

PH.D. DISSERTATION

THESES

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The changes of the meaning of the constitutional content of the notion of freedom of the press

-

with special regard to the practice of the Constitutional Court

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1. Aims of the research, differentiation of the issues

From the beginning, the most essential goal of my doctoral research was to make a distinction between the rights of freedom of speech and freedom of the press - which are connected to one another by a thousand ties – in order to unfold that constitutional content, which stems from the right of the freedom of the press as a standalone fundamental right. This distinction however does not mean that I examine freedom of the press apart from its parent-right or from the right of freedom of speech, but instead that I explore the complex structure of fundamental rights which specifies their relative positions within the constitutional system.

Therefore, all along the preparation of the thesis I strived for separating those issues from the main course of my examination, that - despite to their relation to freedom of the press – mainly concern the constitutional framework of the external boundaries of permissibility of expressions /speech in relation to freedom of the press. These issues are related to the freedom of the press on several points, but I consider their incorporation into my research unnecessary, in light of the chosen viewpoint – upholding the distinction between freedom of speech and freedom of press - which I aimed to consequently apply, since they would undermine the consequent application of the predetermined criteria and erode the tightness of my line of thinking. The detailed analysis of some decisions of the Constitutional Court were omitted due to this consciously chosen viewpoint, for the reason that despite they are connected to the fundamental right of freedom of the press, the connection merely stems from the relation to freedom of expression as a parent-right. However there are decisions where the conclusions are related to the boundaries of permissibility of expressions are made yet cannot be omitted even though they analyse an issue regarding freedom of speech, such as Decision No. 30/1992, which is a cornerstone in order to determine the constitutional meaning / content of freedom of expression. Without taking into consideration the principles laid down in this core decision, the practice of the Constitutional Court which has started over a quarter century ago, could not be interpreted properly and one could not be able to come to a clear understanding of another core decision, Decision No. 37./1992 on the freedom of the press either.

If there were no difference in meaning between these communication rights, it would be pointless to create a distinction by applying different terms to them, as doing so would result in mere duplication of identical rights without associating proper constitutional meaning with them. Upon the overview of the theoretical proof thereof, I came to the illuminating conclusion that even though both in the case of freedom of speech and in the case of freedom of press the same rationales are deemed significant there is some delicate difference between the prominence of these rationales. The meaning of the term freedom of speech is mostly identified as informal “forum” while the meaning of term freedom of press presumes a specific transfer channel, therefore (partly) due to this specificity the means of constitutional protection are also peculiar in nature. The general guarantees of freedom of speech are applicable to the publicity that are mainly covered by freedom of the press, still the notion of freedom of press has an additional element, which results in the appearance of such layers of this right and liability dimensions that are not present within the notion of freedom of speech.

The segments of the right to the freedom of the press – which constitute a huge part of this thesis – are constitutional answers to the issues that stem from a certain specificity, namely the institutional/organizational nature of the transmission of those expressions that are protected by the right to the freedom of expression to the general public.

Given all these reasons, after giving a short overview of the theoretical-historical foundations of the right to freedom of the press, and creating a tableau-like sketch of the Hungarian history of the notion of freedom of the press – which has evolved during the centuries of the history of constitutional law - I will limit my examination within the framework of the democratic interpretation of the Constitution governed by the rule of law in the post-communist era, to the following topics:

- common elements of the definitions of freedom of speech and freedom of the press, and the specificities of the notion of freedom of the press,
- specificities related to the objective institutional protection aspect of freedom of the press (the constitutional content of democratic discourse),
- the constructional framework of state regulation and oversight,
- classic segments of the right to the freedom of speech,
- subjective aspects of the freedom of the press (rights of journalists and their liability in terms of the law of the press).

2. Methodology of the research and the selection of the sources serving as a basis for the analysis

I explored the constitutional meaning of freedom of the press mainly by the analysis of the related decisions of the Constitutional Court, complemented by the assessment of the scientific literary sources of constitutional law. The selection of sources shall be justified with the following reasons:

i.) Already at the beginning of my doctoral research, I had to face the issue that the Hungarian Constitutional Court – despite its ambition to provide theoretically sound reasoning – has mixed the constitutional meaning / content of freedom of freedom of the press with the meaning content of the freedom of speech and the parent-right (freedom of opinions). This recognition has fed my ambition to shed light on the constitutional meaning, which stems from the practice of the Constitutional Court started over a quarter century ago, by providing a comprehensive comparison of those Constitutional Court decisions that analyse the elements of the right to the freedom of the press.

ii.) The almost three-decade-old practice of the Constitutional Court, which has a power to make abstract interpretations of the constitution, cannot be bypassed when one comes to defining the notion, contents and boundaries of each fundamental right including the freedom of the press. The interpretative activity of the Constitutional Court has been significant from the beginning and not only because it has inspected the dimensions of manifestations of freedom of the press with theoretical thoroughness, but because as an organization vested with a negative legislative competence, it had a direct legal impact on the application (*érvényesülés*) of the right to the freedom of the press in the Hungarian legal system on several occasions. There is no doubt that the organic practice of the Constitutional Court has visibly fractured sometimes, still, it serves as a sound basis for creating a uniform definition for the notion of freedom of the press and for identifying its content. Contrary to the According to my view, there is room for the criticism of the Constitutional Court decisions – as I have mentioned in the previous section – because they have interpreted freedom of speech and freedom of press in an overly uniform manner. Contrary to this – or due to this – I aimed to draw a clear distinction between these two manifestations of the parent-right, with special focus on the meaning / content of freedom of the press.

