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**ORGANISATIONS  
AS HOLDERS OF FUNDAMENTAL RIGHTS**

THESIS SUMMARY

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### **1. Subject, Objectives and Currency of the Research**

Humans are inherently individual beings, yet in socio-economic life, they cooperate with others, form groups, and create communities and institutions.<sup>1</sup> Consequently, the doctrine of fundamental rights cannot remain silent on the issue of the various organisations' fundamental rights entitlement. However, it appears to be an inherent contradiction that organisations might also have fundamental rights.<sup>2</sup> These rights, as legal expressions of human rights, constitute the inviolable and inalienable entitlements of individuals.<sup>3</sup> In other words, the concept of fundamental rights is deeply rooted in the recognition of human dignity and vulnerability,<sup>4</sup> thus establishing the closest possible connection to humans and their characteristics. Therefore, it is highly questionable why organisations could claim rights designed explicitly to protect the vulnerability of individuals with physical and moral existence.

Nevertheless, as organisations play a decisive role in our society by the 21st century,<sup>5</sup> more and more organisations are seeking fundamental rights protection before courts. This is greatly facilitated by the fact that organisations – recognized as legal persons under private law – are generally accepted subjects of rights and obligations.<sup>6</sup> Consequently, various fundamental rights protection bodies include them under the protective ambit of fundamental rights, considering their role in the realm of fundamental rights, their vulnerable position similar to individuals, and the need to protect the fundamental rights of the people behind these

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<sup>1</sup> SÁRKÖZY, TAMÁS: *Szervezetek státusjoga az új Ptk.-ban. Társasági, egyesületi és alapítványi jog a Ptk. harmadik könyve alapján.* Budapest, HVG-ORAC, 2013. 6.

<sup>2</sup> GREAR, ANNA: *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity.* Hampshire, Palgrave MacMillan, 2010. 1.

<sup>3</sup> SOMODY BERNADETTE et al.: *Alapjogi Tanok I.* Budapest, HVG-ORAC, 2018. 17.

<sup>4</sup> GREAR, ANNA: Challenging Corporate 'Humanity': Legal Disembodiment, Embodiment and Human Rights. *Human Rights Law Review.* 2007/3. 516.

<sup>5</sup> SÁRKÖZY, TAMÁS: Személyiség és személyiségvédelem. In: MENYHÁRD ATTILA –GÁRDOS- OROSZ FRUZZINA (eds.): *Személy és személyiség a jogban.* Budapest, Wolters Kluwer, 2016. 56.

<sup>6</sup> GREAR: i. m. (2010) 1.

organisations. As a result, it has become generally accepted that, in addition to individuals, certain organisations can also be entitled to specific fundamental rights.

However, with the increasing invocation of fundamental rights protection, organisations extend their claims towards achieving a form of "*legal humanity*".<sup>7</sup> This tendency could easily lead to treating organisations as moral equivalents of individuals,<sup>8</sup> or to the fundamental rights protection of organisations as a means of eroding the level of protection of people's fundamental rights. Consequently, a fundamental rights protection regime may easily embark on a slippery slope, whereby the essential elements of fundamental rights, namely the respect for human dignity and freedom, are jeopardized. Despite these threats, scientific writings or case law approaches that would coherently assess which organisations are entitled to which fundamental rights and why, based on a clear, complex set of criteria, are relatively rare.

Therefore, the purpose of this research is to develop its own fundamental rights concept and a complex criterion system that would allow the organisations' legal capacity to fundamental rights to be assessed coherently in line with the essence of fundamental rights and the European fundamental rights standards in the Hungarian fundamental rights thinking. In accordance with this objective, the dissertation does not aim to settle specific fundamental rights dilemmas or decide cases better than the respective fundamental rights protection bodies. It merely seeks to highlight the factors that could be relevant for establishing a clear and coherent dogmatic system, which is ultimately also a guarantee of people's fundamental rights protection.

By identifying its own fundamental rights concepts, the dissertation seeks to avoid "dependence" on other branches of law, which could easily lead to conclusions contrary to fundamental rights doctrine. In addition, it aims to avoid arbitrary judgments and contradictions with the essence of fundamental rights by taking a sufficiently chiselled approach to the relevant aspects and organising them into a coherent system. Without these, the likelihood of making ad hoc decisions increases, posing the risk of dysfunctionality or even emptying the protection of fundamental rights. Ultimately, these could lead to the violation of the rule of law. Therefore, judging the fundamental rights entitlement of organisations based on clear dogmatic considerations is of great importance. The question is not simple, as both organisations and fundamental rights can present numerous divergent and even conflicting characteristics. Thus,

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<sup>7</sup> GREAR: i. m. (2007) 511–543. See also: GREENFIELD, KENT: *Corporations Are People Too (And They Should Act Like It)*. New Haven & London, Yale University Press, 2018.; CHIBUNDU, MAXWELL O.: Can, Do, and Should Legal Entities Have Dignity?: The Case of the State. *Maryland Law Review*. 2015/1. 194-209. <https://www.jstor.org/stable/20009760?origin=JSTOR-pdf> (Download: 2024. 05. 06.)

<sup>8</sup> GREAR, ANNA: Human Rights – Human Bodies? Some Reflections on Corporate Human Rights Distortion, The Legal Subject, Embodiment and Human Rights. *Law Critique*. 2006. 189.

the dilemmas arising in this context are extremely diverse and can, in some cases, carry significant "tensions" and contradictions. Several illustrative examples can be found, especially if we look around the world.

