Erdős, Csaba*

The Concept of the Dignity of Communities in Hungarian Constitutional Law

Abstract

This concept of the dignity of communities was established by the Hungarian Constitutional Court in the Hungarian legal system, but it also became part of the current Hungarian constitution (Fundamental Law) since its fourth amendment adopted in 2013. The Constitution's clause which contains the dignity of communities was used by the Constitutional Court for the first time in 2021. Since dignity has traditionally been used as a human quality, both in philosophy and in constitutional law, the Constitutional Court had to face many challenges to adopt it to another category of entities. The aim of this study is to present the emergence of the concept of the dignity of communities in Hungarian law, focusing primarily on the case-law of the Constitutional Court, and to provide a critical analysis of these decisions.

Keywords: human dignity, dignity of communities, Hungarian Constitutional Court, Decision No. 6/2021 (II. 19.) AB, Decision No. 7/2021 (II. 19.) AB

I. Preamble

Dignity has traditionally been used as a human quality, both in philosophy and in constitutional law. However, the recognition of the dignity of different groups has become a subject of constitutional law discourse, especially in the last few decades. The dignity of communities is usually seen as an external limit to freedom of expression in the practice of fundamental rights institutions, in the sources of legal literature and even in substantive law. An example of the latter is Article IX(5) of the Fundamental Law of Hungary, which states that "exercising the freedom of expression and opinion cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to bring action before the court – as defined by law – against any statement considered injurious

* Erdős, Csaba JD, PhD, Associate Professor, Széchenyi István University, Faculty of Law and Political Sciences Department of Constitutional Law and Political Sciences; University of Public Service – Ludovika, Faculty of Public Governance and International Studies Department of Constitutional and Comparative Law.

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to the group alleging violation of their human dignity." Although this clause has been in force since 1 April 2013, it was only recently that the Constitutional Court (AB) interpreted this clause for the first time, namely in its Decision No. 6/2021 (II. 19.) AB and Decision No. 7/2021 (II. 19.) AB.

II. Man and dignity – a conceptual framework

One is tempted to think that it would be worthwhile to clarify the nature of dignity and the right to dignity before defining their personal scope. István Kukorelli and Gergely Deli place the relationship between these two categories on three levels of abstraction: the first, the most abstract and intangible level, is human dignity itself (not as a right, but as a value). The second level is its concretization and decomposition, at which level human dignity cannot be placed as a subjective right, but only such "points of reference" can be located here, which function as the wellsprings of subjective rights, and at which points of reference the abstract philosophical concept is grasped by law (including also the general personality right). The third level is that of subjective rights derived from human dignity, which can be used to regulate specific legal relationships.[1] The latter – such as the right to self-determination,[2] name rights,[3] the right to discover one's bloodline,[4] or freedom of marriage[5] – have emerged thanks to the right to human dignity bring understood as a general personality right.[6]

The above distinction is of great dogmatic importance, but it does not bring us any closer to the definition of dignity. András Zs. Varga supports a multidimensional interpretation of dignity, emphasising that "all three dimensions of dignity are derived from the text of the Declaration [i.e. the Universal Declaration of Human Rights], which links equal freedom, dignity and rights to the birth (transcendent dimension) of every (community dimension) human being (personal dimension)".[7] The second attempt at definition is the classification, according to which there is a libertarian concept of dignity that defies from definition, and the opposite; there is a value-based

[1] G. Deli and I. Kukorelli, Az emberi méltóság alapjoga Magyarországon (The fundamental right to human dignity in Hungary), (2015) 70 (7–8) *Jogtudományi Közlöny,* 337–347., 341–343.
[2] Among others: Decision No. 8/1990 (IV. 23.) of the Constitutional Court, Decision No. 1/1994 (I. 7.) of the Constitutional Court, Decision No. 20/1997 (III. 12.) of the Constitutional Court.
[3] Decision No. 995/B/1990 of the Constitutional Court.
[4] Decision No. 57/1991 (XI. 8.) of the Constitutional Court.
[5] Decision No. 22/1992 (IV. 10.) of the Constitutional Court.
[6] Decision No. 8/1990 (IV. 23.) of the Constitutional Court.
[7] Zs. A. Varga, Méltóság és közösség (Dignity and community), in A. Halustyik and L. Klicsu (eds), *Cooperatrici Veritatis. Ünnepi kötet Tersztyánszkyné Vasadi Éva 80. születésnapja alkalmából (Celebration volume for the 80th birthday of Éva Tersztyánszkyné Vasadi),* (Pázmány Press, Budapest, 2015, 83–92) 86.

