authorities, within the limits of their rights exempt from unnecessary abuse and disparagement, as well as
3. in manifestations made in public debates.

However, the question arises as to how the disproportionately shifted practice of our current legal practice has developed from the legal historical point of view in the terms of danger to society.

The legal regulation of the acts defamation and slander considered in the Csemegi Codex and in Statute XLI of 1914 as extremely detailed has been transformed by the Act V of 1961, creating a new *terminus technicus*: a fact 'suitable for damaging honor'. With the new term the legislator endeavored not only to connect the facts of defamation and slander

but also to simplify the legal definition.<sup>7</sup> It can also be deduced from the ministerial argument that the purpose of the bill was to connect honor and the concept of suitability for damaging honor.<sup>8</sup> At this point, as a legal precedent the Act II of 1950 should be briefly referred to since it entered into force the legal institution of danger to society. The amendment of the Criminal Code of 1961 allowed a new form of facts thanks to this legal institution, disregarding thereby the statutory declaration dating back to the Csemegi Codex that manifestations made in pending cases before authorities shall be precluded of culpability. By the fact that, failing a legal regulation the ministerial argument ordered to exclude the above-mentioned ground for preclusion of culpability in the absence of illegitimacy,<sup>9</sup> it unwillingly separated the newly intended concept set out in the facts and the protected legal interest.

Furthermore, in view of the fact that until the formation of new relevant criminal act creations courts also ruled out culpability of defamation committed during the performance of duty in the absence of illegitimacy,<sup>10</sup> since the ministerial argument and the law did not provide this ground of preclusion, the law enforcement practice did not change on its practice of precluding culpability.<sup>11</sup>

However, the real dogmatic significance of the issue has risen following the Constitutional Court Resolution No. 36/1994. (VI. 24.). In this Resolution the Constitutional Court forced criminal courts to restructure their practice, by drafting ‘Due to the constitutionally high value of freedom of expression in public affairs, the protection of public offices’ honor, persons taking on public offices, as well as of other actors in public life, may less restrict freedom of expression than the protection of private individual’s honor.’<sup>12</sup> However, instead of connecting the notion of factuality and protected legal interest embodied by honor with reforming the own practice of the judicial practice, it extended the grounds for preclusion of danger to society with manifestations expressed in public debates, thereby questioning the purpose of criminal law.<sup>13</sup>

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<sup>7</sup> Ministry of Justice: *Magyar Népköztársaság Büntető Törvénykönyve*. Second edition, Közgazdasági és Jogi Könyvkiadó. Budapest, 1962. p. 453.

<sup>8</sup> *Ibid.*

<sup>9</sup> Ministry of Justice *op. cit.* 454.

<sup>10</sup> Judicial Decision No. 1955.11.1070.

<sup>11</sup> Judicial Decision No. 1966.5.4857.

<sup>12</sup> Constitutional Court Resolution No. 36/1994. (VI. 24.); Constitutional Court Decision No. 1994, 219., 231.

<sup>13</sup> Judicial Decisions No. 2013.8.204; 2020.4.96. Supreme Court Decisions No. 2019. 01. B2; 2019.02. B3.

The constitutional revolution which could be described as the last stage in the development of our legal history, had a significant impact on the protected legal interest of defamation and slander. The Constitutional Court, established in order to interpret the Constitution<sup>14</sup> ruled multiple *erga omnes* decisions on the protected value of the two acts subject to the doctoral dissertation apart from the above-mentioned Constitutional Court Resolution No. 36/1994. (VI. 24.). Due to the hierarchy of the legal system, the regulations of criminal law must be in conformity with the Constitution – later with the Fundamental Law – as well as with the resolutions of the Constitutional Court interpreting it. As a result of the expectations expressed this way, the acts of defamation and slander also have to be in consensus with the constitutional requirements, otherwise the unconstitutional facts should have been annulled in part or fully by the Constitutional Court.<sup>15</sup>

The regulation of acts of defamation and slander stems from the necessary competition between the right to human dignity and reputation on one side and the right to freedom of expression on the other side, thus the conflict of fundamental rights. Based on the conclusion formulated – disputing those views that human dignity would be the protected legal interest of the examined acts – right to human dignity and reputation as a protected value can only be defined within limits for the sake of the right to freedom of expression and freedom of action according to the test of necessity and proportionality. In determining the legal interest of the examined acts, it is necessary to interpret right to human dignity in its general dimension of personal rights. The acts of defamation and slander do not provide protection against all expressions of opinion and actions, thus its inviolable dimension representing an absolute limit<sup>16</sup> is unsuitable for defining the value in question.<sup>17</sup> Right to human dignity and right to reputation limited this way are called honor, which is the protected legal interest of slander. However, on the grounds that contrary to slander defamation provides criminal protection only against facts suitable for damaging honor, in the case of this act I find it necessary to further narrow the legal interest within honor. In accordance with the summary thus expressed, in my point of

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<sup>14</sup> Paragraph g Section 1 of Act XXXII of 1989.

