

STUDIA IURISPRUDENTIAE DOCTORANDORUM
MISKOLCIENSIIUM

MISKOLCI DOKTORANDUSZOK
JOGTUDOMÁNYI TANULMÁNYAI

30.



MISKOLCI EGYETEM
ÁLLAM-ÉS JOGTUDOMÁNYI KAR
DEÁK FERENC ÁLLAM-ÉS JOGTUDOMÁNYI DOKTORI ISKOLA

**STUDIA IURISPRUDENTIAE DOCTORANDORUM
MISKOLCIENSIMUM**

MISKOLCI DOKTORANDUSZOK JOGTUDOMÁNYI TANULMÁNYAI
2025. évi 2. szám
Tomus 30

Szerkesztő:
Prof. Dr. Róth Erika

Technikai szerkesztő, a folyóirat titkára:
Dr. Sági Edit
Dr. Udvarhelyi Bence

A tanulmányok technikai szerkesztésében közreműködött:
dr. Bucsi Anikó, dr. Lengyel Bianka Panna, dr. Papp Laura, Elgabaili Tira,
dr. Kállai Erika. Révész Gábor László, Belkacem Ghanian, Felipe
Cristancho

Kiadja:
Bíbor Kiadó Bt.
Felelős kiadó: dr. Borkuti Eszter

A kötet külső borítóján *Albrecht Dürer: Erasmus portréja* című metszet
részlete szerepel

ISSN 1588-7901
MISKOLC, 2025.

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RÓTH ERIKA*

A miskolci állam- és jogtudományi doktori képzés akadémiai kapcsolatai

A Magyar Tudományos Akadémia alapításának 200. évfordulója alkalmából számos rendezvényre, tudományos ülésre került sor. Ezek egyike volt a „*Miskolc és akadémikusai*” címmel Miskolcon, 2024. november 28-án rendezett tudományos konferencia, amelynek egyik szekciójában a Miskolci Egyetem doktori iskolájának vezetői lehetőséget kaptak a doktori iskolák Magyar Tudományos Akadémiával fennálló kapcsolatának bemutatására. A jelen tanulmány a konferencián elhangzott előadás szerkesztett, bővített változata, amelyben a szerző arra törekedett, hogy feltérképezze a Deák Ferenc Állam- és Jogtudományi Doktori Iskola (a továbbiakban: Doktori Iskola) akadémiai kötődését.

1. A doktori képzés rövid története

A Doktori Iskola akadémiai kapcsolatainak bemutatása előtt célszerű röviden áttekinteni a doktori képzés kereteinek kialakulását és a jelenlegi működés sajátosságait.

A doktori képzés a 1993/1994-es tanévben indult meg a Miskolci Egyetem Állam- és Jogtudományi Karán (a továbbiakban: Kar). Az első évfolyam levelező tagozatos doktoranduszainak többsége a Kar oktatói közül került ki¹, akik főállású munkaviszonyuk mellett vettek részt a képzésben. A doktori fokozat megszerzése iránti érdeklődés a következő években folyamatosan nőtt. Míg nappali tagozatos képzésre elsősorban a frissen diplomát szerzettek jelentkeztek, a levelező tagozatos és az ún. egyéni felkészüléssel képzés keretében a már munkaviszonnyal, esetleg kutatási, oktatási tapasztalatokkal is rendelkező szakemberek vettek részt.

Nem egészen egy évtized elteltével a képzés a *doktori iskola* keretei között folytatódott. Büszkeséggel említhetjük, hogy Doktori Iskolánk 2002-ben az első között, „a pécsi jogi kar PhD műhelyével együtt végleges akkreditációt nyert.”² Az

* Prof. Dr. Róth Erika, PhD intézetigazgató egyetemi tanár, a Deák Ferenc Állam- és Jogtudományi Doktori Iskola vezetője, Miskolci Egyetem Állam- és Jogtudományi Kar, Bűnügyi Tudományok Intézete, Büntető Eljárásjogi és Büntetés-végrehajtási Jogi Tanszék, 3515 Miskolc-Egyetemváros erika.roth@uni-miskolc.hu, <https://orcid.org/0000-0003-2783-7436>

¹ STIPTA I.: A doktori képzés két évtizede a miskolci jogi karon. Miskolci Egyetem, Miskolc, 2012. 6.

² STIPTA I.: i.m. 5.