definition that seeks to define the conceptual elements.[8] In German jurisprudence, the issue appears as the opposition between the understandings of human dignity as *Substanzbegriff* and as *Funktionsbegriff:* according to the former, dignity is legally indefinable and thus untouchable by law, while, according to the latter, dignity can be relativised, in particular thanks to the right of self-determination.[9]

Gergely Deli argues for the validity of the freedom-centred concept of dignity, stressing that

> a more complete protection of dignity is logically inconceivable. The concept of dignity has reached the highest logical stage of its development by excluding legal regulation from its core area. [...] Law is only able to protect equally the changing contents and narratives of dignity that vary according to changing value preferences and to deal with human irrationality, if it does not protect the content of human dignity in one form or another, but its form; in other words, in practice, human freedom.[10]

In the absence of a widely accepted concept – paradigm – of constitutional law and public law, it is worth extending our investigation to the field of (constitutional) philosophy. The Christian concept of human dignity is traced back to the divinity of man, which is *unique to man of all beings* and thus places man above all other living beings.[11] Zsolt Balogh points this out by quoting a sermon[12] by the mediaeval mystic Johannes Tauler: "»in a certain sense there are three men in a man: an animal man, who lives according to his or her senses; a rational man; and finally the highest man, the man in the form of a god, the man with the image of God.« It is likely that the latter form is human dignity itself."[13]

Humanism's concept of dignity is attested to in Mirandola's "Oration on the Dignity of Man". He saw the core of dignity in the free will of man: man can acquire

[8] C. Dupré, Az emberi méltóság a 2011-es magyar Alaptörvényben (Human dignity in the 2011 Hungarian Fundamental Law), (2011) 15 (4) *Fundamentum,* 23–36., 31–32.; G. Deli, Emberi méltóság, történelmi narratívák és a jog (Human dignity, historical narratives and the law), (2015) 11 (1) *Iustum – Aequum – Salutare,* 41–58., 44.

[9] Gy. Kiss, "We believe that dignity is the basis of human existence." in A. Patyi (ed.), *Rendhagyó kommentár egy rendhagyó preambulumról (An unusual commentary on an unusual preamble),* (Dialóg-Campus, Budapest, 2019, 213–252) 213., 249.

[10] Deli, Emberi méltóság, történelmi narratívák és a jog (Human dignity, historical narratives and the law), 50.

[11] G. A. Tóth, Az emberi emberi méltósághoz és az élethez való jog (The right to human dignity and the right to life), in G. Halmai and G. Tóth (eds): *Emberi jogok (Human rights),* (Osiris, Budapest, 2003) 258.

[12] J. Tauler, *A hazatérés útjelzői (The Inner Way),* (Paulus Hungarus and Kairosz, Budapest, 2002) 365.

[13] Zs. Balogh, Emberi méltóság: Jogi absztrakció vagy alanyi jog (Legal abstraction or subjective right), (2010) 6 (4) *Iustum – Aequm – Salutare,* 35–44., 44.

for himself any place, form and function, as opposed to other, determined beings.[14] Thus, dignity has become an inevitable, unconditional *quality of man, which cannot be taken away from him*.

From Kant's philosophy, the separation of people from objects is really remarkable: according to this, *objects have prices, people have dignity*.[15] The neo-Kantian Joel Feinberg's theory of the value of the human being also echoes this: "In a society based on human rights, at least, certain rights are as irrevocably conferred on fools and scoundrels as on anyone else. As Vlastos puts it, these rights are based on the value that human beings have as individuals, quite independently of their valuable qualities."[16] Value is thus an inalienable characteristic of man, *a distinguishing feature of man from other beings.*

From the above overview, it is clear that the European philosophical tradition associates dignity exclusively with each human being, considering it as his *differentia specifica:* dignity is nothing other than the determinant of human existence: dignity makes a man a man. To put it another way, "[dignity] is that which distinguishes human life from other expressions of life".[17] Zoltán Balázs also emphasises this: "[i]t has been a commonplace, regularly repeated since antiquity, that man (in general) represents a quality in nature that is of greater value than the apparently larger and more powerful other living (or perhaps inanimate) things".[18]

III. The emergence of the dignity of communities and other entities during the coming into effect of the Constitution

The Constitution of Hungary prior to the current Fundamental Law of Hungary, Act XX of 1949 (hereinafter: the Constitution), which underwent a rule-of-law revision during the period of regime change, did not contain any normative provision on the dignity of communities, but it appeared early in the case-law of the Constitutional Court.