iii.) . When defining the notion of freedom of the press one must take into consideration without a doubt the related international legal instruments and the related judicial practice interpreting these instruments. Complying with international legal obligations is a requirement based on a constitutional clause¹. However, I shall refrain from the detailed description and analysis of these for several reasons. The related international sources of law and the judicial practice built on them are partly present in the practice of the Constitutional Court, yet they are not sufficiently developed or systematic to support the

¹ cf. Act XX. of 1949 (Constitution of the Republic of Hungary) Article 7. § paragraph (1) „The legal system of the Republic of Hungary accepts the generally recognized principles of international law, and shall harmonize the country’s domestic law with the obligations assumed under international law.” Fundamental law of Hungary Article Q paragraph (2): In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.

construction of a complex notion of freedom of the press. The declaration of the freedom of the press within the European Convention on Human Rights (ECHR Article 10.) and its interpretation established by the case law of the European Court of Human Rights (ECtHR) has the most prominence as regards the analysis of the Hungarian constitutional law. At the same time, the Hungarian Constitutional Court has processed and applied the interpretative framework of the ECtHR.

The European Union's mechanism to protect fundamental right has not been established to such an extent that would allow for making general ascertainment and drawing unerring conclusions regarding the common Union standards. On the other hand, the Luxembourg-practice will most likely rely on the Strasbourg standards and tests significantly.

The ICCPR due to its international and global nature and reluctant activity regarding the protection of fundamental rights doesn't have a considerable impact / influence in Europe nor in Hungary, furthermore the text of the ECHR and the practice of the ECtHR lay down stricter standards.

iv.) I must note, that the Constitutional Court has always respected the practice of the ECtHR throughout its operation, and gave detailed analysis of the related Strasbourg practice in its reasoning, because the Hungarian constitutional norms should be interpreted in accordance with the international legal rules and undertaken obligations. The Constitutional Court's referrals to the case law of the ECtHR sometimes seem ad hoc, however it made the Strasbourg standards part of the interpretation of the Hungarian constitution.

In the second and third parts of the thesis, in which I attempt to explore the constitutional meaning / content of the freedom of press, I thematically monitor the Constitutional Court's relevant decisions related to the topic. During the overview of the decisions, I apply both a descriptive, analytical and a critical point of view.

In the fourth part of the thesis, contrary to the methodology used in the previous part, I mainly concentrate on international and European sources of law, and court decisions. The reasons for this are the following:

- the problems discussed within the chapter are international due to the specific nature of online technology,
- the future of regulation points towards global cooperation or at least towards cooperation within the framework of the European Union, which means that the currently forming regulatory tendencies shall be explored within this remit, furthermore
- the Hungarian Constitutional Court's current practice is less mature.

In the fourth part, I discuss more issues that have stronger connections to freedom of speech than to the fundamental right to the freedom of the press, but all of the examined topics are related to the conditions of the operability of democratic discourses and the viability of the public opinion developing in accordance with its own rules. The activities of the intermediary service providers are on the margin of freedom of speech and freedom of press; therefore, I deem their short overview – in order to have a better understanding of the connections between the two fundamental rights – justified.

3. The structure of the research

The goal of my Ph.D. thesis titled „Changes in the constitutional meaning/content of freedom of the press” is to define freedom of the press as a fundamental right with independent content/meaning. On one hand, I define the positive elements of the notion of freedom of the press and on the other hand I create clear distinction between the notion of freedom of the press and its parent-right and freedom of speech by setting up a negative definition.

The thesis consists of four parts, all of which aim to grasp different aspects of the notion of freedom of the press. The first part gives a summary of the Hungarian constitutional history of freedom of the press and the most important theoretical justifications of its existence. The second and third parts are – relying on the practice of the Constitutional Court – unfold the constitutional elements of the freedom of the press. The second part, after setting the methodological frames and conceptual principles, describes the relationship between freedom of speech and freedom of the press, and presents the fundamental conditions for its limitations. Upon the examination of state intervention, I analyse the system of constitutional criteria of state regulation and administrative supervision in a separate chapter. In the third part, I introduce the fundamental elements and classic segments of freedom of the press (such as freedom of establishment, editorial freedom and prohibition of censorship) first, then I analyse the institutional guarantees of freedom of journalists as the individual aspect of the fundamental right of freedom of press, which has a close connection to the segment-rights. The fourth and last part reflects on those phenomena that in the last decade have transformed the structure of publicity and the structure of democratic discourses taking place within it, and that have an effect on defining the notion of freedom of the press as well.