Typical of these are the various dilemmas raised by the religious freedom of business corporations.<sup>9</sup> For instance, can a restaurant chain – invoking the owners' religious beliefs – refuse to serve people of colour, or can a profit-oriented photography business refuse to photograph a lesbian couple's wedding ceremony? In the case of a corporation, whose personal beliefs should be identified as the religion of the organisation: the owners', the executives', or the employees'? What if the religious beliefs of the individuals behind the organisation differ? In these cases, we should examine which entitlement is stronger: the human dignity of individuals or the religious freedom of organisations, or whether there is a collision of fundamental rights at all? Even if we believe that a corporation can be entitled to fundamental rights protection, it may also arise whether we can identify the freedom of individuals in every conduct of a profit-oriented organisation, or in some cases, whether it represents a separate market or economic interest.<sup>10</sup>

In addition, current and highly controversial topics can easily be brought from the Hungarian practice, such as the possibility of fundamental rights status for state organs. In the constitutional practice developing based on the Fundamental Law, the protection of fundamental rights for state organs is increasingly gaining ground. While in 2012, following the entry into force of the Fundamental Law, the Hungarian Constitutional Court (hereinafter: HCC) still maintained the approach that public authority state organs could not be entitled to fundamental rights,<sup>11</sup> subsequent practice has moved in the opposite direction.

Initially, it stated that if an entity created and maintained by the state does not exercise public authority powers in a given case, it may be entitled to fundamental rights protection.<sup>12</sup> The HCC also applied this view to municipalities, instead of considering their special legal position as part of the state structure exercising local public authority, or their specific autonomy against

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<sup>9</sup> A famous case in this regard is the Hobby Lobby case (*Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682 (2014)), which was based on a U.S. regulation that required certain employers to provide their employees with insurance that covered the cost of certain contraceptives. However, this legal obligation was denied by Hobby Lobby on the grounds of religious freedom of the company, and the Supreme Court ruled in its favour, finding a violation of the company's religious freedom, in particular with regard to the fundamental rights of its owners.

<sup>10</sup> In the *KinderStart* case, the courts interpreted Google's action of demoting a website considered a market competitor in its search rankings as an exercise of Google's freedom of speech. (*Kinderstart.com, LLC v. Google, Inc.*, C 06-2057 JF (RS) (N.D. Cal. Jan. 22, 2007))

<sup>11</sup> Decision 3307/2012. (XI. 12.) of the Hungarian Constitutional Court

<sup>12</sup> Decision 3091/2016. (V. 12.) and Decision 3149/2016. (VII. 22.) of the HCC

the central power. Subsequently, in the context of the right to a fair trial, the possibility of fundamental rights protection was accepted even when the state organ exercised its public authority powers in the case at hand.<sup>13</sup> This direction was also reflected in the 2019 amendment of Act CLI of 2011 on the Constitutional Court (hereinafter: CCA), which explicitly provided that a petitioner exercising public authority could also be the initiator of a constitutional complaint against judicial decisions. However, this can easily have a negative impact on the protection of people's fundamental rights, because in such cases the fundamental rights aiming restrict public power do not protect the interests of the citizens and their communities subject to public power, but those of the public bodies that are bound by the fundamental rights.<sup>14</sup>

In addition to the diversity and significance of the questions illustrated above by way of example, the relevance of the topic is further emphasized by the recent Hungarian legislative change, which, as of June 2023, removed the provision from the CCA that allowed public authority exercisers to initiate a constitutional complaint against judicial decisions.<sup>15</sup> This raises the question of whether this will bring any change to the HCC's practice and its conception of fundamental rights holders. Will the mere possession of the power to exercise public authority, by itself, exclude the fundamental rights status, or – continuing the previous practice – will this only be the case if the given body actually exercises public authority?<sup>16</sup> Moreover, the amendment raises the question of whether there will be a difference between the circle of initiators of constitutional complaint against judicial decisions and other types of constitutional complaints, as the legislative change only affected the previous one. Thus, the HCC stands at a significant crossroads regarding the assessment of the initiators' entitlement to file constitutional complaints, and thereby the coherent interpretation of the fundamental rights legal capacity playing a fundamental role in this context.

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<sup>13</sup> Decision 23/2018. (XII. 28.) of the HCC

<sup>14</sup> Isensee, a representative of the German literature, also argues that the freedom expressed in fundamental rights is a symbol of the moral primacy of the people over the state power, and a compensation for the subjection of the citizen to the state power and the inevitable limitation of freedom. The opening up of constitutional complaints to state bodies symbolises the opposite. In: ISENSEE, JOSEF – KIRCHHOF, PAUL: *Handbuch des Staatsrechts der Bundesrepublik Deutschland*. Band IX, Allgemeine Grundrechtslehren. Heidelberg, C.F. Müller, 2011. 945.

<sup>15</sup> Paragraph 27 (2) of the CCA expressly provides that a petitioner exercising public authority is not entitled to submit the constitutional complaint against judicial decision.

<sup>16</sup> Except in the case of the right to a fair trial, where even the exclusion of the exercise of public authority is not required.

## **2. Conducted Investigations and Applied Research Methodologies**

### *a) Structure and Methodology of the Dissertation*

Given that one of the primary objectives of this research is to respect the essence of fundamental rights, it is necessary to contextualize the research within the historical development and main characteristics of fundamental rights. Accordingly, the dissertation begins with a historical analysis and philosophical foundation of fundamental rights (subsection 2.1.1) and continues with the presentation of the applied concepts of fundamental rights (subsection 2.1.2). The dissertation, to an appropriate extent, builds upon key theories regarding legal persons connected to private law (subsections 2.2.2 and 2.2.3). Since the organisation itself is a fundamental element of the research, questions arising in private law — although not exclusive or decisive (subsection 2.2.1) — must still be considered in examining the fundamental rights protection of organisations. Additionally, the research briefly touches upon the main sociological characteristics of organisations (section 2.2.4), as one important starting point is that a genuinely effective legal regulation cannot be detached from reality. The analysis of these areas is confined to the extent of providing the theoretical foundation necessary to support the dissertation's objectives.

