

University Doctoral (PhD) Dissertation Abstract

**Freedom of Criticism of Public Persons – Interaction Between the European Court of
Human Rights and Constitutional Courts**

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I. The Subject and the Aims of the Dissertation

The starting point of the dissertation is that recently *multilevel constitutionalism* has become part of constitutional thinking. The national constitutional systems are each part of several legal systems created by states and connect with each other on several levels. *Horizontal and vertical communication* networks exist between the national and international institutions. Horizontal communication means that institutions and officials at the national level – such as the government and its members, regulators, courts, constitutional courts – communicate with their foreign counterparts in a formal or informal way. Vertical communication occurs between institutions of international organizations and the institutions of their member states. These networks are also interlinked with each other. This could have several aims, such as exchanging information, harmonisation, seeking solutions to similar problems and so on.¹ These processes are significant in favour of democracy, the rule of law and human rights protection. The dialogue between the practice of international human rights courts and the case-law of the national constitutional courts is part of this multilevel communication, and likewise the interaction between the European Court of Human Rights and the national constitutional courts, which is the subject of the dissertation. The system created by the Council of Europe is the oldest and the most effective regional mechanism in Europe regarding human rights protection. The dialogue between the case-law of the European Court of Human Rights and the constitutional courts contributes to the evolution and development of the European human rights approach based on common foundations.

The dissertation examines the interaction between the European Court of Human Rights and the constitutional courts including other courts dealing with constitutional adjudication, studying the features, nature and practical impact of human rights adjudication and its practical effects. The research focuses on the case-law of the courts, and particularly on how the courts influence each other's interpretation on human rights through their rulings in similar cases. The analysis of the interaction is made in connection with a particular human rights issue, specifically the freedom of speech and the freedom of the press, more precisely the freedom of expression about public persons, the limits of these expressions developed by the courts and the methods of judicial balancing in such cases. As a result of constitutional evolution, the common constitutional principle that public persons must tolerate more criticism than other individuals evolved. However, it does not mean that they should bear

¹ SLAUGHTER, Anne-Marie, *A New World Order*, Princeton University Press, Princeton, N.J., 2004, 131-151.

every libelous attack on them. In such cases, the courts must balance between human rights in the course of the decision making. The courts have to determine the limits of free speech and press regarding the infringement of human dignity including the reputation or the honour of public persons. These problems are persistent subjects of the analysis of legal science, because the expressions about public persons constantly raise new questions during their legal assessment. The jurisprudential examination focuses on how the courts can adjust the constitutional tests and measures based on old traditions to the changing circumstances and also how the courts can apply and reform them in cases arising from various situations. This judicial practice shapes the freedom of public speech and the democratic public debate which are essential to the sustainability of democracy. This analysis is especially important these days, as it is experienced all over the world that neglecting the constitutional traditions and freedoms, public officials try to discredit the press and restrain it with legal instruments, furthermore, public persons active in public discourse and having influence on it attempt to deny their status as public figures and stay out of the public discourse by referring to their personality rights.

My hypothesis is that the interaction between the European Court of Human Rights and the constitutional courts *exists* and that interaction is *demonstrable* regarding the judicial considerations and measures appearing in cases dealing with expressions about public persons. Therefore my assumption has two aspects. I presume not only that the interpretation of human rights of the ECtHR influences the interpretation of the constitutional courts, but I also assume that it occurs vice versa, meaning that the interpretation of the constitutional courts also has an impact on the case-law of the ECtHR. Both sides affect the other, which means that the constitutional courts do not solely follow the practice of the Strasbourg Court as a pattern, but instead, these courts mutually observe each other's case-law and thus influence each other's practice in this manner. The degree and the direction of the interaction between the Strasbourg Court and the particular national constitutional courts and also its effects may be different. The research aims to analyse how this interaction manifests in judicial reasoning regarding expressions about public persons and what is the extent of this interaction.

The dissertation aims to explore two main fields.