3.1. History of freedom of the press in Hungary and most important theoretical justifications of its existence

The classic framework for interpretation the notion of freedom of the press is essentially equal to the liberal ideal of this fundamental right with legal focus. The notion of freedom of the press that has sprung from the ideals of the enlightenment was described as an early limit to the power of the (enlightened) absolute state and acquired a prominent position within the catalogue of fundamental rights. The demand for free press and the history of its regulation is a determinative chapter of both the universal and the national history of constitutional law. Those constitutions that were written in the spirit of the civil transformation, which has sprung from the fertile soil of the ideals of the enlightenment, mention freedom of the press amongst the most precious of the fundamental rights. The classic framework of the interpretation of freedom of press – which was historically enacted to counter the tyranny of the absolute state – considers the flow of expressions through the free press the core element of this right and means the independence of the press, especially periodicals, from the state. In 1948, the youth of Pest has symbolically achieved the recognition of freedom of the press and the abolishment of censorship in our country, and these achievements were later enacted by the assembly of the orders in Bratislava (Pozsony); only in order to bring these once-and-for-all banished limitations of press policing back from time to time throughout the ordeals and the course of the diverse Hungarian legal history's different era's. In public legal system of the dualism, the classic liberal ideal ruled the notion of freedom of the press (in the beginning in an unconditional manner, pursuant to Deák's ideas, then at the dusk of the blissful times of peace in a more limited manner); while the authoritarian regimes of the twentieth century endowed this reputable right with a specific meaning bound by ideology, interest and certain values. Interpretations serving the authoritative interests of the ruling establishment constituted the essence (meritum) of the new doctrines. The institutional organization of the press, press regulation and press administration, similarly to the justifying principles of constitutional jurisprudence were functionally subordinated to state-authoritative interest. The aim of legal regulation was besides providing a sound support for the freedom of the press, the reinforcement – and later the protection – of the state order and the structure of power, usually to the detriment of the former goal. The definition of freedom of the press was also adjusted to serve the interests of the reigning political regime, in the 20's first to the interest of the consolidation then to the interests of the "self-serving nation-state" and at last to the interests of the "socialism and people".

In the chapter on constitutional history, I give a short overview of the Hungarian history of freedom of the press, which is a history of fights for freedom until the regime change, political fights for the gained and subsequently lost freedom, and a history of social movements. The country, sometimes the orders, sometimes the people of the streets of Pest or the intellectuals, sometimes the legislators of the „released’ country, have celebrated more than one occasions, the achievement of freedom of the press and declared the forever-lasting abolishment of the preliminary control over the press. From time to time, however freedom of the press was shortly restricted again by applying policing measures. For me the history of the freedom of the press is a history of constant circulation of gained and lost freedom. Act XXXI. of 1989. is a landmark and – as I hope – marks the beginning of a definitive new era, where the Hungarian press’ final and definitive liberation has begun. Due to this and because of the fact that the past three decades of the history of the freedom of the press was the era of defining the notion of constitutional freedom of the press, in which the Constitutional Court had a prominent role, I will examine the democratic Hungary’s constitutional notion of the right to the freedom of the press by examining the decisions of the Constitutional Court in detail in a separate chapter.

At the end of the chapter on constitutional history, I present a short overview of the interpretations of the notion of the freedom of the press, present in the Hungarian scientific literature of public law, utilizing the works of the 19th and 20th century masters of the public law jurisprudence. I examine the definitions and concepts of freedom of the press developed by the public law jurisprudence, by using two distinctive approaches: an approach, which sets civil/civic freedom of the press into the centrefold, and an approach, which follows the ideological-functionalist ideal of freedom of the press.

Pursuant to this, I summarize those classic theoretical justifications, which serve as a basis for creating a theoretical-constitutional foundation for the notion of freedom of the press. Providing a short summary of the theoretical argumentation on the notion of freedom of the press is not only important, because it is a necessary element of the analysis of the definition of freedom of the press, but also because the Constitutional Court has largely relied upon it. These theoretical justifications provide conceptual support for the constitutional reasoning, which has a true importance only if the constitutional law is facing with new phenomena that are hard to insert into the previous framework of interpretation.

3.2. The constitutional meaning/content of the notion of freedom of the press in the practice of the Constitutional Court

In the second chapter, I volunteer to conduct a comprehensive analysis of the general questions of the notion of freedom of the press. Besides creating a positive and a negative definition of the notion of the freedom of the press, I also draw up the *differentia specifica* of the right to the freedom of the press as a specific, communication right, stemming from right to freedom of expression, while I also mention the aspects of differences and correlations between the freedom of speech and freedom of the press. I emphasize the instrumental character of freedom of the press. Freedom of the press is an instrument of the application of both the subjective and the objective sides of freedom of expression, information and the freedom to provide information. The Constitutional Court has stipulated that “the freedom of expression applies to the press in a specific/peculiar way. The freedom of the press shall be guaranteed by the state by taking into account the fact, that the press has a paramount role in information gathering, forming and shaping opinions. [...] Press is not only an instrument for the free expression of opinions,

but an instrument for provision of information, therefore it has a fundamental role in the provision of information which is a precondition of forming opinions.”²

As the Constitutional Court pointed out the following in its decision in which a comprehensive assessment of the new media regulation was provided: „The freedom of the press as an individual fundamental right is an instrument in that sense, that it amplifies the impact of individual expressions and supports informing the democratic publicity on cases of general interest, and forming opinions on cases of general interest. By exercising the right to freedom of the press, the proprietor of this fundamental right is actively shaping the democratic public opinion.”