[14] G. A. Tóth, Az emberi méltósághoz és az élethez való jog (The right to human dignity and the right to life), in G. Halmai and G. Tóth (eds): *Emberi jogok (Human rights),* (Osiris, Budapest, 2003) 258.
[15] Gábor Attila Tóth quotes Kant in Tóth, Az emberi méltósághoz és az élethez való jog (The right to human dignity and the right to life), 258–259.
[16] J. Feinberg, *Társadalomfilozófia (Social Philosophy),* (Osiris, Budapest, 1999).
[17] Balogh, Emberi méltóság: Jogi absztrakció vagy alanyi jog (Legal abstraction or subjective right), 36.
[18] Z. Balázs, Emberi méltóság (Human dignity), (2005) (4) *Jogelméleti Szemle,* http://jesz.ajk.elte.hu/balazs24.html (Last accessed: 30 December 2021).

In its Decision No. 64/1991 (XII. 17.), the Constitutional Court – when interpreting the human dignity clause of the Constitution – laid down the Kantian concept, of *Substanzbegriff* nature and based on the principle of freedom: "there is a core of the autonomy or self-determination of the individual, outside the control of all others, whereby – according to the classical formulation – *man remains a subject* and cannot become an asset or an object".

The Constitutional Court did not stick to the above concept, that dignity is for human beings, for long, and, in its Decision No. 30/1992 (V. 26.), it already used the phrase the "dignity of communities":

> According to the decision of the Constitutional Court, the dignity of communities may be a constitutional limit to freedom of expression. The decision does not therefore rule out the possibility that the legislator may provide for this, even by means of criminal law protection in addition to the offence of incitement to hatred. However, other legal instruments, such as the extension of the scope for the application of non-pecuniary damages, are also suitable for the effective protection of the *dignity of communities*.

However, the Constitutional Court has not yet explained why, and above all how, it considers that dignity, which is considered to be the exclusive characteristic of humans, can be applied to the community.

Decision No. 36/1994 (IV. 24.) AB, which annulled the Criminal Code's provision on insulting a public authority or a representative of a public authority, seemed to return to the 1991 interpretation of dignity by distinguishing between dignity and respect: "Although *only a representative of a public authority may have human dignity,* the public authority itself may also claim the favourable assessment and respect of society."[19] This was completely contradicted by Decision No. 33/1998 (VI. 25.) of the Constitutional Court, in which it ruled that the "dignity of municipal councils" could also be a constitutional limit to freedom of expression. The recognition of the dignity of a public body exercising public authority may be considered surprising, even in the light of the Decision No. 30/1992 (V. 26.) of the Constitutional Court, even if it is a conservative assessment.

Since Decision No. 30/1992 (V. 26.) is the basic decision on the freedom of expression, the panel repeatedly returned to the part of the decision concerning the dignity of communities, and the possible scope of interpretation of the dignity of communities under this Decision appeared in subsequent decisions. First of all, the reasoning of Decision No. 13/2000 (V. 12.) of the Constitutional Court, confirming the constitutionality of the criminal protection of national symbols, referred to this

[19] Italics mine – Cs. E.

part of the "basic decision", and, even if it did not directly interpret the concept of the dignity of communities, it at least contained a definition that could refer to it. It did so by referring to the judgments of the European Court of Human Rights (hereinafter: ECtHR) in *Otto-Preminger-Institut v. Austria* and *Wingrove v. United Kingdom,* from which it concluded that, like religious beliefs and feelings, beliefs and feelings of belonging to a State deserve protection in the event of the use of expressions that insult or degrade the symbols of an independent State or other such acts.[20] Attila Harmathy, in his concurring opinion appended to this decision, further elaborated on the interpretation of the dignity of the individual and the community: "the sense of belonging to a country does not appear as a specific right, but nevertheless, like the right to freedom of religion or conscience, it is part of the right to human dignity as a general personality right".[21] This interpretation clearly implies, in my opinion, that *the dignity of communities can only be understood through the individual, in terms of the individual*.