One of the main goals of the dissertation is to elaborate on the theoretical and institutional aspects of the topic of the dissertation for two reasons. On the one hand, in order to introduce what factors can form and influence the practice of multilevel constitutionalism

analysed in the dissertation and to define and describe the instruments which are the subjects of the analysis and to illustrate the nature of the constitutional dialogue occurred between them. On the other hand, it aims to find what elements justify the dialogue between the courts I have examined. My statement is that one of the determining reasons of the interaction between the European Court of Human Rights and the constitutional courts is the development of the common human rights standards based on the universal human rights concept jointly with the results of the reciprocal influence of globalization and law. The other determining reason of the interaction is that there are essential similarities between the activity of these courts such as the subject of their jurisdictions or the mechanism applied by them.

The other main goal of the dissertation is to reveal the intensity and the crucial directions of the interaction between the case-law of the European Court of Human Rights and the constitutional courts regarding expressions about public persons, by giving a conceptual framework of the measures and the further judicial considerations developed by the case-law of the courts. After reviewing the nature and the theoretical justifying conceptions of the freedom of speech and press, the interaction between the courts regarding expressions about public persons will be analysed and summarized on the basis of the aspects of the judicial balancing.

II. The Structure of the Dissertation

The dissertation is divided into two main parts according to the two main research goals.

In the theoretical and institutional part of the dissertation, first, I detected those processes that are taking place even during these days, and which have contributed to the evolution and development of the multilevel constitutionalism, and as part of it, the dialogue between the courts. I described the main phases of the rise of the *universal human rights approach*, the main statements of this conception, and then I explained the main arguments of one of those conceptions that appeared against the universal human rights approach, which is relevant regarding the topic of the dissertation, namely the *cultural relativism*. Subsequently, I explored some of the relevant aspects of *the connection between the globalization and law*. Then I demonstrated the general features and the possible forms of the *dialogue between courts*. After that I expounded the instruments that are subjects of my analysis, focusing on

those of their characteristics which are necessary to be examined in order to carry out the analysis of the case-law. After reviewing the definition of *constitution and constitutionalism* and the *types of the norms of the constitution*, I determined the features of *constitutional adjudication*. I described the constitutional adjudication as an activity focusing on those five characteristics which are the most distinctive features of this activity and which correspond to the features of the Strasbourg Court from certain perspective, thus they justify the interaction between them. Subsequently, I examined the *constitutional features of the Strasbourg human rights mechanism*. After exploring the similarities between the Convention and the constitutions, I described the similarities between the practice of the Court and the constitutional courts. Beside the similarities, I also pointed out the differences between them in order to get a comprehensive overview on those characteristics of these systems which are necessary to the analysis. In the whole dissertation I used the definitions in the same sense as I determined them in these chapters.

In the second part of the dissertation which is about the human rights analysis, I began with the introduction of the characteristics of *freedom of speech and the press*, pointing out what kind of expressions are protected by these rights. In order to highlight the nature, purpose and function of these rights in a democratic society, I introduced, arranged and compared the related *theoretical-historical justification theories*. I illustrated the major significance of these rights in a democratic society through the justifications and their joint appearance in the judicial practice, and in connection with that I also indicated the directions of the effects between the courts. Subsequently, I delineated the *possible restrictions* of these rights, then I examined the *conflict between human rights regarding the criticism about public persons*. I demonstrated the different conceptions based on the related judicial case-law. Furthermore, I analysed in detail the interaction between the courts based on those considerations which occur during the judicial balancing in such cases. The first angle of the analysis of the interaction is who belongs to this category of persons according to the examined judicial practices. After the detailed analysis of the categories of public persons, I arranged those arguments of the theoretical justifications which confirm the constitutional principle that public persons must tolerate more public criticism about themselves, than other individuals. After that, I continued the analysis along the *types of the expressions* and the *other related circumstances that occur during the judicial balancing*. I examined the case-law of the courts separately regarding *statement of facts, quotation and report, value judgments* and *value judgments based on facts*. In doing so, I described the *tests* applied by the courts

during their decision-making in these cases and the *circumstances* that influence the judicial reasoning and the result of the decision. As a result of the analysis of the connection between the examined courts I summarised their effects on each other regarding the above mentioned factors in separate subchapters. Besides providing an overview on the application of arguments and measures adopted and further developed by the courts, I also tried to find the crucial distinctions between their reasoning.