The freedom of the press is an instrument that facilitates the exercise of the objective side of freedom of expression, in the sense, that „the press in this quality controls the activities of the public figures and institutions and the decision-making process, it informs the political community and the democratic publicity thereof (watchdog role).”³

A separate chapter of thesis discusses the limitability of freedom of the press by the state, the constitutional conditions of state intervention, and the constitutional framework of the regulation and supervision of the press and the media. The state regulation and oversight are such limits of the freedom of press that also serve as the guarantees of its exercise. The dualistic nature of state intervention is expressed in the obligation of institutional protection, which is connected to the objective side of freedom of the press and which is closely connected to a preliminary issue. Namely whether the freedom of the press has only a negative side (freedom from something) or there is an identifiable positive side (freedom to do something), the institutional guarantees of which may be created by the institutions of state intervention (regulation and oversight). In the thesis I argue that freedom of the press is a multi-dimensional fundamental right, which obliges the state to comply with two constitutional requirements: besides it's obligation to refrain from intervention (for example prohibition of censorship, editorial freedom, freedom of establishment free from administrative restriction), it should also ensure the creation and maintenance, achieved by regulatory instruments and instruments of oversight.

. The dichotomist approach according to which the state is either friend or foe, is false according to my view. I acknowledge – moreover I attribute outstanding importance to – the constitutional guarantees that oblige the state to refrain from intervention, however I attribute equal importance to the state's obligation to provide institutional protection, in order to ensure the application of freedom of the press. The requirement applies in an enhanced manner in the new media environment, where new global service providers have appeared due to the structural changes of publicity, which have bigger influence on the composition of publicity and on the processes of democratic discourses than the intervention of the state.

3.3. The content of the classic segment-rights of freedom of the press in Constitutional Court's practice

The classic segment-rights of freedom of the press, are those rights, that are elemental necessities to exercise this freedom; the ones that are not completely cover the complete content of this fundamental right, but have such a fundamental importance, that without their existence, it is hopeless to exercise the

² 37/1992. (VI. 10.) AB határozat, ABH 1992. 227. 229.

³ 65/2011. (XII. 20.) AB határozat, ABH 2011. 478. 503.

right to the freedom of the press (*conditio sine qua non*). The classic segment-rights are the freedom of establishment, the editorial freedom and the prohibition of preliminary control and restrictions.

These rights serve as unique safeguards provided by the state and shall be regarded as obligations to refrain from certain acts, so their prevalence assumes the state does not interfere (negative freedom). The constitutional content of freedom of the press is to ensure a positive freedom, which are criteria, especially those that are based on the state's obligation of institutional protection. In some instances, the presence/functioning of the segment rights requires state intervention, for example in the form of structural rules or content regulation limiting editorial autonomy. Within the merits of the positive freedom the issue of journalist's privileges shall be mentioned, which is presented in detail in one of the following chapters. The right to the protection of journalist's sources or the right of entry are parts of the classic segment-rights in a narrow sense/ tangentially. Yet they can be derived from editorial freedom for the reason that the right to determine content freely and without influence can only be exercised if the journalist or the editor can use and the information source can share information of public interest fearlessly or if the journalist is not restricted in his freedom of movement and can attend and inform of events of public interest. In a similar fashion, there is a necessity for state intervention stemming from the state's obligation to provide institutional protection in the case of media services transmitted by the use of limited infrastructure where operating and dispensing the infrastructural resources is the obligation of the state. This obligation of the state can be interpreted as a restriction of the right to freedom of establishment, but in fact the market restrictions which are adjusted to the technological capabilities help the fulfilment of the institutional requirements of the freedom of the press, the conduct of discourses and take into account the needs of the audience.

3.4. The future of the right of the freedom of the press – the structural change of publicity and freedom of press

The structure of (mass)communication which has appeared centuries ago, and evolved with the appearance of radio and television has undergone fundamental changes caused by the appearance of the technology of the internet. At the same time however the structure of online publicity is not monolithic, since the internet's pluralistic ecosystem is a combination of different technologies. Within the renewed structure of publicity, the quantitative and qualitative features of the flow of information and the participants of the discourses have also changed (by the appearance of new information routing gatekeepers instead of the old ones). The services that came into existent due to the specificities of the technology have promised the prevalence of freedom of speech at such a magnitude and abundance of information that has never been thought of, yet it has to be acknowledged, that there are mechanisms under the surface that have an enormous effect on the composition of available content. These new phenomena have an effect on the exercise of the right to freedom of expression also on the composition of democratic public opinion. In this chapter after giving a general analysis of the changed structure of publicity and presenting the constitutional legal consequences thereof, I examine the activities of the new gatekeepers from a constitutional point of view. I assess the activities of video-sharing platform providers, hosting providers, search engine providers and social media platforms. I examine the notions of filter bubble and fake news related to the activities of the gatekeepers in a separate chapter.

4. Short summary of the conclusions of the thesis:

i.) The notion of freedom of the press has a sui generis content, from which some standards partly different from freedom of speech stem. Peculiar institutional guarantees and restrictions arise from the fact that its content is specific compared to freedom of speech and from its specific field of application, these guarantees and restrictions are not typical for freedom of speech. As for the former classic segment-rights, while for the latter content-related rules of press- and media law shall be mentioned as examples.

ii.) Moreover, specific attribution of freedom of press is that there is broad legal regulation in place to ensure its institutional background and the exercise of its limits. The law of the press and media set out the institutional guarantees of this fundamental right, and the constitutional safeguards of administrative oversight.

iii.) The freedom of the press is a multidimensional fundamental right, which has a negative and a positive side, also its subjective and an objective fields of application are complementary to each other. The subjective right to freedom of the press sometimes collides constitutionally with the objective, institutional side of this right. Upon resolving such a collision, one must take into account the high values of freedom of the press which is based on democratic justification. The institutional assurance of the facilitation to carrying out democratic discourses is therefore a constitutionally justifiable restriction to the subjective exercise of this freedom, such as the freedom of establishment or the editorial freedom.