Decision No. 14/2000 (V. 12.) of the Constitutional Court on the constitutionality of the criminal prosecution of authoritarian symbols went further towards the definition of the dignity of communities: it stated *expressis verbis* that "Article 54(1) of the Constitution defines the fundamental right to human dignity as the right of »human beings«".[22] It justified this extension of the personal scope of dignity by pointing out, firstly, that the term was also used in Decision No. 30/1992 (V. 26.); secondly, that "the protection of communities committed to the values of democracy is based on Article 70/A of the Constitution concerning the equality of persons and the prohibition of discrimination and on the fundamental right to human dignity enshrined in Article 54(1) of the Constitution"[23] and, thirdly, by recalling its Decision No. 33/1998 (VI. 25.). This argument *can be understood as an assertion of the "inherent" dignity of communities, i.e. not an indirect dignity that is transmitted through their members*. This is also reflected in the concurring opinion of András Holló, which recognised not only the dignity of communities but also their right to dignity.[24] István Kukorelli added a dissenting opinion to the decision, in

[20] Árpád Erdei drew the same conclusion in his concurring opinion.
[21] Decision No. 13/2000 (V. 12.) of the Constitutional Court, Section 8 of the concurring opinion of Attila Harmathy.
[22] Decision No. 14/2000 (V. 12.) of the Constitutional Court, Section IV.5. of the Reasoning.
[23] Decision No. 14/2000 (V. 12.) of the Constitutional Court, Section IV.5. of the Reasoning.
[24] "In itself, the distribution of authoritarian symbols for explicitly commercial purposes, motivated by commercial profit, the wearing and use of which do not cross the boundaries of subjective expression of opinion, etc., cannot be regarded as an abuse of the right to freedom of expression that would restrict the dignity of communities – the »right to the dignity of communities«, which is a fundamental right that can be limited in itself, separate from the right to life [Decision No. 64/1991 (XII. 17.) of the Constitutional Court] – to such an extent, and at the same time endanger public peace, as to make the use of criminal measures necessary and proportionate."

which – in addition to what was quoted in the preamble – he stressed that "[it isn]ot the community itself, as a collection of indeterminate persons or as an organisation separate from its members, that has dignity (which is conceptually excluded), but the underlying right to human dignity of the individuals who make up the community is worthy of protection". This approach is in line with the philosophical foundations of dignity and the initial case-law of the Constitutional Court. We also note that the individual need for protection of the rights of people belonging to a given community, based on their dignity, would have provided an even stronger basis for this restriction of freedom of expression; as such, it was not necessary to base the argument on the dignity of communities.

In 2008, the Constitutional Court also dealt with the constitutional limits on the freedom of expression in a "pair of decisions", in *ex-ante* norm control procedures. Decision No. 95/2008 (VII. 3.) of the Constitutional Court, which ruled that the criminal provisions relating to defamation were unconstitutional, stressed that "[n]ot only the community itself, as a collection of indeterminate persons or as an organisation separate from its members, has dignity, but *the subjective right to human dignity of the individuals who make up the community is worthy of protection*".[25] The amendment to the Civil Code would have given the individual member of the community a right of action in the event of any defamation of the community. Decision No. 96/2008 (VII. 3.) of the constitutional Court, resulting from the motion of the President of the Republic, found it unconstitutional. In relation to the dignity of communities, the reasoning stressed that the essential feature of the contested legislation "is that the legislature does not intend to recognise the community of persons as the victim, i.e. *it does not create a »collective right«,* but it wants to create the possibility of protection for the individual who claims to belong to the community in the event of harm to the community".[26] Similarly: "As explained above, *»the dignity of communities« cannot therefore be understood as a fundamental right of its own*. [...] Belonging to a community can be a determining element of a person's personality".[27] According to the Constitutional Court, there are "qualities which are built into the personality and which also have a community-building function".[28]

[25] Decision No. 95/2008 (VII. 3.) of the Constitutional Court, Section III.3.4. of the Reasoning. Italics mine – Cs. E.