III. The Methods and the Sources of the Dissertation

During the analysis I used various – descriptive, analytical, comparative and normative, justifying – *methods*.

During the analysis of those processes which triggered the interaction I have examined, I used the *analytical method*. I also applied mainly the analytical descriptive method in those chapters which contain the description of the fundamental legal documents and legal institutions examined by the dissertation. Besides that, in these chapters I also used the methods of comparative constitutional law especially the classification and functionalism. These methods are appropriate for the identification of the features of the interaction between the courts and their function regarding human rights issues, as well as for the analysis of the case-law.² During the research I constantly used – especially in the second part but to a certain extent in the first part as well – the empirical methodological tools of comparative constitutional law. In Europe, the evolution and development of the multilevel constitutionalism has opened new dimensions regarding the application of the methodology of comparative constitutional law. Concerning the subject of the dissertation, it is important to note that the Strasbourg human rights mechanism has such a significant role in human rights issues that it is not only a topic of the academic discourse in the field of international law, but it is also a research central subject – applying numerous comparative methods – of the constitutional law.³ Comparison is a fundamental tool of the academic analysis, and it has a central role in concept formation which can help to explore the possible similarities and differences between the specific cases. This method may enhance the development of critical thinking on constitutional norms and practices. Thus the method of comparative constitutional

² JACKSON, Vicki C., *Comparative Constitutional Law: Methodologies*, In: ROSENFELD, Michael – SAJÓ, András (eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, Oxford, 2012, 58, 62-63.

³ VON BOGDANDY, Armin, *Comparative Constitutional Law: A Continental Perspective*, In: ROSENFELD – SAJÓ (eds.) *Ibid.* 32-33.

law can overstep the analytical method and may build theories from the consequences of causal inquiries.⁴ I also used the method of classification in the course of the exploration of the similarities and differences in the judicial practices regarding expressions about public persons. During the analysis based on the judicial considerations in the related cases, I explored the interaction between the courts and drew the conclusions with the analytical method and the analytical tools of comparative constitutional law.

Beside the above mentioned methodologies, I constantly tried to determine in the dissertation – especially regarding the interaction between the courts I have examined, the role of freedom of expression in democratic states, the tolerance obligation of the public persons, the legal consequences of the types of the expressions – *normative, justifying standpoints*.

Compared to the interaction between the European Court of Human Rights and constitutional courts in general, *the influence of the judicial practices on each other is special* regarding freedom of expression, particularly in cases regarding public persons. The U. S. Supreme Court established the constitutional principles and measures of the decision-making regarding expressions about public persons proceeding from the common law traditions and principles, maintaining some part of them and departing and transforming some other parts of them in the second half of the eighteenth century. After that these tests and constitutional practices became such standards for the European courts among others that they affected both the case-law of the Strasbourg Court and the interpretations of the national constitutional courts. Although these courts considered the principles and practices established by the U. S. Supreme Court as an important starting point, they modified them with respect to the European traditions and relations and they supplemented them with new elements. For this reason, the inquiry of the relevant case-law of the U. S. Supreme Court and the examination of the effects of that was essential to the analysis of the interaction between the ECtHR and the European constitutional courts. The analysis of the interaction was possible only this way. The highlighted elements of the examination of the interaction were the case-law of the *German Federal Constitutional Court* and the *Hungarian Constitutional Court*. The reason for this is that the practice of the German Federal Constitutional Court is significant in Europe and it influences both the case-law of the ECtHR and the constitutional courts. The detailed examination of the case-law of the Hungarian Constitutional Court is reasonable because the dissertation can provide a comprehensive picture about the Hungarian practice and make

⁴ HIRSCHL, Ran, *On the Blurred Methodological Matrix of Comparative Constitutional Law*, In: CHOUDHRY, Sujit (ed.), *The Migration of Constitutional Ideas*, Cambridge University Press, Cambridge, 2006, 39-47.

conclusions on it. Thus the dissertation can contribute to the academic legal analysis of the case-law of the Hungarian Constitutional Court and explore such viewpoints that may be instructive and useful even for the judicial practice. Beside the above mentioned practices I have studied from a wider perspective, I endeavoured to explore the tendencies of the case-law of *some other European courts dealing with constitutional adjudication* and to indicate the demonstrable effects in the relevant parts of the dissertation.