iv.) The subtitle of this thesis refers to fact that during the examination the meaning/content of this fundamental right, the Constitutional Court's practice provided great assistance for me. However, the Constitutional Court's practice wasn't always consistent, especially when it came to differentiation between freedom of speech and freedom of the press. The two fundamental rights were often mentioned as synonyms by the related decisions. This inconsistency is bothering when one aims to identify the exact content and limits of the discussed fundamental rights. Upon assessing the elements of the definition of freedom of the press, I also examined the Constitutional Court's related practice, and made my conclusions on the constitutional meaning/content of freedom of the press by analyzing the decisions together.

v.) Upon the examination of the constitutional content of the notion of freedom of the press, it is indispensable to examine the constitutional framework of state intervention and the constitutionally legitimate scope of state regulation and oversight.

vi.) I searched for the newest aspects of the relationship between freedom of speech and freedom of press by analyzing the structural changes of democratic discourses caused by the internet technology. In the new sphere of publicity created by new media, it is even harder to make distinction between the two fundamental rights, because the activities of the service providers fall into the very edge of the personal scope of freedom of speech and press. I examined the activities of the new gatekeepers – which changes the structure of publicity and fundamentally influences the democratic discourses - from the freedom of the press' point of view.

vii) Upon analyzing the filter bubble and the fake news phenomena, I reached a conclusion according to which there is a need for new regulatory solutions, which are beyond the traditional framework of interpretation, in order to protect pluralistic publicity as the foundation of democratic social order, however we have to take the classic guarantees of freedom of press (and speech) into account. Therefore, the problem is especially hard to solve in light of this categorical imperative.

viii) The regulation of online discourse is a complex task and nowadays still an unsolved issue. There is no doubt however that the online publicity cannot be unregulated like the wild west. Democratic societies cannot give up the achievements of their constitutional systems, especially not the democratic fundamental values, the exercise of human rights within the online sphere. The regulation of the online spheres of publicity can only be achieved/expedient if it is a result of the close cooperation of more, responsible actors. The engagement of the state is not sufficient in itself; such as the acts of a swordless knight, its random voluntarist attempts to regulate are doomed to failure due to the specificities of the technology. In case one aims to achieve the distortion-free presence of democratic discourses in the online publicity, there is need for state regulation. However, one tougher question has to be answered: what should be the scale of state intervention and on what points is it necessary. Besides, the state's desire to regulate has to be limited with exercising huge caution. On one hand ensuring the public interest requires legal solutions, and on the other hand, the overrated state intervention bears huge risks in such a constantly changing and evolving area as the sphere of online communication, therefore it might make more harm, than it promised to tackle. We be conscious of the fact, that due to the special technology of the internet, national legislation can hardly be effective, the rules should be set out on a global level. The European Union's legislative mechanism could provide a good framework for the European regulation.⁴ However, it is without a doubt that the state has a role in regulate, but the role of the service providers and the users is important as well.

ix) The most important expectation toward service providers is the assurance of transparent operation, which can be enforced by a future legal regulatory system and the explicit and unequivocal actions / advocacy of the users. The responsibility of the users of different platforms is not a small one, they have to become as a fashionable expression puts it, conscious consumers. Moreover, they don't have to be consumers, but responsible *citoyen*, who protect the democratic public debates – the oxygen of democratic social order – from online pollution, who doesn't sacrifice the functioning of democratic discourses on the altar of their own comfort and who doesn't let Huxley's brave new world become reality in the new connected – or if you like platform – society. Not even if the judicial practice points in a different direction.

x.) One of the biggest challenges is to identify the substantial tools for the realization of the state's institutional protection, which guards online freedom of speech and freedom of the press, the online disputes, because the global nature of the services is beyond the territorial jurisdiction of state legislation and the jurisdictional opportunities of national jurisprudence. The power of private service providers' to restrict fundamental rights is – according to my views – calls for the wide recognition of the horizontal scope of freedom of speech.

However, without freedom of the press a healthy democratic publicity the functioning of the democratic society and the constitutional principle which defines our country as a democracy under the rule of law, is unsustainable.⁵ Freedom of the press is a constitutional value and – remembering the constitutional history of our county - we have primary obligation to defend it. If there are enough citizens, who are committed to democratic discourses and are willing to participate in pluralistic public debates, then we don't have to order a requiem for the freedom of the press (just yet).

⁴ vö. Koltay András: A sajtószabadság fogalma ma,. In: Koltay András – Török Bernát: Sajtószabadság és médiaszabályozás a 21. század elején 2. Wolters Kluwer, Budapest, 2015. 136–137.

⁵ Magyarország Alaptörvénye B.) cikk (1) bekezdése

5. List of the author's publications on the topic and their independent citations

Klein Tamás: A videomegosztóplatform-szolgáltatások. In: Klein Tamás – Tóth, András (szerk.): Technológia jog - Robotjog – Cyberjog. Wolters Kluwer, Budapest, 2018. 165–169.

Klein Tamás: A web 2.0. egyes szabályozási kérdései – különös tekintettel az alkotmányjogi vonatkozásokra. In: Klein Tamás (szerk.): Tanulmányok a technológia- és cyberjog néhány aktuális kérdéséről. Médiatudományi Intézet, Budapest, 2018. 41–50.