átmenet zökkenőmentesen zajlott, a hallgatók számára semmilyen nehézséget nem jelentett a váltás.³

A doktori program címe – „*A magyar állam- és jogrendszer, jogtudomány továbbfejlesztése, különös tekintettel az európai jogfejlődési tendenciákra*” – lefedi az állam- és jogtudományok teljes körét. Az elmúlt több mint három évtizedben a képzés indulásakor meghirdetett kilenc alprogram közül többnek az elnevezése változott, újabb kutatási programok indultak, mások megszűntek. A jelenlegi struktúra biztosítja a lehető legváltozatosabb kutatási témák meghirdetését, a tudományos kutatás újabb tendenciáira történő gyors reagálást.

Az Országos Doktori Tanács adatbázisa szerint a Doktori Iskolában eddig 177 hallgató szerzett doktori fokozatot.⁴

2. A doktori képzés jelenlegi keretei

A doktori képzés *tizenhárom képzési, kutatási program* alapján folyik, amelyek közül tizenkettőre ösztöndíjas és önköltséges formában is jelentkezhetnek az érdeklődők, egy kizárólag angol nyelven meghirdetett program viszont csak önköltséges képzés keretében érhető el.

Ez utóbbi a „*Central European Comparative Law*” angol nyelvű program, amely a 2021/2022. tanévben indult és PhD tanulmányokat folytatni kívánó hazai és külföldi – elsősorban, de nem kizárólagosan közép-kelet-európai országokból érkező – érdeklődők számára kínál képzési és kutatási lehetőséget. E program keretében számos külföldi – szintén közép-kelet-európai országban – oktatóként, kutatóként tevékenykedő, gyakran nemzetközi szinten is elismert szakember vállal témavezetői feladatokat. A programban résztvevő hallgatók lehetőséget kapnak arra, hogy bekapcsolódjanak a Közép-európai Akadémia (Central European Academy) Junior Programjába.⁵

Doktori Iskolánk a *Stipendium Hungaricum Ösztöndíjprogram* keretében is fogad külföldi hallgatókat, akik szintén angol nyelvű képzésben vesznek részt.

Bár a jelentkezők és a felvettek között többségben vannak, akik az osztatlan jogásképzésben szereztek diplomát, a képzés abból a szempontból is speciális, hogy más diplomával rendelkezők is részt vehetnek benne, amennyiben tervezett kutatásuk illeszkedik a meghirdetett doktori témákhoz.

A doktori képzés jelenleg a következő képzési, kutatási programok keretében folyik:

- Az európai jog közös történeti, társadalmi gyökerei (programvezető: Dr. Koncz Ibolya Katalin egyetemi docens)

³ STIPTA I.: i.m. 14-15.

⁴ <https://doktori.hu/doktori-kepzes/doktori-iskolak/76-deak-ferenc-allam-es-jogtudomanyi-doktori-iskola> (letöltés dátuma: 2025.12.27.)

⁵ <https://centraleuropeanacademy.hu/junior-program/> (letöltés dátuma: 2025.02.01.)

- Hagymány és megújulás a jog elméleti megalapozásában (programvezető: Prof. Dr. Szabó Miklós professor emeritus)
- A munka- és szervezeten belüli vállalkozási viszonyok magyarországi jogi rendezésének problémái az ipari és a mezőgazdasági termelés, valamint a kereskedelem területén az európai jogfejlődés tükrében (programvezető: Prof. Dr. Prugberger Tamás professor emeritus)
- A közigazgatás korszerűsítésének tudományos megalapozása (programvezető: Prof. Dr. Torma András egyetemi tanár)
- Az alkotmányosság és a jogállamiság garanciáinak megteremtése (programvezető: Prof. Dr. Paulovics Anita egyetemi tanár)
- A pénzügyek jogának tudományos megalapozása (programvezető: Dr. Erdős Éva egyetemi docens)
- A nemzetközi jog ezredfordulós kihívásai, különös tekintettel a nemzetközi bíraskodás és az emberi jogvédelem perspektíváira (programvezető: Dr. Raisz Anikó egyetemi docens)
- A bünygyi tudományok fejlődési irányai (programvezető: Prof. Dr. Farkas Ákos professor emeritus)
- Az összhang megteremtése a magyar és az Európai Közösségek polgári eljárásjoga között (programvezető: Prof. Dr. Wopera Zsuzsa egyetemi tanár)
- Európai kereskedelmi jog (programvezető: Prof. Dr. Barta Judit egyetemi tanár)
- Polgári jogi rekodifikáció, nemzetközi és jogági harmonizáció (programvezető: Prof. Dr. Barzó Tímea egyetemi tanár)
- Az Európai Unió joga (programvezető: Prof. Dr. Wopera Zsuzsa egyetemi tanár)
- Central European Comparative Law (programvezető: Prof. Dr. Szilágyi János Ede egyetemi tanár)

A felsorolt programok keretében 87 magyar vagy angol nyelven meghirdetett témára jelentkezhetnek a leendő PhD hallgatók.⁶ Néhány témavezető több kutatási témában is fogad hallgatókat.