The dissertation analyses interaction between courts, therefore the *main sources* are the *decisions of the examined courts*. Although the analysis of the case-law was the task of the second part of the dissertation primarily, I also referred to standards of the related judicial case-law in the institutional, theoretical part of the dissertation. Therefore, during the research I examined more than 200 judicial decisions completely or partially. Apart from the decisions of the Hungarian Constitutional Court and some decisions of the ECtHR against Hungary which were translated to Hungarian, I elaborated the case-law in English. Most of the decisions are completely available in English. Analysing some of the decisions, I used the database of the Venice Commission (<http://www.codicies.coe.int>), where the summary of the decisions made by the related state are available in English. There are some related *national and international legal norms* as well among the sources of the dissertation in connection with the analysis.

I evaluated the *legal* literature in connection with the examination of the interaction between the courts, the exploration of the justifying considerations and related to the judicial case-law. Describing the definitions and the instruments I have examined, I prioritized those academic legal works that I accept and apply in the whole dissertation, but I also endeavoured to introduce the conflicting views. The dissertation widely relies on the English and Hungarian legal literature, both in the institutional and the case-law analysing parts.

Besides the above mentioned material, there are some *soft law documents* – such as the Action Plans of the Council of Europe, some relevant documents of the Committee of Ministers and the Parliamentary Assembly, opinions of the Venice Commission – among the sources of the dissertation which contributed informatively to the introduction of the examined practices and tendencies. However, I have not focused on those factors in the dissertation that contribute to the interaction between the courts in an informal manner, such as the personal meeting of the judges, conferences and other similar forms of communication.

IV. Conclusions

Based on the dissertation it can be declared that the practices of the European Court of Human Rights and the constitutional courts *influence each other* regarding the interpretation of human rights.

The development and constant evolution of the interaction is based on several parallel processes – among others the development and spread of the universal human rights approach and the effects of globalization and law on each other – which lead to human rights and constitutional values becoming common, universal values and imply cooperation in various directions beyond the national level. In addition, the interaction between the European Court of Human Rights and the constitutional courts is justified by the similarities between their functions – primarily the subject of their adjudication and the methods of their interpretation.

These courts are authentic interpreters of human rights documents based on *common human rights terms* as a result of the universal human rights approach. Accordingly, in the course of determining the content of fundamental rights and the principles of their limits these courts set out common human rights terms. Both the national constitutions and the Convention – recognising the principles of constitutional democracies – declare fundamental human rights and normatively claim their enforcement. Thus they obligate the states to respect these rights and guarantee their enforcement. Accordingly, they restrain the power of the state. Consequently, those courts which were established to interpret these human rights charters have to interpret and explain substantively the same human rights and decide on the justification of their restrictions. Therefore, they encounter similar kinds of human rights problems from time to time.

There are similarities regarding *the application of the methods of the human rights adjudication* in the practices of the courts I have examined too. During the human rights adjudication, these courts developed tests based on formal and substantive – precisely the aim and the proportionality of the restriction of the fundamental right – elements and they apply these test and develop them further. Another common feature of these courts is that they all exercise *judicial review of legal norms or practices* regarding their compatibility with human rights guaranteed by a higher norm. Determining the content of fundamental rights and the measures of their restrictions, both the constitutional courts and the ECtHR have *reasonable freedom regarding the interpretation*. This makes it possible to observe the changing

circumstances regarding the practical enforcement of human rights, thus the courts can interpret human rights issues *in a progressive manner*. At the same time, the case-law of these courts has some characteristics of *precedent-based adjudication*. Accordingly, regularly they follow the principles and practical considerations of their own previous decisions in the new cases and they apply them consequently. They justify the departure from the previous case-law with arguments in the reasoning of the decision. During their activity, they examine each other's practices with the method of comparative constitutional law and this forms their legal approach and their reasoning, thus they influence each other's practices. This interaction is justifiable because it enhances the evolution of the common European human rights approach and human rights protection.