Klein Tamás: Az online diskurzusok egyes szabályozási kérdései. In: Klein Tamás (szerk.): Tanulmányok a technológia- és cyberjog néhány aktuális kérdéséről. Médiatudományi Intézet, Budapest, 2018. 11–40

→ Cservák Csaba: Modern technológiák az alkotmányjogban, különös tekintettel az alapjogvédelemre. In: Technológiai kihívások az egyes jogterületeken. KRE ÁJK, Budapest, 2018. 67–86.

→ Zódi Zsolt. Platformok, robotok és a jog. Új szabályozási kihívások az információs társadalomban. Gondolat, Budapest, 2018.

Klein Tamás: Az online nyilvánosság alkotmányjogi vonatkozásai. In: Klein Tamás – Tóth, András (szerk.): Technológia jog - Robotjog – Cyberjog. Wolters Kluwer, Budapest, 2018. 219–261.

Klein Tamás: Az online tartalomszolgáltatások uniós hordozhatóságának lehetőségei. In: Klein Tamás – Tóth, András (szerk.): Technológia jog - Robotjog – Cyberjog. Wolters Kluwer, Budapest, 2018. 125–130.

Klein Tamás: Még egyszer a sajtószabadság és médiajog 21. századi aktuális kérdéseiről és szabályozási lehetőségeiről - de lege ferenda. Jogtudományi Közlöny, 2018/3. 170–172.

→ Cservák Csaba: Modern technológiák az alkotmányjogban, különös tekintettel az alapjogvédelemre. In: Technológiai kihívások az egyes jogterületeken. KRE ÁJK, Budapest, 2018. 67–86.

Klein Tamás (szerk.): Tanulmányok a technológia- és cyberjog néhány aktuális kérdéséről. Médiatudományi Intézet, Budapest, 2018.

Klein Tamás – Tóth, András (szerk.): Technológia jog - Robotjog – Cyberjog. Wolters Kluwer, Budapest, 2018.

Klein Tamás: A sajtószabadság és a médiajog legújabb kihívása és az azokra adható megoldási javaslatok. Jogtudományi Közlöny, 2017/3. 306–307.

Klein Tamás: Adalékok az online diskurzusok szabályozási kérdéseire In: Koltay András – Török Bernát (szerk.): Sajtószabadság és médiajog a 21. század elején 4. Wolters Kluwer, Budapest, 2017. 149–186.

→ Pádár Henrietta. A kommentekért való felelősség bírói gyakorlatának evolúciója. [online] Debreceni Jogi Műhely 2018/1–2. www.debrecenijogimuhely.hu/archivum/1_2_2018/a_kommentekert_valo_felelosseg_biroi_gyakorlatanak_evolutiona/. Letöltés dátuma: 2018. december 20.

→ Bartóki-Gönczy Balázs: Az online közvetítő szolgáltatók mint az információhoz való hozzáférés új kapuőrei. Doktori értekezés. PPKE JÁK Doktori Iskola, Budapest, 2018.

Klein Tamás: Az infokommunikációs jog alkotmányos alapjai. In: Klein Tamás – Tóth András (szerk.): Bevezetés az Infokommunikációs Jogba. Patrocinium, Budapest, 2017. 13–76.

Klein Tamás: Az internetes nyilvánosság hatása a demokratikus diskurzusok pluralitására: A korlátlan hozzáférés beteljesülése vagy egy illúzió csapdája. In: Chronowski Nóra – Pozsár-Szentmiklósy Zoltán – Smuk Péter – Szabó Zsolt (szerk.): A szabadságszerető embernek. Liber Amicorum István Kukorelli, Gondolat, Budapest, 2017. 511–525.

Klein Tamás – Tóth András (szerk.): Bevezetés az Infokommunikációs Jogba. Patrocinium, Budapest, 2016.

→ Schubauer Petra. Digitális élet a halál után – avagy az online személyes adatok polgári jogi és adatvédelmi jogi megítélése az adatalany halála után. In: Jogalkotás és jogalkalmazás a XXI. század Európájában IV. 40–49.

Klein Tamás: A magyar médiaszabályozás története. In: Koltay András – Nyakas Levente: Magyar és európai médiajog. Wolters Kluwer, Budapest, 2015. 41–66.

Klein Tamás: A Magyar Rádió, a hírszolgálat és a film a koalíciós korszakban (1945-1948). In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. Wolters Kluwer, Budapest, 2015. 364–385.

→ Klestenitz Tibor – Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. In Medias Res, 2016/1. 171–174.

→ Takó Sándor: A Filmcenzúra fejlődéstörténete Magyarországon a „gépszínházak” megjelenésétől a rendszerváltásig. In: Koltay András – Török Bernát (szerk.): Sajtószabadság és médiajog a 21. század elején IV. Wolters Kluwer, Budapest, 2017. 85–117.

→ Sz. Nagy. Gábor: A koalíciós korszak sajtójogi szabályozása 1945–1949 között. Múltunk, 2017/4. 190–213.

→ Sz. Nagy Gábor: A magyar sajtó politika a koalíciós időszakban (1944-1949). Doktori értekezés. 2018.

Klein Tamás: A Rádió, mint új médium a két világháború közötti Magyarországon. In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914–1989. Wolters Kluwer, Budapest, 2015. 219–254.

→ Klestenitz Tibor – Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. In Medias Res, 2016/1. 171–174.