[26] Decision No. 96/2008 (VII. 3.) of the Constitutional Court, Section III.4.1. of the Reasoning. Italics mine – Cs. E.

[27] Decision No. 96/2008 (VII. 3.) of the Constitutional Court, Section III.3. of the Reasoning. Italics mine – Cs. E.

[28] Decision No. 96/2008 (VII. 3.) of the Constitutional Court, Section III.4.2. of the Reasoning.

IV. The Fundamental Law and its amendments, as well as the related interpretations

1. Fine tuning – new horizons?

When the Fundamental Law entered into force, the regulation of dignity at the constitutional level did not change substantially from that in the Constitution,[29] and neither the dignity of communities nor the dignity of other institutions was provided for in the text. Nevertheless, in the case-law of the Constitutional Court, it has been argued – albeit not in any reasoning of the majority – that the interpretation of 2008 cannot be maintained with the entry into force of the Fundamental Law. Barnabás Lenkovics, in his dissenting opinion to Decision No. 4/2013 (II. 21.) AB, raised the issue of the recognition of the dignity of communities in its own right: "Just as »human existence« can be understood to refer to both individual and social (smaller and larger, looser and more organised) forms of community existence, the dignity of individuals is subsumed into the dignity of communities and *acquires a new legal quality*".[30] András Zs. Varga argued in a similar way for the common dignity of communities – which he linked to the problem of sovereignty through the nation – on the basis of the sense of belonging that they experience:

> The nation as a community of individuals of equal dignity ("We") is the source and legal basis of state power. Without its recognition, there can be neither law nor constitutionalism, as expressed in Hungary in the National Avowal of the Fundamental Law: the constitution as the basis of law is not simply a rule, but a "living embodiment of the nation's will, an expression of the ideals by which we collectively aspire to live". This is reflected also in the Constitution of the United States of America. This "We" also has a transcendent aspect; society as a community is not a multitude of statistical individuals, but *has a common dignity by virtue of belonging,* which derives from the personal dignity of its members.[31]

[29] The three changes are:
– with the sentence of the National Avowal "We assert that human dignity is the foundation of human life", dignity as a value was introduced also in the Preamble;
– in Article II, the inviolability of dignity is now included in the constitutional text, and
– the right of workers to working conditions which respect their dignity is explicitly included in Article XVII.

[30] Decision No. 4/2013 (II. 21.) AB, the dissenting opinion of Barnabás Lenkovics [126]. Italics mine – Cs. E.

[31] Varga, Méltóság és közösség (Dignity and community), 90. Italics mine – Cs. E.

2. The first interpretation (or the lack thereof)

The fourth amendment of the Fundamental Law also affected Article IX, which declares freedom of expression. According to paragraph (5) of this Article, "[e]xercising the freedom of expression and opinion cannot be aimed at violating the dignity of the Hungarian nation or the *dignity of any* national, ethnic, racial or religious *group*. *Members of such groups* are entitled to bring action before the court – as defined by law – against any statement considered injurious to the group alleging violation of their human dignity".[32] The reasoning of the fourth amendment to the Fundamental Law[33] explained the regulation of the dignity of communities at the constitutional level by stating that "the previous case-law of the Constitutional Court in this regard has made it clear that effective action against hate speech cannot be ensured at the statutory level, and therefore it is justified to establish it by amending the Fundamental Law". The reasoning, however, did not provide any further clues for clarifying the relationship between the dignity of individuals and communities. In its interpretation of Article IX(5), the Constitutional Court thus has considerable leeway, even pursuant to Article R(3).

The interpretation of the dignity of communities in the light of Article IX(5) of the Fundamental Law was first carried out by the Panel of the Constitutional Court in 2021, again in a pair of decisions. Both decisions were based on a constitutional complaint challenging a judgment of an ordinary court applying Article 2:54 of the new Civil Code.[34] The main cases were brought by individuals belonging to a particular religious community, in these cases Christian, on the grounds that, in their view, a pictorial representation and accompanying text on the front page of a newspaper and a performance at a pro-abortion demonstration infringed their individual rights.