<sup>15</sup> Subsection 1 Section 41 of Act CLI of 2011.

<sup>16</sup> The summary of Balogh Zsolt reads 'human dignity, the legal group that establishes the legal status of a person is unlimited as it is part of human quality'. (BALOGH Zsolt: *Alapvető jogok és kötelességek. Alapjogok korlátozása*. In: (ed: DRINÓCZI Tímea and JAKAB András: *Alkotmányozás Magyarországon 2010-2011. I.* Pázmány Press Budapest-Pécs 2013. 138.).

<sup>17</sup> S. the two dimensions of right to human dignity appearing in the practice of the Constitutional Court in the next subsection.

view the protected legal interest of defamation is *social esteem* whilst slander's is the protection of *honor*.

I have already made reference in the legal historical part of the dissertation to acts suitable for damaging honor but lacking damage to society as the core issue of the dissertation and as my main thesis. It is undoubtedly reflected in the current practice of law that there can be found a difference and separation between the concept of honor named in the facts and the one which is the subject of the protected legal interest.<sup>18</sup> Following this conclusion I considered it important to approach the judicial practice from the aspect of at what extent the constitutional requirements meet factuality. After a thorough review on the decisions of criminal courts I can state that law enforcers in the vast majority of their criminal decisions did not refer to the necessity or proportionality of the restriction on fundamental rights. Furthermore, the test of restriction on fundamental rights is not expressly carried out (at least not evaluated) within the terms of factuality.

This statement is in line with the Supreme Court Decision No. 2013.8.204, its arguments read as 'In order to realize the notion of statement of facts (rumor etc.) from the criminal act approach, the contention must be examined in itself and not in a fundamental right relation'. Thanks to this recognition, the thesis that the concept of honor is separated in the facts and protected legal interests of defamation and slander can be fed back. Factuality thus lacking the definite interpretation of fundamental rights – in addition to the aforementioned purpose of criminal law – raises the problem that the legal enforcer with negligence of constitutional requirements in terms of factuality would extend the proportional limit on freedom of expression in favor of the accused party, leaving the otherwise unlawful acts with impunity.

In connection with the judicial practice excluding danger to society I paid attention to the dogmatic reasons for the manifestations expressed during official proceedings lacking damage to society. Comparing the legal literature positions on the topic a) statements of facts and findings within the framework of expert activity; as well as b) the culpability of the statements of facts presented by the litigants' legal representatives are not grounds for culpability precluded by the exercise of professional rights and the performance of duties, but by criminal act authorization – similar to the culpability of the accuser, the witness or

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<sup>18</sup> E.g. Judicial Decisions No. 2013.8.204; 2020.4.96. Supreme Court Decisions No. 2019.01. B2; 2019.02.B3.

the litigants. Nevertheless, given my earlier thesis, in case of the combination of the notion honor in the facts and in the protected legal interest, my conclusion would become irrelevant, since in the absence of factuality it would not be necessary to apply a ground to exclude culpability.

With regard to manifestations lacking danger to society, it is necessary to briefly address the constitutional requirements on public debates and the conclusion established in connection with their development. Having analyzed the Constitutional Court's aspects on public affairs in this chapter, in lieu of a new thesis those aspects must be considered as a conclusion, which need to be taken into account in order to determine whether the manifestations concerning public affairs have exceeded the border of freedom of expression limited by the test of necessity and proportionality:

1. The law enforcer must first decide whether manifestations constitute a statement in public matters.
2. It is necessary to examine in a second step whether communication constitutes a judgment or a statement of facts.
3. Finally, it is for the courts to decide whether the exact expression of opinion has violated the honor or reputation of the person involved.<sup>19</sup>