A doktori képzés iránti érdeklődést jelzi, hogy a Deák Ferenc Állam- és Jogtudományi Doktori Iskolában 121 fő folytatta doktori tanulmányait a 2025/2026. tanév első félévében.⁷

⁶ <https://doktori.hu/doktori-kepzes/doktori-iskolak/76-deak-ferenc-allam-es-jogtudomanyi-doktori-iskola>; <https://doktori.hu/doktori-kepzes/temakiirasok/> (letöltés dátuma: 2025.12.27.)

⁷ <https://doktori.hu/doktori-kepzes/doktori-iskolak/76-deak-ferenc-allam-es-jogtudomanyi-doktori-iskola> (letöltés dátuma: 2025.12.27.)

A doktori képzés első négy félévében, az ún. *képzési és kutatási szakaszban* a hallgatók kötelező és szabadon választott tárgyakat teljesítenek. A kötelező tárgyak egy részét minden hallgató köteles felvenni, míg más tárgyak az adott programhoz kötődnek. Az oktatási krediteket az első négy félév során kötelező megszerezni, csak ezt követően bocsáthatók *komplex vizsgára* a doktoranduszok. A tantárgyak teljesítése szükséges, de nem elégséges feltétele a komplex vizsgára jelentkezésnek, ahhoz további eredmények igazolása is elvárt, összesen 120 kredit pont értékben. A komplex vizsga sikeres teljesítésével léphetnek a doktoranduszok a képzés második részébe, az ún. *kutatási és disszertációs szakaszba*, ahol a folyamatos kutatás és a publikálás mellett a legfontosabb feladat a doktori értekezés elkészítése.

A hallgatókat a megszerezhető kreditekkel is ösztönzi a doktori iskola arra, hogy kutatási eredményeiket folyamatosan megjelentessék, konferencia előadások keretében ismertessék meg a szakmai közönséggel. A doktoranduszok tanulmányainak publikálására a Doktori Iskola saját kiadású folyóirata, a *Studia Iurisprudenŕiae Doctorandorum Miskolciensium* (a Miskolci Doktoranduszok Jogtudományi Tanulmányai) is lehetőséget biztosít, de fontos, hogy más kari kiadványokban, továbbá a Magyar Tudományos Akadémia IX. Gazdaság- és Jogtudományok Osztályának Állam- és Jogtudományi Bizottsága által elfogadott listákon szereplő hazai és nemzetközi folyóiratokban is megjelentessék írásait.

A képzés során megszerzett minimum 240 kredit szükséges az *abszolutórium* kiadásához, amely igazolja, hogy a hallgató a tantervben előírt valamennyi követelménynek eleget tett, és amelynek birtokában – a további feltételek teljesítése esetén – sor kerülhet a PhD fokozat megszerzéséhez vezető eljárás megindítására.

3. A miskolci állam- és jogtudományi doktori képzés akadémiai kapcsolatai

Nehezebb kimutatni a Magyar Tudományos Akadémia és a doktori képzés közvetlen kapcsolatát, ha nincs az adott karon akadémiai kutatócsoport vagy olyan, az akadémiahoz kapcsolódó projekt, amelyben a doktoranduszok és a doktori iskola tagjai vesznek részt. Ha azonban ezen túllépünk, kiderül, hogy sok-sok szállal kötődik a doktori képzés, az abban akár hallgatóként, akár oktatóként résztvevők jelentős része az MTA-hoz. A továbbiakban e kapcsolatok közül néhánynak a vázlatos ismertetésére kerül sor.

Előre kell bocsátanunk, hogy a Doktori Iskola tagjai többségében a Kar oktatói, így az akadémiai kapcsolat nem feltétlenül a doktori képzésben való részvétel miatt áll fenn, de az oktatók szakmai közéletben való aktív részvétele kihat a doktori iskola életére, a képzés minőségére, elismertségére is.