Both decisions of the Constitutional Court state that the panel has taken, as its starting point for the interpretation of Article IX(5) of the Fundamental Law, the case-law developed for paragraph (4).[35] In this context, the Constitutional Court emphasised that

> [a] violation of the human dignity of an individual belonging to the community in the context of belonging to that community naturally entails a violation of the individual's subjective feelings. Conversely, however, this is not necessary: the violation of the

[32] Italics mine – Cs. E.
[33] Reasoning of the Proposal No. T/9929.
[34] Pursuant to Article 2:54(5), "[a]ny member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period".
[35] Decision No. 6/2021 (II. 19.) AB, Reasoning [21]; Decision No. 7/2021 (II. 19.) AB, Reasoning [25].

> subjective judgments, emotional attitudes or possible sensitivities of a member of the community does not necessarily imply a violation of his or her human dignity or of the dignity of the community.[36]

As Tünde Handó pointed out in her dissenting opinion,[37] the panel did not take a clear position on the question of whether communities have dignity in their own right – and if so, what exactly this means – or whether the 2008 "contagion model" applies also under the Fundamental Law. Ildikó Hörcherné Marosi[38] and Miklós Juhász[39] explicitly supported the contagion model, but it should also be emphasised that the concurring opinion of Balázs Schanda,[40] the dissenting opinion of Attila Horváth,[41] the dissenting

[36] Decision No. 6/2021 (II. 19.) of the Constitutional Court, Reasoning [24]; Decision No. 7/2021 (II. 19.) of the Constitutional Court, Reasoning [29].

[37] "The Constitutional Court has not yet dealt with the interpretation of Article IX(5) of the Fundamental Law in view of Article 2:54(5) of the Civil Code. Therefore, it would have been important for the decision to explain clearly the concepts of violation of human dignity, freedom of religion, the dignity of the religious community, the violation of the personality rights of a member of the religious community resulting from the violation of the dignity of the religious community – affecting a member of the religious community – which may result from a violation of the dignity of the religious community and how they are interrelated. The majority decision fails to define what the dignity of the religious community is, but it also fails to state how the dignity of the community and that of the individual are related." Decision No. 7/2021 (II. 19.) AB, the dissenting opinion of Tünde Handó [86]–[87].

[38] "The opinion-forming power of such opinions is great, and their effect multiplied and amplified by the press/media can have the potential to stigmatise a community of believers. Ultimately, it is capable of calling into question *the right to identity and self-determination of those belonging to the community of believers.* Such possible processes, which restrict free thought, have a bad message, especially in Europe, but also everywhere in the world." Decision No. 7/2021 (II. 19.) AB, the concurring opinion of Ildikó Hörcherné Marosi [64].

[39] "I see it as an advantage of this interpretation that it formally recognises the existence of the dignity of the community (a contrary position would be untenable anyway since the entry into force of the fourth amendment of the Fundamental Law, as it would render a provision of the Fundamental Law meaningless), but *it retains the exclusively human nature of the concept of dignity* [see: Decision No. 14/2000 (V. 12.) AB, dissenting opinion of Dr. István Kukorelli, Judge of the Constitutional Court], and in such a way that it also remains consistent with the community-centred conception of man in the Fundamental Law and the responsibility of the individual for the community {Decision No. 2/2021 (I. 7.) AB, Reasoning [93]}. From the latter, it is also easy to deduce the expectation of the protection of communities against the expression of opinion, thus ensuring that the provision of the Fundamental Law on the dignity of the community is respected." Decision No. 7/2021 (II. 19.) AB, concurring opinion of Miklós Juhász [73].

[40] "I also agree that it is not an insult against a community (or against the individuals belonging to it) which shall be considered as the limit to freedom of expression, but a violation of the dignity of the community shall be considered as such. [...] The representation of public figures in this way *does not »spill over« to other persons belonging to the religious community in question, nor does it affect their dignity*." Decision No. 7/2021 (II. 19.) AB, concurring opinion of Balázs Schanda [74].

[41] "This [i.e. deliberate and provocative mockery of religious symbols] violates the freedom of religion and *the rights of believers in a given religion*. [...] The Curia has ignored the commitment in the Fundamental Law to the principles of the National Avowal, which recognises the *dignity of* Christianity *and*

opinion of Imre Juhász[42] and the dissenting opinion of Mária Szívós[43] did not focus on this issue, but their wording also suggests acceptance of the "contagion" concept of dignity.