Following the theoretical introduction, the substantive part of the dissertation, given the focus of the research, can be divided into two main topics. Accordingly, Chapter 3 details the main issues related to organisations (justification and conceptual elements), while Chapter 4 deals with the fundamental rights of organisations (the nature of fundamental rights). The former topic is more extensive than the latter, as more questions need to be clarified in this regard.<sup>17</sup> Additionally, the interpretation of the concept of fundamental rights for organisations — specifically, which organisations and why they can be entitled to fundamental rights — is a more divisive issue than determining which fundamental rights and why they can be applied to organisations. Therefore, numerous findings and viewpoints on this matter can be found in both the literature and case law. Given that the assessment of the fundamental rights of organisations is a highly complex question requiring consideration of many factors, the dissertation contains partial conclusions both concerning the fundamental rights concept of the organisation (section 3.4) and the fundamental rights of organisations (section 4.4). The results derived from these partial summaries and their combined interpretation are detailed in Chapter 5. The formulation

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<sup>17</sup> For example, the justification of the fundamental rights status of organisations, the relationship between the fundamental rights concept of an organisation and the concept of a private legal person, or the question of differentiation between organisations and the groups of people.

of these partial and final conclusions, in line with the research goal, serves to present the results as clearly and transparently as possible.

Since the dissertation aims to develop a conceptual and criterion framework useful for Hungarian fundamental rights thinking, one of its essential elements is the examination of Article I, Section (4) of the Hungarian Fundamental Law and the constitutional interpretation of the "legal entity created by law" as a potential fundamental rights holder (section 3.3). Generally, it can be stated that the fundamental rights entitlement of organisations rarely appears in an explicitly codified form. If it does, it is, by its nature, implemented in a very laconic and highly abstract manner. Consequently, in addition to examining historical and normative provisions, the dissertation heavily relies on case law analyses. Of these, the practice of the Constitutional Court before the Fundamental Law and the practice of the Constitutional Court under the Fundamental Law is also decisive, both with regard to the concept of the fundamental rights of organisations (chapters 3.1 and 3.2) and the fundamental rights of organisations (chapters 4.2 and 4.3). However, examining Hungarian case law alone would not be sufficient to create a complex criterion system, so the paper also analyses the positions of the German Federal Constitutional Court (Bundesverfassungsgericht, hereinafter: BVerfG) and the European Court of Human Rights (hereinafter: ECHR).

Several aspects make the inclusion of the BVerfG's and ECHR's view indispensable for the research. Particularly in favour of the BVerfG's case law is that it is one of the most active and advanced practices based on legal traditions, in terms of both the consideration of legal persons and the protection of fundamental rights, including the fundamental rights protection of organisations. The consideration of the ECHR's practice is particularly justified because the content of the European Convention on Human Rights and the related case law are regarded as a common, European-level standard for fundamental rights, which constitutes the minimum level of protection for fundamental rights. By taking into account these case laws, the research will include in its analysis the main aspects of European fundamental rights thinking, enriched by other European cases and constitutional approaches, insofar as they contribute to the achievement of its objective.

In addition, this dissertation also leverages the advantages of the so-called concept mapping tool. Its application aims to objectively identify the main dogmatic issues influencing the fundamental rights entitlement of organisations and to outline a possible coherent relationship system between them. The method of concept mapping is also intended to help avoid the risk of developing an arbitrary or incoherent criterion system.

## b) *Reasons for Using Concept Mapping*

Given that this research is heavily focused on legal doctrine, the use of concept mapping as a research methodology might seem atypical from several perspectives. In theoretical subjects like those included in legal education, the application of concept mapping is still a novel and extremely rare method, even in education, let alone in scientific research. Nevertheless, there are instances where using concept mapping can be advantageous in the legal field.<sup>18</sup> Moreover, particularly in empirical research, researchers sometimes use concept mapping as a qualitative research method for data collection, analysis, and presentation of results.<sup>19</sup>

The application of concept mapping is supported by the fact that in this case, numerous, sometimes very different perspectives need to be considered coherently. Additionally, the study of the case law of fundamental rights protection bodies shows that they are extremely fragmented and do not necessarily form a coherent system. The courts often focus solely on the specific case, and their findings generally do not go beyond the arguments necessary to assess the particular case. They rarely explicitly address the general assessment of fundamental rights entitlement. Therefore, general statements concerning the fundamental rights legal capacity of all organisations are rarely identifiable, and contradictory decisions also occur. Furthermore, the individual arguments and perspectives often remain hidden, and it is not explicitly clarified what role they play in the general assessment of the organisations' fundamental rights entitlement and how the individual perspectives relate to each other.<sup>20</sup> Thus, in practice, the relevant factors and the relationships between them often go unnoticed and can become entangled or confused in the arguments considered when making decisions.

Therefore, concept mapping is an excellent tool for identifying and coherently organizing the numerous, sometimes very different aspects, as it helps highlight the key questions from the "background noise".<sup>21</sup> It achieves this by allowing a comprehensive overview of the issue of

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<sup>18</sup> There has been a research that has specifically investigated the impact of the concept mapping tool on promoting deeper learning for students enrolled in the constitutional and administrative law module. See: DEPLANO, ROSSANA: Using concept maps in Law Schools to Foster Meaningful Learning: Evidence from a pilot study. *Journal of Learning and Teaching in Higher Education*. 2018/2. 125-136. DOI: <https://doi.org/10.29311/jlthe.v1i2.2748>

<sup>19</sup> HAY, DAVID et al.: Using Concept Mapping to Enhance the Research Interview. *International Journal of Qualitative Methods*. 2010/1. 52-68. DOI: <https://doi.org/10.1177/160940691000900106> ; BURKE, JESSICA et al.: An Introduction to Concept Mapping as a Participatory Public Health Research Method. *Qualitative Health Research*. 2005/10. 1392-1410.; CONCEIÇÃO et al.: i. m.

<sup>20</sup> For example, in the ECtHR decisions on religious freedom, there are statements that can be interpreted as both a justification of the fundamental rights entitlement and the nature of the fundamental right. For more details, see point 6 of the Results section.

<sup>21</sup> HAY et al.: i. m. (2010) 54.



organisations' fundamental rights and outlining the relationships between the various sub-questions. Consequently, concept mapping is not only suitable for identifying the essential concepts and dogmatic issues but also for organizing the research results, thus providing a coherent outline of a general, complex set of aspects that can be used to achieve the research objective.