Klein Tamás: A sajtó- és médiaszabályozás történeti vázlatja egyes országokban. In: Koltay András – Nyakas Levente: Magyar és európai médiajog. Wolters Kluwer, Budapest, 2015. 66–88.

Klein Tamás: A sajtószabadság államszocialista felfogása. In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. Wolters Kluwer, Budapest, 2015. 256–353.

→ Klestenitz Tibor – Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. In Medias Res, 2016/1. 171–174.

Klein Tamás: A sajtószabadság fogalmának jelentésmódosulásai egykor és ma. In: Lajkó Dóra – Varga, Norbert (szerk.): Alapelvek és alapjogok. Szegedi Tudományegyetem Állam- és Jogtudományi Doktori Iskola, Szeged, 2015. 253–264.

Klein Tamás: Adalékok a sajtószabadság fogalmának meghatározásához Magyarországon. In: Koltay András – Török Bernát (szerk.): Sajtószabadság és médiajog a 21. század elején 2. CompLex, 2015. 53–97.

→ Koltay András – Török Bernát (szerk.): Sajtószabadság és médiajog a 21. század elején 2. Wolters Kluwer, Budapest, 2016. 168–170.

Klein Tamás: Az angol sajtó jogi szabályozásának történeti vázlata. In: James Curran – Jean Seaton: Hatalom felelősség nélkül. A sajtó, a műsorszolgáltatás és az internet Nagy-Britanniában. Wolters Kluwer, Budapest, 2015. 477–492.

→ Paál Vince: James Curran – Jean Seaton: Hatalom felelősség nélkül. A sajtó, a műsorszolgáltatás és az internet Nagy-Britanniában. Könyvismertetés. In *Medias Res*, 2015/2. 428–432

Klein Tamás: Az elektronikus média a szocializmus korszakában. In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914–1989. Wolters Kluwer, 2015. 598–615.

→ Klestenitz Tibor – Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914–1989. In *Medias Res*, 2016/1. 171–174.

→ Takó Sándor: A Filmcenzúra fejlődéstörténete Magyarországon a „gépszínházak” megjelenésétől a rendszerváltásig. In: Koltay András – Török Bernát (szerk.): Sajtószabadság és médiajog a 21. század elején IV. Wolters Kluwer, Budapest, 2017. 85–117.

Klein Tamás: Smuk Péter: A politikai diskurzusok alkotmányjogi szerkezete. A demokratikus közvélemény kialakulásának alkotmányos garanciái – európai standardok és közép-európai kihívások. Recenzió. In *Medias Res*, 2015/1., 213–217.

Klein Tamás: A sajtószabadság fogalmának színeváltozásai. In: Fazekas Marianna (szerk.): Jogi Tanulmányok, Jogtudományi Előadások az ELTE ÁJK Doktori Iskoláinak Jubileumi Konferenciáján, 20 éves a doktori képzés az ELTE Jogi Karán. ELTE ÁJK Doktori Iskola, Budapest, 2014. 102–113.

Klein Tamás: Adalékok a Horthy-korszak sajtórendészeti szabályozásához II. Sajtószabadság és/vagy nemzetérdek – egy „öncélú nemzeti állam” sajtószabályozása (1931–1936). In *Medias Res*, 2013/ 1. 45–65.

→ Sz Nagy Gábor: Az 1945. júliusi papírbotrány reprezentációja a korabeli politikai sajtóban. *Médiakutató*, 2014/2. 105–115.

→ Horváth Attila. Az emberi jogok története. In: Horváth Attila (szerk.): Magyar alkotmány- és jogtörténet. NKE Közigazgatás-tudományi Kar, Budapest, 2014. 263–314.

→ Paál Vince. A konszolidált ellenforradalom és a sajtószabadság. In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914–1989. Wolters Kluwer, Budapest, 2015. 82–112.

→ Hegyközi Ilona. A magyar nyomda-, könyv-, sajtó- és könyvtártörténeti szakirodalom 2013-ban. *Magyar Könyvszemle*, 2015/1. 109–129

→ Sárándi Tamás. Levezényelt visszacsatolás: A magyar katonai közigazgatás Észak-Erdélyben, 1940. Pro-Print, Csíkszereda, 2016)

→ Balogh Atilla. Adalékok a Keresztes-Fischer Ferenc vezette Belügyminisztérium rendészeti politikájához (1931-1932) – Gyülekezési, egyesületi, sajtórendészeti ügyek; állambiztonság, állami ellenőrzések, fejlesztések a közbiztonsági szerveknél [online]. KRE-DIT, 2018/1., <http://www.kre-dit.hu/tanulmanyok/balogh-atilla-adalekok-a-keresztes-fischer-ferenc-vezette-belugyminiszterium-rendeszeti-politikajahoz-1931-1932-gyulekezesi-egyesuleti-sajtorendeszeti-ugyek-allambiztonsag-allami-elle/>. Letöltés dátuma: 2018.12.20.

Klein Tamás: Az elektronikus sajtó szabályozásának kezdetei Magyarországon. A rádiójog genezise. In: Paál Vince (szerk.): Magyar sajtószabadság- és szabályozás 1914–1989. Előadások a magyar sajtószabadság történetéhez. NMHH MT Médiatudományi Intézet, Budapest, 2013. 20–32.