Accordingly, these days such progress is taking place which can result in such European human rights practice, which is advanced and responsive regarding the diversity and the changes. At the same time, the signs of crisis occur in the democratic systems in numerous European countries and we are witnessing the evolution of new autocracies. At this time, we find examples of deviating from the case-law of the European Court of Human Rights in different ways, which are serious problems for the Member States of the Council of Europe in order to maintain and strengthen the level of protection of the human rights based on common foundations.

Based on the analysis relating to human rights we can declare that the directions of the effects between the examined courts is demonstrable most precisely by the examination of the main points of the judicial balancing – such as the justifications of the freedom of expression, the status of the public person who is related to the expression, the type of the expression, the intention and the diligence of the speaker, the burden of proof, the method, the context and the effects of the expression.

It is an important result of the dissertation that *the method of the exploration* developed and applied by the dissertation is adequately applicable to the examination of the interaction between the courts regarding other fundamental rights as well, and it is applicable for the accurate analysis of human rights adjudications of particular courts. Furthermore, the detailed examination of the judicial practice based on the considerations of the judicial balancing can be useful even for the practitioners.

Based on the justification theories of the freedom of expression, I concluded that the role of these rights in the democratic society is mostly understandable, if we accept that the

justifying theories based on arguments regarding the interest of either the community or the individual justify the character and major protection of these rights *together and supplementing each other*. Freedom of speech and freedom of the press are essential in a democracy because these rights make the democratic public discourse and the free self-expression of the individuals of the society and their personal developments possible through that. The most extensive freedom of expression and the sustainable democratic society may materialise with the fulfilment of these viewpoints. This is also the appropriate starting point for researching the freedom of expression about public persons. The case-law of the U. S. Supreme Court was among the first where this made an appearance, and then the German Federal Constitutional Court made it part of its practice. The ECtHR also built these considerations into its practice and it is noticeable, that after the East-Central-European courts also received them. In this respect we can conclude that *the interaction between the courts is multi-directional*, because the approach established by the U. S. Supreme Court among the first, appeared first on the national level, in the practice of a national constitutional court in Europe and became part of the European constitutional reasoning in this way. After that the ECtHR also built this approach into its practice and the consistent case-law of the ECtHR also influenced the practice of other European constitutional courts.

I examined the question who the public persons are based on the practices of the examined courts, indicating the key points to the determination of the category of public persons, and I arranged such subcategories – those who have public functions, other public figures active in public discourse, well-known persons and other cases – that largely cover the circle of persons. In doing so, I demonstrated that there is an agreement in the case-law of the examined courts regarding a relatively large part of the *category of public persons*. *The common legitimizing principles of the constitutional democracies and practical considerations* justify the higher tolerance obligation of public persons compared to other individuals regarding public criticism. It seems in the practice of the examined courts, that although they accept the approach that the instrumental and constitutive justifications verify the freedom of expression together, during the justification of the major the freedom of criticism in relation to public persons, they use instrumental arguments in their reasoning. In this regard, the practice of the Hungarian Constitutional Court follows the considerations of the German and the Strasbourg practices, and summarising them, it concluded that extensive freedom of criticism of public persons is the “meeting point” of the two types of justifications. It can also be declared that there are several levels of the tolerance obligation of public