*c) Main Elements of the Research Concept Map*

The dilemmas related to the fundamental rights entitlement of organisations, and thus the concept map of the research, can be divided into two main areas: the organisation and the fundamental right. The factors related to the organisation can also be categorized into two main topics: the justification of the fundamental rights protection of organisations and the fundamental rights concept of organisation. The former involves examining whether there is, and if so, what constitutionally justifiable reason exists for the inclusion of the organisations under the protective ambit of fundamental rights.<sup>22</sup> The fundamental rights concept of the organisation includes criteria that influence which organisations with specific characteristics can generally vindicate fundamental rights protection. This issue is significantly influenced by the justification applied in the case law, which is why the dissertation addresses the justification question before the case law and normative components of the fundamental rights concept of the organisation.

Finally, regarding the fundamental rights of organisations, the nature of the fundamental rights is decisive.<sup>23</sup> This mainly includes those fundamental rights aspects that affect which fundamental rights organisations can also claim.<sup>24</sup> The main questions and the individual perspectives within them are not only standalone but are closely interconnected and mutually influence each other, thus collectively determining whether a particular legal entity can be a rights holder of a specified fundamental right.<sup>25</sup>

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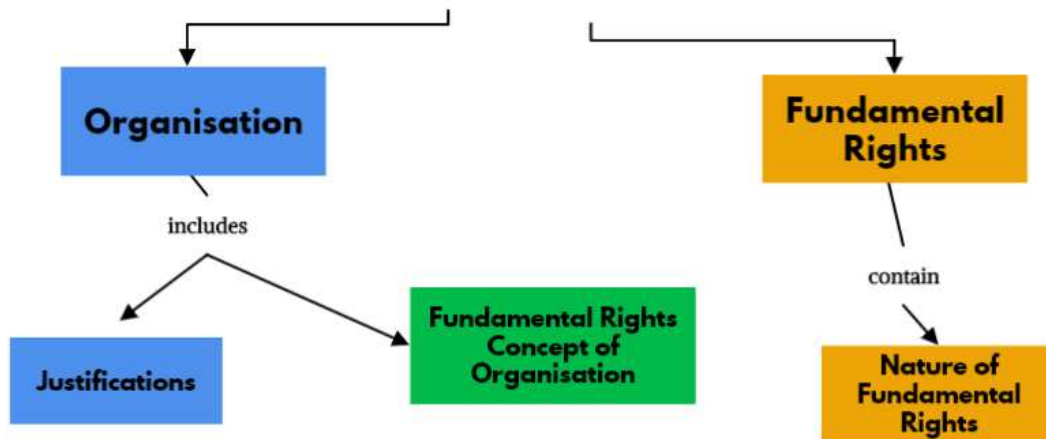
<sup>22</sup> BOTTLIK-GRANYÁK, LÍVIA: Miért lehet alapjogi jogosult egy szervezet? *Themis*. 2020/12. 26.

<sup>23</sup> GRANYÁK, LÍVIA: A szervezetek alapjogi jogalanyisága és az alapjog természete. *Magyar Jog*. 2019/9. 522.

<sup>24</sup> However, the analysis of the nature of a fundamental right may take place at several levels, and may include an analysis of the nature of the fundamental rights as a whole, as well as the nature of the organisation.

<sup>25</sup> GRANYÁK, LÍVIA: Vannak-e alapjogaik a szervezeteknek? *Jogi tanulmányok*. 2018. 87.

# Organisations as Fundamental Rights Holders



*Figure 1: Concept map of the main criteria of organisations as fundamental rights beneficiaries*

### 3. Key Findings and Their Usefulness

For Hungarian fundamental rights thinking, it is crucial to develop a theoretically grounded, properly nuanced, coherent criterion system in line with European standards regarding the fundamental rights entitlement of organisations. Without this, individual decisions could easily result in reducing the level of protection of fundamental rights and erode people's fundamental rights, which would jeopardize human dignity and freedom. To avoid this, the dissertation identifies the following main factors for Hungarian fundamental rights dogmatics:

- 1. It is necessary to interpret the substantive legal category of the "legal entity created by law" in line with the Fundamental Law. Based on this, it is crucial to justify the organisations' fundamental rights protection and ensure consistency with the function of fundamental rights.*

Regarding the fundamental rights concept of organisations, Article R, Section (3) of the Fundamental Law must play a role, which requires examining Article I, Section (4) of the Fundamental Law primarily through objective teleological interpretation. Among the interpretive methods according to Article R, this one is capable of promoting the development

of a coherent and universally applicable fundamental rights holder concept for all organisations. Accordingly, the question cannot be ignored of why, beyond individuals, "legal entities created by law" may also be entitled to fundamental rights protection. In other words, it is essential to establish what justifies the fundamental rights protection of a given organisation. In this context, it cannot be overlooked what role fundamental rights play in a constitutional democracy. Therefore, we must consider the objective of fundamental rights, which is to delineate individuals' free action space and limit the activities of the state holding public power.<sup>26</sup> This follows from the examination of the nature of fundamental rights as well, which can be interpreted at two levels, on the basis of all fundamental rights and on the basis of the nature of the fundamental right in question.

2. *There are two justification paths for the Hungarian fundamental rights thinking, that could lead to a similarly coherent fundamental rights protection system. (1) The first is a broadly interpreted instrumental justification,<sup>27</sup> (2) the second is a combination of an instrumental and narrowly applied autonomous justification.<sup>28</sup>*

Deciding which justification path is necessary for Hungarian fundamental rights protection is not the aim of this dissertation. Due to the fact that two similarly coherent solutions can be identified in this regard. The first is a widely applied instrumental justification, and the second is a stricter instrumental justification alongside a narrowly applied autonomous justification. However, it must be noted that a purely autonomous justification would not lead to a valid result. The application of such a perspective in itself could pose a significant threat to the protection of individuals' fundamental rights and the purpose of fundamental rights, as it could easily lead to an arbitrary judicial practice. This is because, based on this approach, the relevant fundamental rights adjudicating forum would have an extremely broad discretion as to when to

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<sup>26</sup> HALMAI, GÁBOR – TÓTH, GÁBOR ATTILA (szerk.): *Emberi jogok*. Budapest, Osiris, 2003. 90-91.; SAJÓ, ANDRÁS – UITZ, RENÁTA: *A szabadság alkotmánya: Bevezetés a jogi alkotmányosságba*. Budapest, HVG-ORAC, 2019.