During my research on the comparison of criminal- and civil law facts guarding the right to human dignity and right to good reputation against the freedom of expression, I was looking for the answer whether the criminal or the civil law regulations provide a more favorable opportunity to enforce claims for those whose right to human dignity and right to reputation have been violated. The basis of the idea was the similarity between criminal and civil law facts. Despite their shared constitutional basis, several differences can be found in their regulations and the judicial practice. In order to determine the difference between the facts of these two branches of law it is necessary to begin with the values protected. Whilst the right to reputation in civil law protects social judgment based on real facts, as a criminal law counterpart of this fact defamation protects the society's image on the passive subject's reputation. The act of defamation brings us closer to the aforementioned civil law fact by justification. This legal institution provides impunity for

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<sup>19</sup> Constitutional Court Resolutions No. 3329/2017. (XII. 8.), arguments [30]-[33]; No. 3374/2019. (XII. 19.); No. 3048/2020. (III. 2.), arg. [28], arg. [21]; No. 3209/2020. (VI. 19.), arg. [35]; No. 3210/2020. (VI. 19.), arg. [36]; No. 3210/2020. (VI. 19.), arg. [37]; No. 3212/2020. (VI. 19.), arg. [37]; No. 3214/2020. (VI. 19.), arg. [28]; No. 3214/2020. (VI. 19.), arg. [29]; No. 3215/2020. (VI. 19.), arg. [29].

those perpetrators who otherwise commit factual acts, but grounds for total or partial exemption from criminal responsibility exist in law, or public interest or legitimate private interest exempt it.

At the same time, some discrepancies can be identified among those protected values summarized this way. Compared to criminal law, civil law protects statements made in the absence of public interest or of a legitimate private interest. However, this narrow range of manifestations raises the question of which branch's regulations conform the test of necessity and proportionality. Given in particular the fact that following a restriction of a fundamental right the restrictions must be at the same level, one of the branch's system would be unconstitutional. Resolving this problem is a future challenge for legislators and law enforcers to cope with.

In contrast to the aforementioned two facts, civil law's right to integrity and the protected value of criminal law's defamation are the same for natural persons – if we disregard the facts protected by slander. Repeatedly referring to criminal courts' dual perception of the notion honor, the right to integrity specified in the Civil Code shall be compared with the legal value of honor protected by the act.

The primary difference between the two protected values is to be found within the scope of the protected persons. While private law practice provides protection only to natural persons<sup>20</sup>, the passive subject of the criminal facts can be natural persons, legal persons or legal entities without legal personalities.<sup>21</sup> Following the summary of this difference the comparison needs to be continued within the scope of natural persons. With regard to these persons as both facts provide protection for right to human dignity (and the right to reputation) against freedom of expression, due to the test of necessity and proportionality set out in the Fundamental Law the protected values have to be the same. The practice on the specific manifestations of the two branches of law may thus differ as a result of the

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<sup>20</sup> Resolution No. P. 22.098/2012/7. of the *Budapest-Capital Regional Court*. The court compares honor to human dignity and therefore precludes legal persons possessing honor. In the contrary, in its Resolution No. Pf. 21.032/2013/4. the *Metropolitan Court of Appeal* – contrary to the opinion of the aforementioned Resolution of the court of first instance – stated that 'honor is a social judgment of a person, and legal persons can also have a social esteem'.

Similar to the Resolution No. P. 22.098/2012/7. of the *Budapest-Capital Regional Court*, the *Veszprém Regional Court* also stated in its Resolution No. P. 20.753/2012/8. that certain individual rights belong only to individuals, exemplifying human dignity and integrity. A similar point of view was stated inter alia in the Resolution No. Pf. 20.031/2017/5. of the *Pécs Regional Court of Appeal*, Resolutions No. P.20.583/2015/8. and P.20.606/2014/7. of the *Budapest Environs Regional Court*.

<sup>21</sup> Judicial Decisions No. 1965.11.4643; 1993.3.139. Bkf.7533/2007/2. of the *Metropolitan Court*.

test of necessity and proportionality applied incorrectly, and of the misinterpretation of terms being offensive and of a stylistic nature – misapplication of constitutional requirements.

In the course of my research I was surprised to find out that in numerous resolutions the law enforcing practice distinguished the infringement form of slander from its criminal act based on the aspect of the legal interest protected.<sup>22</sup> However, the difference between the two facts is not to be found in the protected legal interest but in the elements of facts. The infringement determined in Section 180 of Act II of 2012 (Administrative Penal Act, hereinafter: APA) is – except for the factual elements specified in Section 227 Par. 1 Points a-b of the Criminal Code – fully identical with its criminal counterpart, which suggests the ancillary nature of the infringement. This construction is not unique in the legal system. Similar regulations can be seen in both acts and infringements of public nuisance or illegal entry into private property.