3.1. A Kar alapítása

Az állam- és jogtudományi doktori képzés elválaszthatatlan az Állam- és Jogtudományi Kartól, így az akadémiai kapcsolatok bemutatásában a Kar alapításáig nyúlhatunk vissza.

A miskolci egyetemi szintű jogászképzés 1981. évi indulását hosszabb előkészítő munka előzte meg. Az Oktatási Minisztériumban 1980. január 31-én tartott főosztályvezetői értekezletére Gönczöl Katalin⁸ főelőadó állította össze a miskolci jogászképzés szervezésével kapcsolatos feladatokra vonatkozó javaslatot.⁹ A Kar alapításával kapcsolatos elvi és szakmai irányítást egy ún. karközi bizottság látta el. Ahogy Stipta István a Kar történetének első közel két évtizedét bemutató munkájában írta, „A karközi bizottság feladata az oktatói alkalmassági követelmények érvényesülésének ellenőrzése, a vezető oktatók kiválasztása, a szervezeti kérdésekben történő állásfoglalás volt. A bizottság elnöke Király Tibor, a társkarokat Ádám Antal, Benedek Ferenc, Mádl Ferenc, Németh János, Schmidt Péter, Szentpéteri István, Veres József képviselte. Az MTA Kulcsár Kálmánt és Peschka Vilmost, az Igazságügyi Minisztérium Petrik Ferencet, az oktatásügyi főhatóság Gönczöl Katalint delegálta.”¹⁰

Ezt a névsort úgy is tekinthetjük, mint a Kar első akadémiai kapcsolatát, hiszen a bizottság tagjai közül többen már a Kar alapításakor is rendelkeztek akadémiai doktori címmel vagy azt később szereztek meg, néhányan pedig a Magyar Tudományos Akadémia levelező vagy rendes tagjai voltak. A jelen tanulmány keretei között mindössze két személyt emelnék ki a Miskolci Egyetemhez, illetve a doktori képzéshez fűződő kapcsolatuk alapján.

A bizottság elnöke volt *Király Tibor* Széchenyi-díjas magyar jogtudós, egyetemi tanár, akit 1979-ben a Magyar Tudományos Akadémia levelező, 1987-ben pedig rendes tagjává választott.¹¹ 2011-ben a Miskolci Egyetem tiszteletbeli doktorrá avatta, a „doctor honoris causa” kitüntető cím birtokosa lett.

Mádl Ferenc Széchenyi-díjas magyar jogtudós, egyetemi tanár, 2000-től 2005-ig a Magyar Köztársaság elnöke. 1987-től az MTA levelező, 1993-tól rendes tagja.¹² Művelődési és közoktatási miniszterként 1993. szeptember 15-i levelében ő tájékoztatta a Miskolci Egyetem rektorát arról, hogy az Ideiglenes Országos

⁸ Gönczöl Katalin az állam- és jogtudomány doktora, szélesebb körben leginkább mint az állampolgári jogok országgyűlési biztosa (1995-2001) vált ismertté és elismertté. Az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Doktori Iskolájában a doktori képzéshez is szoros kapcsolat fűzte, hiszen amellett, hogy témavezetőként több fiatal tudós fokozatszerzését segítette, hosszabb időn át a doktori tanács elnöki feladatait is ellátta.

⁹ STIPTA I.: A miskolci állam- és jogtudományi oktatás története (1981-1999). In: ZSÁMBOKI L. (szerk.): 50 éve Miskolcon. Fejezetek a Miskolci Egyetem történetéből. Miskolc, 1999. 177.

¹⁰ STIPTA I.: i.m. 1999, 177.

¹¹ Az MTA köztestületének tagjai. https://mta.hu/koztestuleti_tagok?PersonId=19172 (2024.11.25.)

¹² Mádl Ferenc emlékdal. <https://madlferenc.hu/eletrajz/> (2024.11.25.)

Akkreditációs Bizottság elfogadta a Kar egyetemi doktori (PhD) program akkreditálására beadott pályázatát.¹³

A Kar alapításában résztvevő tudósokon kívül is számos ponton kötődik a Kar és a Doktori Iskola tevékenysége az akadémiai szférához.