<sup>27</sup> Instrumental justification essentially derives the fundamental rights of organisations from the fundamental rights of people. In this case, the function of the fundamental rights of organisations is nothing other than to be a means for the collective realisation of fundamental human rights. This is highlighted by: SÁRKÖZY, TAMÁS: *A jogi személy elméletének átalakulása*. Budapest, Közgazdasági és Jogi Könyvkiadó, 1985. 224.

<sup>28</sup> An approach to justification according to which the fundamental rights entitlement of organisations can have a separate conception of its own, more independent from the individuals' fundamental rights. This may be motivated on the one hand by a vulnerable situation similar to that of human beings, or by other rule of law considerations, such as the interest in excluding arbitrary judicial proceedings when the procedural rights of public bodies are guaranteed.

grant or deny fundamental rights protection to various organisations, or could even grant organisations the same fundamental rights protection as the individuals.<sup>29</sup>

Moreover, the complete abandonment of instrumental justification would be unjustified for several reasons. Firstly, because this approach most realistically reflects the actual characteristics of organisations, specifically that they are artificially created entities serving human purposes. Secondly, because it would be misleading in the context of assessing the fundamental rights entitlements of certain organisations, such as associations and religious organisations, if the necessity of protecting the fundamental rights of the individuals behind these legal entities were not taken into account. Since these organisations established precisely as a result of the exercise of individual fundamental rights. All of this supports the application of a purely instrumental view, which is further strengthened by the threats inherent in autonomous justification. Nevertheless, the mixed justification approach is advocated by the fact that, in practice, characteristics of both instrumental and autonomous justifications can be identified. Thus, the application of a single justification is unlikely to lead to a "complete result".<sup>30</sup> Furthermore, the two justification theories can greatly facilitate a sufficiently but not excessively flexible approach to the fundamental rights concept of organisations with numerous characteristics, thereby ensuring their actual applicability.

3. *Three main essential criteria can be identified concerning the fundamental rights concept of an organisation. (1) Fundamental rights entitlement does not completely correspond to full legal personality provided by other branches of law. (2) The fundamental rights concept of an organisation differs from the group of individuals. (3) Organisations associated with the state rather than the sphere of individual freedoms should be excluded from the protective ambit of fundamental rights.*

From the justification of the organisations' fundamental rights protection and the function of fundamental rights, it follows several essential factors, which shall be considered regarding the

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<sup>29</sup> Some of the criteria of autonomous justification – vulnerable situation comparable to that of human beings and the rule of law – are broad and flexible categories that can leave a lot of room for interpretation to fundamental rights protection bodies.

<sup>30</sup> This is also supported by the fact that the BVerfG, which explicitly follows the instrumental justification, also grants foundations fundamental rights protection, despite the fact that this legal entity lacks the so-called personal substrate required by the instrumental justification. According to this requirement, it must be determined with respect to the organisation in question that its establishment and activities are an expression of the freedoms of natural persons, especially when the relationship with the individuals behind the organisation is reasonable and necessary.

concept of fundamental rights beneficiary. These can be categorized into three main groups. The first suggests that to establish fundamental rights status, it is not necessarily required to have a full legal personality provided by another branch of law; rather, a broader concept of legal personality suffices. This means that the entity can be the subject of rights and obligations, even if only to a limited extent.<sup>31</sup> The second observation is that the fundamental rights concept of an organisation must be distinguished from a group of individuals. According to this, an organisation exists when the legal entity is perceived as an independent entity by individuals, which has consolidated into an effective unit capable of decision-making.<sup>32</sup>

The third and one of the most important and contentious elements of the fundamental rights concept of an organisation is the criteria concerning state-related entities. The relevant factors here include – from German doctrine – the function, task, distance from the state, and proximity to individuals' sphere of freedom of the given entity. Additionally, from the Strasbourg practice, the legal status of the organisation, the rights arising from this status, the nature of its activities, and the degree of independence from state power are also crucial. Furthermore, any factors influencing whether the organisation enjoys "sufficient institutional and operational independence from the state," or whether the entity was established for "state administrative purposes", must be considered. These factors indicate that entities associated with the state, where human freedom does not manifest in their activities, should be excluded from fundamental rights protection. Taking into account this aspect, some state-related organisations gain fundamental rights status due to their significant connection with the sphere of freedom protected by individuals' fundamental rights. Such entities, found in the German case law, are the "exemption triads", which include state universities, public broadcasters, and public-law status churches and other religious organisations.<sup>33</sup> Furthermore, this category can include public bodies, theatres, museums, and libraries associated with fundamental rights.

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<sup>31</sup> For example, although the student council is not a legal entity, since the Hungarian Higher Education Act establishes certain rights for it (such as the right to consent, to make proposals, and to express opinions), its fundamental rights entitlement can be examined without requiring full legal personality under private law. Although the HCC does not evaluate student councils from this perspective, the Decision 3005/2024. (I. 12.) of HCC implicitly recognized the fundamental rights entitlement of a university student council. In addition, here can be mentioned from the ECHR practice, the case of a legal entity not having legal personality under national law (*Zumtobel v. Austria*, Judgement of 30 June 1992, no. 12235/86), or the recognition of the *locus standi* of an applicant when the complaint concerns the dissolution or registration procedure itself. (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, no. 29225/95 and 29221/95, ECHR 2001-IX).

<sup>32</sup> ISENSEE– KIRCHHOF: i. m. 927. For example, a group of friends, a string quartet, cannot qualify as an organisation, since it is the same as the "whole" of its members, and is not separate from them.

<sup>33</sup> BALDEGGER, MIRJAM: *Menschenrechtsschutz für juristische Personen in Deutschland, der Schweiz und den Vereinigten Staaten*. Berlin, Duncker & Humboldt, 2017. 116.