persons. Regarding the level of the tolerance obligation of each categories of public persons, the case-law of the courts is various. In this regard, we can reveal the interaction between the courts as follows. The principle that public officials must tolerate more public criticism than other individuals in connection with their official conduct, became a constitutional principle in the USA. The U. S. Supreme Court also extended this major tolerance obligation to the well-known persons in the public life and to persons who are active in public. The Strasbourg Court determined the levels of the tolerance obligation regarding the certain categories of public persons more precisely, overstepping the traditions that came from the USA. According to the interpretation of the Strasbourg Court, the politicians have the highest tolerance obligation. Compared to the politicians, civil servants must tolerate less regarding the public criticism, and – based on the tradition of “contempt of court”, which is an Anglo-Saxon legal institution – the judges receive increased protection regarding public criticism during the judicial procedure. Compared to other individuals, well-known persons must tolerate only those criticism regarding their personality that contribute to the public debate. This dynamic and evolutive interpretation – especially the considerations regarding the judges – was a point of reference for the European constitutional courts, and in order to reach fair balance between the human rights, the closer observation of them and their application based on the courts own considerations may be progressive. However, the circle of public persons is changing, thus there are some uncertainties regarding the status of the person who is related to the expression. During the legal assessment of these situations, the courts have to confront all of the circumstances of the case and the interests of the most extended democratic public sphere. It is demonstrable in the practice of all of the examined courts, that the decision-making regarding the status of the person correlates with the other circumstances of the case, especially the relationship to the public matters and the contribution to the public debate.

During the legal assessment of the expressions about public persons, the aim is to make a fair balance between the free public debate, the freedom of public expression of the individuals and the human dignity and reputation and honour of the public persons. Beyond the determination of the circle of the public persons, another task of judicial balancing is to distinguish between the types of the expressions and to evaluate the other related circumstances of the case together. In this regard, we can declare that the case-law of the U. S. Supreme Court regarding free speech undoubtedly influenced the European interpretation. The effects of the interpretation of the U. S. Supreme Court regarding the constitutional principle about the major tolerance obligation of the public persons, the importance of

distinguishing between the types of the expression and the measures regarding their different consequences is definitely demonstrable in the case-law of the examined European courts. During the decision-making in such cases, it has highly significance, how the courts evaluate the expression and based on this evaluation what kind of legal consequences will follow that. In this respect, it became a common approach of the case-law of the examined courts that during the legal assessment of the expressions the courts must make a distinction between *statements of facts* and *value judgments*.

It is also a common approach that *true statements of facts* are protected by the freedom of expression, while *the intentional lies* and *the false statements of facts expressed with disregard* fall outside of the protection. Regarding the *diligence measure*, departing from the reckless disregard measure of the U. S. Supreme Court, the European courts apply various, stricter measures. The ECtHR requires such diligence from the speaker which may reasonably expected in the specific circumstances and another diligence which may reasonably expected regarding professional journalism. This measure from the case-law of the ECtHR appears in the practices of the European constitutional courts – such as in the practice of the Czech, the Turkish and ultimately the Hungarian Constitutional Court –, but there are also much stricter measures in the case-law of the European constitutional courts – such as in the practice of the German Federal Constitutional Court. It is important to highlight that the Hungarian Constitutional Court recently withdrew the diligence measure of the constitutional test regarding criminal regulation, taking a great leap forward to the approach of the ECtHR that criminal sanction regarding expressions about public persons only in exceptional circumstances can be proportional and would be compatible with the Convention. However, the further application of this measure is questionable. Furthermore, regarding *the burden of proof* none of the European courts adopted that approach of the U. S. Supreme Court, which allows a wide space for freedom of expression. In the European human rights practice, the burden of proof is on the speaker.

Regarding *quotation and report*, the effect of the practice of the German Federal Constitutional Court on the case-law of the ECtHR is noticeable. In these cases, there are some special significant circumstances, such as whether the statements of the quoting person from the allegations of the quoted person can be isolated and in what kind of understanding or for what kind of illustration is the quotation used by the quoting person or the commentator. Compared to this practice which guarantees major protection to the report in public matters,

the related case-law of the Hungarian Constitutional Court is much stricter, because it allows only a few exceptions from the objective liability of the press.