3.2. Az MTA doktora fokozat

A doktori képzés kezdetétől hosszú időn át a képzés, a doktori iskola vezetőjének MTA doktora (korábban tudományok doktora) címmel kellett rendelkeznie, így kiemelkedő jelentősége volt annak, hogy a Kar oktatói közül lehetőleg többen is megfeleljenek ennek az elvárásnak. A tudományok doktora volt a doktori képzés megindításában, az akkreditációra irányuló pályázat kidolgozásában meghatározó szerepet játszó Zlinszky János, aki az ideiglenes akkreditációt követően a doktori program első vezetője lett.¹⁴ Ugyancsak rendelkezett tudományok doktora címmel a Bűnügyi Tudományok Tanszékének, majd Intézetének vezetője és a Doktori Tanács elnöke Horváth Tibor.¹⁵

A Kar fennállásának első öt évében doktori címet szerzett továbbá Ruszoly József (1986¹⁶), Novotni Zoltán (1986¹⁷) és Gáspárdy László (1984¹⁸). Röviddel ezután a tudományok doktora címmel rendelkező kollégák száma tovább nőtt. Lamm Vanda¹⁹ 1988-ban, Prugberger Tamás 1990-ben, Bragyova András 2003-ban védte meg értekezését és szerzett akadémiai doktori címet.

Amikor MTA doktori címét megszerezte, már nem a Miskolci Egyetem oktatója volt, de korábban Doktori Iskolánkban meghatározó szerepet játszott Kovács Péter, Stipta István, aki hosszú időn át a (változó elnevezésű) Doktori Tanács elnöke volt és Szabadfalvi József. Közülük Kovács Péter és Stipta István a Miskolci Egyetem tiszteletbeli (honoris causa) doktorai, Szabadfalvi József pedig – aki 2025-ben az

¹³ STIPTA I.: i.m. 2012, 5. Ez a doktori program ideiglenes akkreditációját jelentette.

¹⁴ SÁRY P.: Zlinszky János. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon. A Miskolci Jogi Kar fennállásának 40. jubileuma alkalmából. Miskolci Jogásztradíciók Megőrzéséért Egyesület, Miskolci Egyetem Állam- és Jogtudományi Kar, Miskolc, 2021. 714-715.

¹⁵ FARKAS Á. – GÖRGÉNYI I.: Horváth Tibor. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 484, 487.

¹⁶ PETRASOVSKAI A: Ruszoly József. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 621.

¹⁷ KENDERES G. – PRUGBERGER T.: Novotni Zoltán. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 595. o

¹⁸ WOPERA Zs.: Gáspárdy László. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 464. o

¹⁹ Doktori Iskolánk korábbi vezetőjét, Lamm Vandát 2007-ben az MTA levelező tagjává, 2013-ban rendes taggá választották. 2011 és 2017 között az MTA Gazdaság- és Jogtudományok Osztályának elnökhelyettese, 2018-tól 2020-ig osztályelnök. 2020-tól az MTA társadalomtudományi alelnöke.

https://mta.hu/koztestuleti_tagok?PersonId=19618 (letöltés dátuma: 2025.02.17.);

https://hu.wikipedia.org/wiki/A_Magyar_Tudom%C3%A1nyos_Akad%C3%A9mia_tiszts%C3%A9gvisel%C5%91inek_list%C3%A1ja (letöltés dátuma: 2025.12.27.); Lamm Vanda. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 541-542.

MTA levelező tagja lett – az Egyetemi Doktori Tanács és a Deák Ferenc Állam- és Jogtudományi Doktori Iskola Tudományági Doktori Tanácsának is külső tagja.

Kétségtelen, hogy az akadémiai fennálló legközvetlenebb kapcsolat az, amikor a Doktori Iskola oktatói vagy korábbi doktoranduszai szereznek MTA doktora címet. Végzett doktoranduszaink közül még kevesen jutottak el az MTA doktora cím megszerzéséig, de a következő években – köszönhetően a tehetséges korábbi PhD hallgatóinknak – számuk minden bizonnyal gyarapodni fog. Doktori Iskolánk jelenleg is aktív oktatói közül legutóbb Veress Emőd szerzett MTA doktori címet 2022-ben.

3.3. Köztestületi tagság

A tudományos fokozatot szerettek számára nyitva áll az út, hogy jelentkezzenek az MTA köztestületébe és ezzel aktívabban bekapcsolódjanak az akadémiai tevékenységekbe. A Karon oktató PhD fokozattal rendelkező kollégáink többsége él ezzel a lehetőséggel, de más területen dolgozó végzett doktoranduszaink közül is többen kérik felvételüket.