Moreover, there are state-related legal entities that, similar to individuals, possess autonomy against state power, such as local governments. However, according to the dissertation's opinion, this organisational characteristic alone, without a connection to the individuals' freedom sphere, is not sufficient to attain fundamental rights status.<sup>34</sup> The existence of autonomy as a factor resulting in fundamental rights protection can be envisaged under the aspect of autonomous justification, which bases fundamental rights status on similarity to the situation of individuals. Thus, for instance, a municipality can be a subject of fundamental rights if its situation is deemed similar to the vulnerability and protected status of individuals.<sup>35</sup> This thesis argues that equating a local government, part of the state apparatus and exercising local public power, with citizens subjected to public power and possessing moral status and physical vulnerability, could obscure the essential differences between various right holder. This is a factor of such weight that it could also affect the coherence of the doctrine of fundamental rights.

Beyond the above, there are organisations generally associated with the individuals' freedoms sphere where the possibility of state influence, and thus their connection to the state, might arise. Typical examples include mixed-ownership, state-owned companies, or economic entities performing state functions. Given their connection to the state, the justification of these organisations' fundamental rights protection must be examined, and such considerations should not be neglected. In this context, a multifactorial examination is necessary, which – contrary to the German approach – goes beyond the determining role of ownership relations.

*4. The nature of fundamental rights can be examined on several levels. One of the most self-evident is investigating whether the nature of a given fundamental right can be interpreted concerning organisations.*

If, in a specific case, it is determined that the organisation – considering its organisational characteristics and the function of fundamental rights – can generally be a subject of

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<sup>34</sup> However, this does not mean that the autonomy of local governments cannot enjoy constitutional protection, merely that, according to the criteria of this paper, it does not necessarily in itself constitute basis for fundamental rights protection.

<sup>35</sup> The idea of a situation similar to that of the people as a factor justifying constitutional protection can also be found in the practice of the Swiss Federal Court. However, the Swiss Federal Court also examines whether the State measure in question affects the organisation in question in a similar way to private individuals, and analyses this not specifically in terms of the protection of fundamental rights, but in the context of the constitutional rights, which is a broader category. (BGE 96 I 466, BGE 104 Ia 381, BGE 112 Ia 356, BGE 119 Ia 214, BGE 121 I 218, BGE 123 III 454) See: BALDEGGER: i. m. 121-125., 104., TRATAR, BOŠTJAN: Entities of Local Self-Government as Possible Holders of Human Rights. *Godišnjak Pravnog Fakulteta u Banja Luci*. 2019/1. 104. <https://core.ac.uk/download/pdf/270184224.pdf> (Downloaded: 2024.03.22.)

fundamental rights, a multi-level examination is still required. Firstly, it must be decided whether an organisation can be a subject of the given fundamental right at all, and secondly, whether the specific organisation can be a subject of the fundamental right in question. According to this, the first level of examination focuses on whether the concerned fundamental right can be interpreted in relation to legal entities with organisational characteristics. The second level addresses whether the specific fundamental right can be interpreted in the organisation in question. Overall, this research suggests that to develop a coherent and appropriately founded fundamental rights doctrinal system, the general and specific characteristics of both organisations and fundamental rights must be harmonized.<sup>36</sup>

5. *When examining the nature of the specific fundamental right, the following factors are determining: (1) Whether the fundamental right in question aimed at protecting an exclusive human characteristic. (2) Whether the action to be protected by the fundamental right can be organized and realized at an organisational level, and whether the value in question can be identified within the organisation's scope of activities, with an organisational-specific character. (3) Is it possible to identify in the nature of the fundamental right in question the protection of a value for organisations that is independent of the human or organisational quality of the right holder. (4) The collective or individualistic aspect of a fundamental right, as well as its dual nature, is also significant.*

Regarding whether a fundamental right by its nature applies to organisations, the primary filter is the essential differences between human and organisations. The attributes that can only pertain to humans, known as exclusive human characteristics. Such exclusive human characteristics include physical, mental, and spiritual integrity, as well as the moral status associated with human dignity.<sup>37</sup> Additionally, specific human traits closely associated with human status, such as parental, child, male or female status, and the right to marry and establish

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<sup>36</sup> General attributes are those applicable to all organisations or all fundamental rights. For example, every organisation is a "legal person," an artificial entity without biological or moral existence, appearing in some legal form (organisational nature). In terms of all fundamental rights, the function of fundamental rights applies: ensuring individual freedom and limiting the exercise of state power. On the other hand, a specific characteristic of an organisation is its purpose for establishment, the function it serves, or the activities it engages in. Similarly, a specific characteristic of a fundamental right is the value it aims to protect, emphasizing the protection of certain values inherent in its nature.

<sup>37</sup> Based on these factors, we can say, for example, that organisations cannot invoke freedom of conscience, human dignity, or the prohibition of torture.

a family, can also be identified. Therefore, if a fundamental right aims to protect such values, it is highly unlikely that an organisation can possess it.

However, if the value protected by a fundamental right does not directly relate to such exclusive human characteristics, it may be conceivable that the fundamental right can be interpreted in relation to organisations. This typically occurs if a specific organisational content can be identified concerning the value protected by the fundamental right.<sup>38</sup> Deciding whether the fundamental right can hold such content requires examining whether the action can be organized and realized at an organisational level or whether the value can be identified within the organisation's activities with an organisational-specific character.<sup>39</sup> In addition, the fact that an organisation may claim the fundamental right in question may also be positively influenced if the nature of the fundamental right concerned emphasises the protection of a value for organisations that is independent of the right holder's human or organisational status. Thus, in these cases, the nature of the fundamental right is not specifically tied to the characteristics inherent in the right holder. This can occur if the application of the fundamental right to organisations emphasizes a rule of law or socio-political function instead of protecting human dignity.<sup>40</sup>

In addition to these considerations, the collective or individualistic nature of a specific fundamental right and the so-called dual nature observed in the right to religious freedom and the right to association are significant concerning the nature of the fundamental right.<sup>41</sup> While individualistic fundamental rights generally exclude organisations' fundamental rights entitlement, in the case of fundamental rights with a collective aspect, the protection of organisations is more accepted. However, the collective aspect of a fundamental right can manifest in several ways. For example, it may be a fundamental aspect of the right that it can be exercised collectively, such as in the case of religious freedom, the freedom of association, and the freedom of assembly. The dual nature of the first two also facilitates their applicability to organisations. Furthermore, the collective aspect may manifest in the high level of

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<sup>38</sup> For example, the inviolability of the home can be interpreted as it provides constitutional protection for the location of work, operational, and business activities. Relevant decisions: BVerfGE 42, 212.; *Société Colas Est and Others v. France*, Judgement of 16 April 2002, no. 37971/97

<sup>39</sup> In addition to the inviolability of the home, this may also include the right to freedom of assembly or, in the German understanding, of freedom of occupation.