3. Excursus: the dignity of Parliament

The fourth amendment to the Fundamental Law also affected the provisions on the organisation of the state, since Article 5(7) of the Fundamental Law establishes the dignity of Parliament as a constitutional value which also forms the basis of the law relating to the powers of the police and disciplinary law. Since 2013, therefore, the idea of the Decision No. 33/1998 (VI. 25.) AB, according to which a public body exercising public authority has dignity, has been revived at the level of the Fundamental Law. Comparing this with the other provisions on dignity in the Fundamental Law, we can only conclude that *the constitutional authority knows at least two types of dignity,* the dignity of human beings, which is in accordance with the interpretation of the constitution, and a dignity in the ordinary sense, which does not mean the immanent, intangible and indefinable essence of a given being, but rather authority, an authoritative nature, respectability, or even the ability to be judged favourably and appreciated. A gesture, an animal, an object or even a building can have such dignity – or, more aptly, "stateliness" – and the same logic can be used to justify a similar quality in a public body. This "dignity" is different from the dignity of communities: the reason for the existence of the latter, as can be inferred from Article IX(5), is the protection of the dignity of the individual. The need to protect the dignity of a community does not even arise (rightly!). In my opinion, this will definitely involve an inflation of the concept of dignity, especially since it was not necessary for the establishment of disciplinary law and the law relating to the powers of the police – and the limits of its application: there

members of the Christian *community*. [...] In reaching its decision, the Curia also failed to take into account the fact that the picture was published at Christmas, during the Advent period, which has an even greater impact on *members of the religious community*, and may cause offence to them, since it has an unjustified offensive and degrading effect on their religious festivity and on the veneration of Jesus." Decision No. 7/2021 (II. 19.) AB, the dissenting opinion of Attila Horváth [104]–[105].

42 "Individuals can form communities (including religious communities) and, *as members of these communities, they do not cease to be human; in this way, respect for their human dignity* must continue to be promoted and supported by the constitutional or legislative authority, as well as by the judicial authorities." Decision No. 7/2021 (II. 19.) AB, the dissenting opinion of Imre Juhász [124].

43 "Based on the above, I am of the firm opinion that – contrary to the arguments in the majority decision – the use of a significant religious symbol of Christianity as a tool for ironic criticism of some public or social phenomenon is not protected under Article IX(5) of the Fundamental Law. The »effect« thus produced inevitably affects the members of the religious community concerned, in other words, it is necessarily also an affront to the dignity of that community." Decision No. 7/2021 (II. 19.) AB, the dissenting opinion of Mária Szívós [141].

is no doubt as to the constitutionality of these legal institutions (but not necessarily of their specific forms!), their necessity is supported by the Hungarian public law tradition and by foreign solutions.

V. Summary and prospects

The fourth amendment to the Fundamental Law – especially in the light of Article 2:54 of the new Civil Code – necessarily entailed a "dusting down" of the problem of the dignity of communities. In 2008, László Kiss stated, in his dissenting opinion, that "it would certainly have been beneficial if a comprehensive and clarifying debate on the dignity of »specific« groups could have been settled". Today, this idea is more relevant than ever, but an authentic interpretation of the dignity of communities must wait a little longer. Looking optimistically at the missed opportunity, we can say that the absence of an interpretation by the Constitutional Court could stimulate an academic discourse on the subject, which could have a fruitful impact on the practice of the panel.

However, sketching out the interpretations of the Constitutional Court and legal literature of about 30 years, having regard also to the content of the concurring and dissenting opinions attached to Decision No. 7/2021 (II. 19.) AB, it is probable that the interpretation expressed by István Kukorelli in his dissenting opinion in 2000 will survive, which was supported in 2008 by the majority of his fellow judges in the Constitutional Court. The interpretation of the "dignity of communities" in the first sentence of Article IX(5) of the Fundamental Law, as the transcendent dignity of its members deriving from their belonging to the community, remains valid also after the fourth amendment of the Fundamental Law, since, firstly, it is in harmony with the traditional, human-centred concept of dignity; secondly, it remains in line with the community-based idea of the human enshrined in the Fundamental Law;[44] and thirdly, it is also supported by the second sentence of Article IX(5) of the Fundamental Law, which provides for the possibility of individual redress for members of the offended community at the constitutional level.

[44] See in particular: Decision No. 7/2021 (II. 19.) AB, concurring opinion of Miklós Juhász [73].