3.4. MTA támogatások, projektek

A tehetséges fiatal kutatókat támogató *Lendület program* kiváló lehetőséget kínál a posztdoktori kutatások folytatására. A rendelkezésünkre álló információk szerint eddig még kevesen kapcsolódtak be oktatóink és korábbi doktoranduszaink közül ebbe a programba. Doktori Iskolánk oktatói közül Lehotay Veronika 2022. szeptember 1-től a „*Munka, társadalom és politika: munkahelyi kultúrák a szocializmus magyar modelljében*” (2022-2027) Lendület Kutatótársaság tagja (a kutatócsoport vezetője Horváth Sándor).²⁰ A kutatás keretében jelent meg „*A Miskolci Ügyvédi Kamara első 100 éve*” című könyve.

További pályázati lehetőség, amely a doktoranduszokat és az oktatókat egyaránt érinti, a *Bolyai János Kutatási Ösztöndíj*. A PhD fokozatot szerzett fiatal kutatók pályázóként, az oktatók bírálóként kapcsolódnak ehhez a támogatási formához. A fokozatot szerettek közül többen nyerték el az ösztöndíjat és teljesítették kiválóan vállalt kötelezettségeiket, amelyet Bolyai Plakettal vagy a Kuratórium oklevelével ismertek el.

Meg kell említeni még az MTA *könyvkiadási pályázatát is*, amelynek köszönhetően Pusztahelyi Réka „A magánjogi elévülés” c. monográfiája megjelentetéséhez 2015-ben támogatásban részesült.

²⁰ <https://workhistory.eu/rolunk/> és <https://workhistory.eu/kutatok/lehotay-veronika/> (letöltés dátuma: 2025.12.27.)

3.5. További akadémiai kapcsolatok

Az MTA Állam- és Jogtudományi Bizottságának egyes albizottságai által szervezett konferenciákon a Kar oktatói több alkalommal tartottak előadást.

Ugyancsak részt vesznek kollégáink bizottsági tagként az *MTA doktora cím megszerzésére irányuló eljárásokban*.

Az Akadémia hatása azon keresztül is érezhető, hogy a hazai és nemzetközi folyóiratlisták összeállításával, az egyes folyóiratok A, B, C, D kategóriába sorolásával a doktoranduszok és az oktatók publikációs teljesítményének értékelését is befolyásolják az MTA osztályai, bizottságai. A PhD fokozatszerzéshez egyre gyakrabban követelik meg a doktori iskolák, hogy a jelölt rendelkezzen meghatározott számú, magas minősítésű folyóiratban megjelent tanulmánnyal. A törzstagi megfelelés vizsgálatánál ugyancsak az MTA IX. osztálya, ezen belül is elsősorban az Állam- és Jogtudományi Bizottság által elfogadott folyóiratlisták a meghatározók, a publikációs követelményeket a témahirdetők és az oktatók esetében is ez a besorolás határozza meg.

3.6. A Jogtudományi Intézettel fennálló kapcsolat

Említést kell tennünk a korábban az MTA-hoz tartozó Társadalomtudományi Kutatóközpont Jogtudományi Intézetéről, amelyhez több szálon is kapcsolódott Doktori Iskolánk tagjainak és doktoranduszainak a tevékenysége.

Néhányan kutatóként dolgoztak az intézetben, így például Horváth Tibor a MTA Állam- és Jogtudományi Intézet Büntetőjogi Osztályának, majd Büntetőjogi és Kriminológiai Osztályának a vezetője volt²¹, Lamm Vanda hosszú ideig (1992-2012) igazgatóként²² irányította a nemzetközi szinten is elismert intézmény *munkáját*, de Bragyova András is tudományos főmunkatársként, majd tudományos tanácsadóként²³ dolgozott ott. Kutatója volt az Intézetnek Rácz Zoltán és Vörös Imre, a Kar korábbi oktatója.

Az Intézethez tartozó két folyóiratban az *Acta Juridica Hungarica* és az *Állam- és Jogtudomány* c. folyóiratban a Doktori Iskola oktatóinak több publikációja jelent meg.

Az Intézethez kapcsolódik az *Internetes Jogtudományi Enciklopédia*, amelyhez tanulmányok (szócikkek) írását több kollégánk vállalta csakúgy, mint előadások tartását az Intézet által szervezett rendezvényeken.

Az Intézet 2014-től minden második évben pályázatot hirdet a *Pro Dissertatione Iuridica Excellētissima Díjra*, amelyet 2016-ban Doktori Iskolánk volt doktorandusza, Farkas Krisztina nyert el „Az eljárás gyorsításának lehetőségei a német, a svájci és az olasz büntető igazságszolgáltatásban” c. dolgozatával.