<sup>40</sup> For example, procedural rights, the requirement of equal treatment or freedom of expression.

<sup>41</sup> The dual nature of a fundamental right is essentially that it protects both the fundamental rights of individuals and the existence and functioning of the legal entity created.



organisation required by the right.<sup>42</sup> According to the jurisprudence of the ECHR, the collective aspect of a fundamental right may also appear in whether the right has a context for building relationships with others.<sup>43</sup> Moreover, broadly interpreted communication rights<sup>44</sup> highlight that this characteristic may manifest in the enforcement of the right contributing to the realization of the fundamental rights of multiple persons. This means that the value protected by the fundamental right can be realized not only at the individual level but also at the societal level.

*6. The issues concerning both organisations and fundamental rights must be considered at multiple levels, in relation to each other. The individual factors are closely interconnected and collectively determine whether a particular legal subject can be entitled to a fundamental right.*

The characteristics of organisations and fundamental rights must be assessed as a whole, not in isolation. For example, the function or activity of an organisation (specific organisational characteristics) play a role in determining whether it can be a right holder of fundamental rights in general (general fundamental right characteristic).<sup>45</sup> Furthermore, the value protected by the fundamental right in question (specific fundamental right characteristic) influences how the fundamental right can be interpreted concerning a right holder with organisational characteristics (general organisational characteristic).<sup>46</sup> Thus, the general and specific characteristics of organisations and fundamental rights appear in all questions, including whether an organisation can be a fundamental rights holder in general and whether a fundamental right can be invoked by an organisation. And even whether the organisation in question can claim the protection of a specific fundamental right.<sup>47</sup>

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<sup>42</sup> In Hungary, this was exemplified by the partial entitlement to participate in national referendums through the right to collect signatures, or in German legal literature, by forms of mass communication directed towards the public.

<sup>43</sup> *Niemietz v. Germany*, Judgement of 16 December 1992, no. 13710/88, no. 13710/88

<sup>44</sup> This refers to communication rights as interpreted by Decision 30/1992. (V.26.) of HCC, which include freedom of expression, freedom of information, freedom of assembly and association, freedom of conscience and religion, freedom of scientific and artistic life, and freedom of teaching.

<sup>45</sup> For example, a state or governmental function of an organisation (a specific organisational characteristic) can exclude its fundamental rights entitlement due to the function of fundamental rights (a general fundamental rights characteristic).

<sup>46</sup> For example, the prohibition of torture, which aims to protect mental and physical integrity (a specific level fundamental rights characteristic), does not apply to "artificial" persons (a general organisational characteristic).

<sup>47</sup> This raises the dilemma of whether a profit-oriented company (specific organisational characteristic) can invoke freedom of religion (specific fundamental rights characteristic), which typically protects a human attribute: spiritual integrity. In such cases, the dual nature of this fundamental right cannot be taken into account, as in the case of churches or other religious organisations. Furthermore, due to the different organisational characteristics, the question also arises as to how it can be determined which religion the given organisation follows.

Moreover, it can be established that the factors influencing the nature of a fundamental right do not necessarily determine whether an organisation can invoke it in isolation but in conjunction with other characteristics. For example, regarding religious freedom, it is essential to consider that it primarily aims to protect a human characteristic – spiritual integrity – but is also a dual-natured fundamental right with collective aspects. Concerning the inviolability of the home, it is similarly necessary to consider that, as a right protecting private life, it is primarily individualistic but may have collective aspects (e.g., interaction with others) and an organisational-specific content (e.g., business premises, professional activity locations). Moreover, the nature of this right, as a highly protective type, emphasises the function of protection against arbitrary interference.

Furthermore, it can also be stated that the justification of organisations' fundamental rights entitlement may also be related to the nature of the specific fundamental right. For example, the instrumental justification of religious freedom for churches is closely related to the collective and dual nature of this right. According to the ECHR, when a church turns to it, it does so in reality on behalf of its members, thus enabling a church to possess and exercise this right on behalf of its members.<sup>48</sup> Moreover, the ECHR clearly states that if an organisation were not entitled to the protection of religious freedom, the religious freedom of individuals would become vulnerable.<sup>49</sup> These observations can be interpreted as reflecting an instrumental justification view through the nature of the fundamental right. The situation is similar concerning the protection of private life – specifically the inviolability of the home. In extending the scope of protection of this right to include the headquarters, branches, or other business premises of organisations under certain circumstances, the ECHR significantly considered the emphasis on the interest related to freedom from arbitrary interference identified in the nature of this right. Although the ECHR primarily examined the nature of the fundamental right, an implicit autonomous justification can be identified in the interpretation. In this case, the emphasis is on whether the organisation is in a position – similar to individuals – that justifies providing protection against arbitrary interference.<sup>50</sup>

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<sup>48</sup> *X and Church of Scientology v. Sweden*, Judgment of 5 May 1979, no. 7805/77

<sup>49</sup> *Hasan and Chaush v. Bulgaria*, Judgement of 26 October 2000, no. 30985/96

<sup>50</sup> This concept shows similarity with the notion of the typical fundamental rights risk situation (*grundrechtstypischen Gefährdungslage*) in German practice. Regarding the fundamental rights entitlement of organisations both perspectives omit the "retrospective" justification based on the protection of human fundamental rights. Instead, the organisation's vulnerability (similar to the vulnerable position of individuals) itself justifies the need for fundamental rights protection. Moreover, the protection against arbitrary interference is considered a cornerstone of the rule of law, so in this case it can be stated that the autonomous justification aspect of the rule of law also appears.