The extensive protection of *value judgments* also became a common approach of the courts. In this regard, not only the practice of the U. S. Supreme Court, but the practice of the German Federal Constitutional Court influenced significantly both the European constitutional courts and the ECtHR. The definition of value judgments and the description of their role in the public debate applied by the ECtHR, appeared first in the Lüth Case. The ECtHR complemented the definition of value judgments with further elements from case to case, and established contextual basis standpoints regarding their possible restrictions. Afterwards, these conceptions from the case-law of the ECtHR appeared in the practices of other European constitutional courts and shaped their practices. Regarding the restriction of value judgments, the European courts established measures in the case of serious infringement of human dignity. However, the courts should clarify these measures in the future. Compared to the approach of the U. S. Supreme Court, the European approach is also less permissive regarding value judgments. Consequently, it can be declared that although the fundamental principles and tests of the U. S. Supreme Court were starting points for the European human rights adjudication, beside applying them the European constitutional courts and the ECtHR modified and further developed them with respect to their own relations, proceeding to the evolution of the European measures based on common grounds. A good example for this progression is that in realizing the problems of the interpretation emerged in the European practice, the Strasbourg Court established the category of *value judgment based on facts* as a further consideration to the decision-making regarding the types of the expressions. Afterwards, some European constitutional courts – such as the Czech and the German – also started to apply this category.

The Federal German Constitutional Court stands out among the European constitutional courts, because its more than a half century old case-law influences both the ECtHR and the other European constitutional courts – regarding for instance the definition and evaluation of value judgments or the measures of quotation and report. At the same time, maintaining some parts of its own constitutional traditions, this court also observes the changing directions of the European human rights adjudication, as the application of the category of value judgment based on fact shows.

Beside the common progression, we can detect the increasing moving away from this. We can find extensive restrictions of the expressions about public persons in the case-law of the European constitutional courts. For example, the Constitutional Court of Poland found constitutional the rules that impose criminal sanctions on the speaker regarding most of the expressions about the head of state. Even though the Hungarian Constitutional Court observes the international practice and applies some elements of it with respect to the domestic relations, the court enhances the uncertainties with its ambiguous practice and the occasional and alternating application of the European human rights standards.

The *context of the expression* is also part of the judicial evaluation. The case-law of the examined courts uniformly denotes that in cases related to criticism about public persons, the courts can and should make a decision based on the context of the expression. It would be impossible to make a decision regarding a critical expression about a public person without the examination of the public and social sphere in which the expression was made by the court. In addition, it would be also impossible without the examination of all the circumstances of the expression: the aim, its contribution to the public discourse and the method, the form and the effect of the expression etc.

Based on the analysis, it can be concluded that the constitutional courts and the ECtHR observe each other's practices, which is progressive regarding the evolution of the human rights adjudication. The aim of this interaction is not – and cannot be – that the constitutional courts of the Member States of the Council of Europe should follow the decisions of the ECtHR regarding all questions and the evolution of a uniform practice. The aim would rather that both the constitutional courts and the ECtHR observe the new standpoints and evaluations in each other's practices in order to develop the tools of the examination of human rights issues and conform to the needs of the era and the common European constitutional values. However, the further development of this process is uncertain at this time.



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List of publications related to the dissertation

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1. **Balogh, É.:** A precedens jellegű bíráskodás elemei az Emberi Jogok Európai Bírósága gyakorlatában: a közszereplők türeési kötelezettségének fokozatossága.
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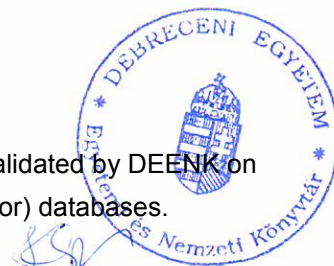
By the directives of HAS Committee on Legal and Political Sciences:

Publications in periodicals level „A”: 9, related to the dissertation: 5.

Publications in periodicals level „C”: 2, related to the dissertation: 0.

Publications in periodicals level „D”: 1, related to the dissertation: 0.

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