²¹ FARKAS Á. – GÖRGÉNYI I.: i.m. 484.

²² Lamm Vanda. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 541.

²³ PRUGBERGER T.: Bragyova András. In: NAGY Z. (szerk.): Jogászprofesszorok Miskolcon ... 429.

Ugyancsak az Intézet indította el a *Jogtudományi Hírlevél* elnevezésű kétheti elektronikus kiadványt, amelyben más szakmai közéleti hírek mellett a doktori műhelyviták és nyilvános védések is meghirdetésre kerülnek.

3.7. A Magyar Tudományos Akadémia Miskolci Területi Bizottsága (MAB)

A Kar és a Doktori Iskola szempontjából a Miskolci Akadémiai Bizottság jelenti a legközvetlenebb kapcsolatot az Akadémiához. Az *Állam- és Jogtudományi Szakbizottság* és az annak keretében működő *nyolc munkabizottság* tisztségviselői és tagjai sorában számos oktató kollégánkat és doktoranduszukat megtalálhatjuk. A munkabizottságok rendszeresen rendeznek hazai és nemzetközi konferenciákat – sok esetben a Karral vagy annak egy szervezeti egységével közösen –, amelyen esetenként a doktoranduszok is kapnak lehetőséget előadás tartására.

Ugyancsak a MAB-hoz kapcsolódik a *MAB Emlékérem*²⁴, a *MAB Kitüntető Tudományos Díj*²⁵ és a *Tudományos Díj*²⁶ adományozása. Ez utóbbi kitüntetésben a fiatal, PhD fokozatot néhány éve szerzett egykori doktoranduszok – akik időközben esetleg már a Doktori Iskola oktatói, témahirdetői – is részesülhetnek. Azok közül, akik eddig a MAB Tudományos Díját megkapták, csupán egy kutató, Szabó Béla nem a Deák Ferenc Állam- és Jogtudományi Doktori Iskolában vagy jogelődjében végezte doktori tanulmányait (már korábban kandidátusi fokozattal rendelkezett), míg a MAB Kitüntető Tudományos Díját eddig négy, a Doktori Iskolánkban PhD fokozatot szerzett kolléga vehette át. Azok viszont, akik a három díj valamelyikében részesültek, de nem Miskolcon szereztek PhD fokozatot, oktatóként, témahirdetőként, törzstagként vesznek vagy vettek részt a doktori képzésben.

3.8. Nemzetközi kapcsolatok, kapcsolat más külföldi és hazai akadémiai szervezetekkel

²⁴ MAB Emlékérem kitüntetésben részesült Prugberger Tamás (2019). <https://tab.mta.hu/miskolci-területi-bizottsag/tortenete/dijazottak/> (letöltés dátuma: 2025.12.27.)

²⁵ A MAB Kitüntető Tudományos Díját a következők kollégák vehették át: Prugberger Tamás (2007), Szabó Miklós (2011), Bíró György (2014), Fodor László (2018), Csák Csilla (2020), Paulovics Anita (2022), Szilágyi János Ede (2024). <https://tab.mta.hu/miskolci-területi-bizottsag/tortenete/dijazottak/> (letöltés dátuma: 2025.12.27.)

²⁶ Tudományos Díjat kapott Szabó Béla (1998), Paulovics Anita (1999), Fodor László (2000), Szabó István (2001), Róth Erika (2002), Csák Csilla (2003), Wopera Zsuzsa (2004), Sály Pál (2005), Sántha Ferenc (2006), Gedeon Magdolna Ágnes (2007), Leszkoven László (2008), Olajos István (2009), Szilágyi János Ede (2010), Jacsó Judit (2011), Raisz Anikó (2012), Kirs Eszter (2013), Jakab Nóra (2014), Gondosné Pusztahelyi Réka (2015), Mélypataki Gábor (2016), Juhász Ágnes (2017), Varga Zoltán (2018), Nagy Adrien (2019), Czékmann Zsolt (2020), Jánosi Andrea (2021), Jámor Adrienn (2022), Lehotay Veronika (2023), Marinkás György (2024), Hornyák Zsófia (2025). <https://tab.mta.hu/miskolci-területi-bizottsag/tortenete/dijazottak/> (letöltés dátuma: 2025.12.27.)