The above-mentioned results of the research aim to clarify the scope of the constitutional complaint and the concept of the fundamental right holders to lodge it. It reveals the fundamental rights considerations essential for developing a coherent concept of fundamental rights beneficiaries respecting the essence of fundamental rights within the Hungarian constitutional context. Utilizing these results, Hungarian fundamental rights protection forums will be capable of approaching cases initiated by organisations comprehensively and coherently, thus making legitimate decisions. Beyond these practical benefits, the research results fill a significant gap in the Hungarian legal literature regarding the fundamental rights status of organisations.

# Organisations as Fundamental Rights Holders

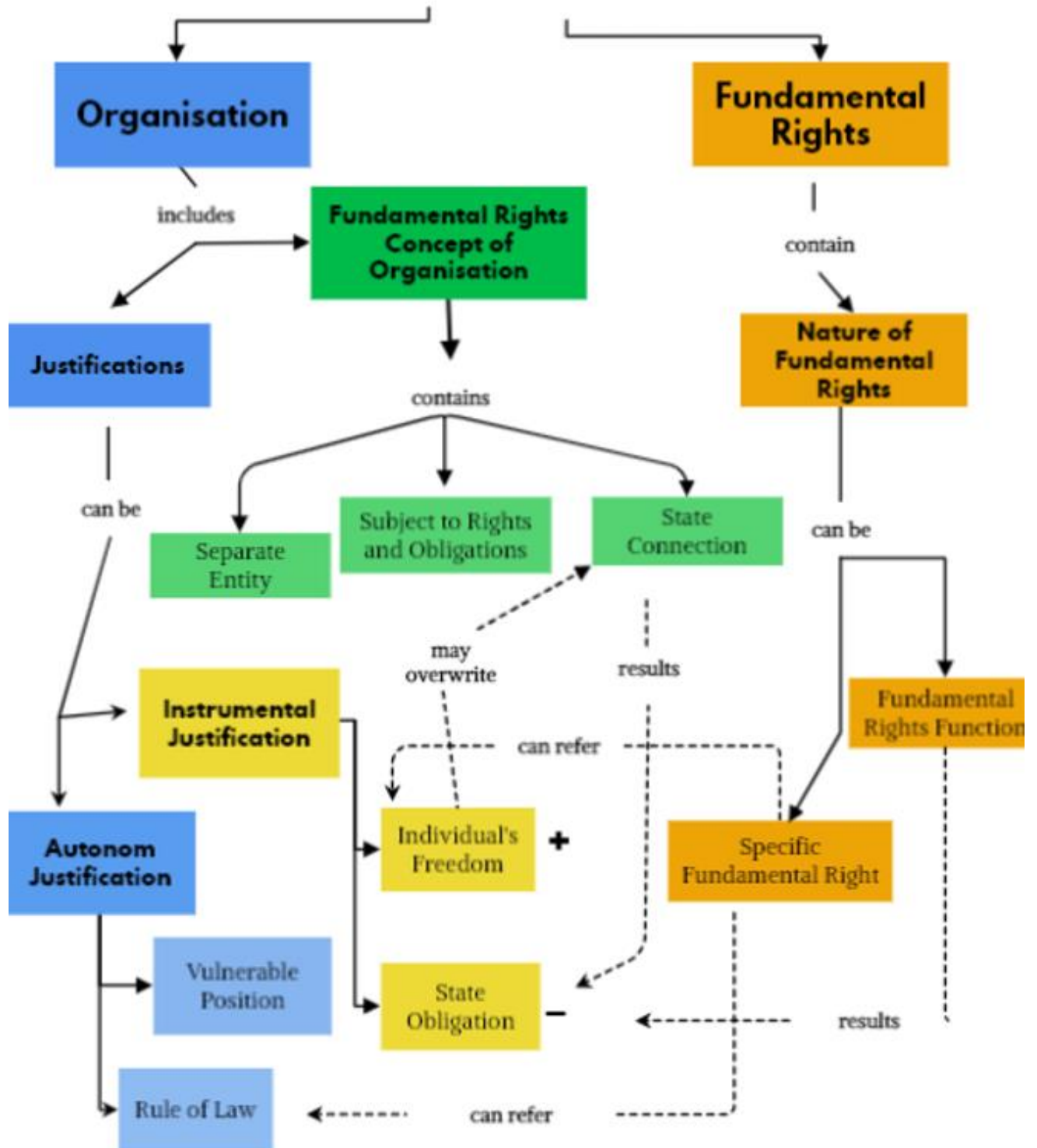


Figure 2: Concept map of the organisations as fundamental rights holders

#### 4. The author's publication in relation to the thesis's topic

BOTTLIK- GRANYÁK, LÍVIA: Miért lehet alapjogi jogosult egy szervezet? *Themis*. 2020/12. 26-45.

BOTTLIK- GRANYÁK, LÍVIA: Szervezetek mint alapjogi jogosultak a magyar Alkotmánybíróság gyakorlatában. *Jogi Tanulmányok*. 2021. 135-148.

GRANYÁK, LÍVIA: A szervezetek alapjogi jogalanyisága és az alapjog természete. *Magyar Jog*. 2019/9. 522-530.

GRANYÁK, LÍVIA: Do Human Rights Belong Exclusively to Humans? The Concept of the Organisation from a Human Rights Perspective. *ELTE Law Journal*. 2019/2. 17–24.

GRANYÁK, LÍVIA: Vannak-e alapjogaik a szervezeteknek? *Jogi Tanulmányok*. 2018. 86-97.

GRANYÁK, LÍVIA: Vannak-e alapjogaik a szervezeteknek? Elméleti alapok és gyakorlat. *Közjogi Szemle*. 2018/2. 51-57.