→ Paál Vince. Sajtószabályozás és sajtószabadság a Horthy-korszakban. In: Paál Vince (szerk.): Magyar sajtószabadság és –szabályozás 1914–1989. Előadások a magyar sajtószabadság történetéhez. Médiatudományi Intézet, Budapest, 2013. 7–19.

Klein Tamás: A magyar médiaszabályozás története. In: Koltay András – Nyakas Levente: Magyar és európai média jog. CompLex, Budapest, 2012. 41–65.

→ Fazekas János. Az európai médiaszabályozó hatóságok jogállásának elméleti kérdései és nemzetközi megalapozása. In: Koltay András – Török Bernát (szerk.): Sajtószabadság és média jog a 21. század elején. CompLex, Budapest, 2014, 215–232.

→ Takács Róbert: A sajtó a Kádár-korszakban. In: Paál Vince (szerk.): A sajtószabadság története Magyarországon 1914-1989. Wolters Kluwer, Budapest, 2015. 492–597.

→ Fazekas János. Az európai médiaszabályozó hatóságok jogállásának összehasonlító elemzése. In: Koltay András – Török Bernát: Sajtószabadság és média jog a 21. század elején 4. Wolters Kluwer, Budapest, 2017. 11–36.

Klein Tamás: A sajtó- és médiaszabályozás történeti vázlata egyes országokban. In: Koltay András – Nyakas Levente (szerk.): Magyar és európai média jog. CompLex, Budapest, 2012, 66–89.

→ Fazekas János. Az európai médiaszabályozó hatóságok jogállásának elméleti kérdései és nemzetközi megalapozása. In: Koltay András – Török Bernát (szerk.): Sajtószabadság és média jog a 21. század elején. CompLex, Budapest, 2014. 215–232.

→ Fazekas János. Az európai médiaszabályozó hatóságok jogállásának összehasonlító elemzése. In: Koltay András – Török Bernát: Sajtószabadság és média jog a 21. század elején 4. Wolters Kluwer, Budapest, 2017. 11–36.

Klein Tamás: Adalékok a Horthy-korszak sajtórendészeti szabályozásához I. (1919–1931). In *Medias Res*, 2012/2. 182–198.

→ Császár Ildikó. A szentgotthárdi fegyverszállítási botrány sajtóvisszhangja. *Vasi Szemle*, 2014/6. 676–688.

→ Sz Nagy Gábor: Az 1945. júliusi papírbotrány reprezentációja a korabeli politikai sajtóban. *Médiakutató*, 2014/2. 105–115.

→ Horváth Attila. Az emberi jogok története. In: Horváth Attila (szerk.): Magyar alkotmány- és jogtörténet. NKE Közigazgatás-tudományi Kar, Budapest, 2014. 263–314.

→ Paál Vince: A konszolidált ellenforradalom és a sajtószabadság. A sajtószabadság története Magyarországon 1914-1989. Wolters Kluwer, Budapest, 2015., 82–112.

→ Harkai Ágnes. A végső harc órájában: Bosnyák Zoltán *Harc* című hetilapjának bemutatása. *Pro Minoritate*, 2015/Téli sz. 177–198.

→ Balogh Atilla. Adalékok a Keresztes-Fischer Ferenc vezette Belügyminisztérium rendészeti politikájához (1931-1932) – Gyülekezési, egyesületi, sajtórendészeti ügyek; állambiztonság, állami ellenőrzések, fejlesztések a közbiztonsági szerveknél [online]. KRE-DIT, 2018/1., <http://www.kre-dit.hu/tanulmanyok/balogh-atilla-adalekok-a-keresztes-fischer-ferenc-vezette-belugyminiszterium-rendeszeti-politikajahoz-1931-1932-gyulekezesi-egyesületi-sajtorendeszeti-ugyek-allambiztonsag-allami-elle/>. Letöltés dátuma: 2018.12.20.

Klein Tamás: Gondolatok az új elektronikus sajtószabályozás apropóján. In: Tóth Andrea (szerk.): *Nyelv és kommunikáció a 21. század digitalizált világában: XIII. Dunaújvárosi Nemzetközi Alkalmazott Nyelvészeti és Kommunikációs Konferencia: [előadásainak szerkesztett gyűjteménye]*, Dunaújvárosi Főiskola Kiadó Hivatala, Dunaújváros, 2012. 155–160.

Klein Tamás: Regelung der elektronischen Presse in Ungarn. ELTE ÁJK Magyar Állam- és Jegtörténeti Tanszék, Budapest, 2012. (kismonográfia német nyelven)

Klein Tamás: Az új elektronikus sajtójogi szabályozás egyes strukturális szabályainak alkotmányjogi optikája. Jogi Tanulmányok, 2011/1. 93–112.

Klein Tamás: Az elektronikus sajtójog strukturális szabályainak változása egyes alapjogok tükrében. In: Smuk Péter (szerk.): Az állam és jog alapvető értékei. Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, Győr, 2010. 85–95.

Klein Tamás: Az elektronikus sajtó szabályozásának kezdetei Magyarországon. In: Király Miklós – Varga István (szerk.): A XXIX. Országos Tudományos Diákköri Konferencia Állam- és Jogtudományi Szekciójának díjnyertes dolgozatai I-II: ELTE Eötvös Kiadó, Budapest, 2011. 1075–1107.

Klein Tamás: Az elektronikus sajtó szabályozásának kezdetei Magyarországon. Infokommunikáció és Jog, 2009/4. 136–144.