In addition to this taxonomic interpretation the fact that both the Criminal Code and the APA use the same conceptual elements has to be taken into consideration. Since in my point of view a legal concept can only have one type of interpretation, the notion of honor and the suitability for damaging honor have to coincide in criminal law and infringement law. This conclusion of mine is confirmed by a great number of law practice decisions which – contrary to the resolutions cited earlier – distinguished the act of slander from its infringement form based on the subsidiary nature of the infringement's provisions.<sup>23</sup>

During the review of acts defamation and slander – due to the fundamental rights implications – I considered it necessary to formulate criticism on justifiable defense against verbal acts constituting the two facts as well. Resolution No. 4/2014 emphasized as a barrier to justifiable defense that the legal institution is not applicable to verbal acts. However, the conclusion reached in this Resolution is unconstitutional in my view. Since its entry into force the Fundamental Law determines the right to self-defense as a fundamental right,<sup>24</sup> it also contains *expressis verbis* the test of necessity and proportionality formulated by Constitutional Court Resolution No. 30/1992. (V. 26.). Due to the hierarchy of legislation, the fundamental rights determined in the Fundamental Law

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<sup>22</sup> Resolution No. Bhar.147/2011/6. of the *Debrecen Regional Court of Appeal*; Resolution No. Bhar.84/2014/3. of the *Pécs Regional Court of Appeal*; Resolutions No. Bfv.1094/2013/5. and Bfv.997/2014/7. of the *Supreme Court*.

<sup>23</sup> Court Decisions No. 2009.6.245; 2010.2.54; *Supreme Court* Resolution No. Bfv.II.853/2011.

<sup>24</sup> Fundamental Law, *Article V*.

shall not be restricted by the interpretation of the Supreme Court, however the cited Resolution did unconstitutionally restrict the right to self-defense by the barrier put forward in connection with verbal acts.

As a matter of fact, Article V of the Fundamental Law states ‘Every person shall have the right to repel any unlawful attack against his or her person or property, or one that poses a direct threat to the same’ which formulation does not include any restrictions on violent crimes. The Supreme Court’s findings on verbal acts also raise problems on the field of defense against violation of right to human dignity. Namely, the Resolution ruled out the possibility of the necessary defense against an unlawful attack on the right of human dignity, which is an absolute, inviolable and unrestricted right at the top of the catalogue of fundamental rights, guarding all human existence. Given that in the cases of defamation and slander – during a constant insult and swearing – consummation and completion may be separated, in case of a verbal act that had been consummated but not yet completed the attack is considered to have taken place. Thus, in accordance with the right to self-defense the necessary means of protection have to be available for the person whose right to human dignity has been violated.

The doctoral dissertation primarily reflects on the practice of law enforcement bearing in mind the legal historical development and constitutional requirements. The utilization of the results achieved in the dissertation can thus be applied mainly in the course of reforms on the legal practice from the aspects I have referred to. The new approach I deduced – concerning danger to society – revealed a problem that was slowly unfolding in several stages. However, constitutional examination on the acts of defamation and slander also brought issues concerning the infringement practice, as well as the barrier to self-defense in the case of verbal acts ruled in Resolution No. 4/2014. I consider the constitutional examination of those questions useful for law enforcers as well.

The results of my research are though also relevant to legal literature in my view. As I have referred to it several times throughout the dissertation, legal literature and judicial practice often interpret the protected legal interest in a non-constitutional way. I consider it necessary to rethink and reconsider. In my view the approach I have put forward promotes the uniform interpretation of the legal system, thus connecting the definitions of constitutional law, civil law, criminal law and infringement law.



In addition to the above, I paid distinguished attention throughout the dissertation to process the judicial decisions of the law enforcement practice, through which I wanted to provide a base for an easier overview and reference on the research topic. In the seventh chapter of the dissertation I additionally set a separate goal: I summarized the regulations of the two branches of law by comparing the possibility of enforcing the claim provided in criminal and civil law, thereby facilitating the choice of the aggrieved parties in relation to the enforcement of the violation of law.

#### IV. List of publications connected to the topic of the dissertation

- Dániel GYULAY: *Self-defense against verbal crimes*. Belügyi Szemle. 2018/12. 89-97.
- Dániel GYULAY: The forbidden borders of intimacy, or the indecent exposure demarcation of the sexual acts and the slander. In: MISKOLCZI BODNÁR Péter (szerk.): *XIV. Jogász Doktoranduszok Országos Szakmai Találkozója*. Jog és állam 24. szám. (2018) p. 147-156.
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