Az *MTA tiszteleti tagja* 2001-től Prof. Hugh Beale, a Warwicki Egyetem jogi karának korábbi vezetője, jelenleg professor emeritusa, a Miskolci Egyetem tiszteletbeli doktora (1995), 2004-től a Brit Akadémia tagja. A Warwicki Egyetemmél karunknak évtizedeken át szoros együttműködési kapcsolata volt, közös kutatások folytak, oktatóink néhány hetes kutatómunkára utazhattak az külföldi partnerhez, többen PhD dolgozatuk megírásához gyűjtöttek anyagot.

Prugberger Tamás tiszteletbeli tagja a *Vajdasági Tudományos és Művészeti Akadémiának*²⁷, Jacsó Judit pedig a *Heidelbergi Tudományos Akadémia* konferencia ösztöndíját nyerte el 2019-ben.

Görgényi Ilona 2004-2008 között az *MTA Szabolcs-Szatmár-Bereg Megyei Tudományos Testülete Állam- és Jogtudományi Szekciójának* elnöke volt, tevékenységéért 2006-ban Lónyai Menyhért Emlékérmet kapott.

4. Záró gondolatok

A rövid, vázlatos „leltár” a legfontosabb kapcsolódási pontokat emelte ki, érzékeltetve, hogy ha nem is működik akadémiai kutatócsoport a Karon, ez nem jelenti azt, hogy az MTA-hoz kapcsolható különféle tevékenységekben ne vennének részt a Doktori Iskola oktatói és doktoranduszai. A felsorolásban nem kaptak helyet azok a személyes, baráti szakmai kapcsolatok, amelyek nem csak a hazai, de külföldi tudományos akadémiák tagjaival, tisztségviselőivel állnak fenn és közös kutatások tervezésében, közös publikációk megjelentetésében öltenek testet. Nem esett szó azokról a nemzetközi elismerésekről sem, amelyek nem kapcsolódnak közvetlenül a doktori képzéshez, bár Doktori Iskolánk is büszke rá, hogy tagjai tiszteletbeli doktorai külföldi és más hazai egyetemeknek (Csák Csilla, Horváth Tibor, Torma András kapott doctor honoris causa kitüntető címet), mint ahogy nem értékeltük a Doktori Iskola által elnyert, de az MTA-hoz nem kötődő pályázatokat, elismerő címekeket sem.

²⁷ Prugberger Tamás. In: NAGY Zoltán (szerk.): Jogászprofesszorok Miskolcon ... 609.

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CSÍK AURÉL*

Hazugságok hálójában – az álhírek közvéleményre gyakorolt hatása

Absztrakt: Az álhírek korunk egyik legnagyobb problémáját jelentik. Az internet révén egy átlagos felhasználó ma már információk garmadáához fér hozzá, azonban sajnos nincs arra lehetősége, hogy egyesével ellenőrizze ezek hitelességét. Ez azt jelenti, hogy az információs zavarkeltésre irányuló egyre könnyebben jutnak virális eléréshez, amellyel az eddigiekkel össze nem mérhető károkat tudnak okozni a közvéleményben. Tanulmányomban az álhírek definiálásának a nehézségeit fogom megvizsgálni annak a bemutatásával, hogy az információs zavarkeltésnek milyen formája fordulhatnak elő. Ezt követően három jellemző példát fogok hozni, hogy a fentebb megemlített formák hogyan jelennek meg a valóságban.

kulcsszavak: internet, közösségi média, álhír, dezinformáció, félretájékoztatás

Abstract: Fake news is one of the biggest problems of our time. The internet gives the casual user access to a myriad of information, but unfortunately they do not have the opportunity to check its authenticity one by one. This means that it is increasingly easy for disruptive information to achieve a viral reach, which can cause unprecedented damage in the public opinion. In my study, I will explore the difficulties of defining fake news by showing how forms of information disruption can occur. I will then give three typical examples of how the forms mentioned above appear in the reality.

key words: internet, social media, fake news, disinformation, misinformation

1. Bevezetés

„Springfieldben megeszik a kutyákat. Az emberek, akik ide jöttek, megeszik a macskákat [...] megeszik az ott élők háziállatait.” – állította Donald Trump az amerikai ABC csatorna által szervezett elnökjelölti vitán¹. Trump a fenti mondatával azt igyekezett érzékeltetni, hogy az Egyesült Államokba érkező bevándorlók mennyire bestialisan viselkednek, és ezzel mekkora veszélyt jelentenek a hétköznapi amerikaiakra nézve. Példának az Ohio állambeli Springfieldben élő haiti bevándorlókat hozta fel, akik tudomása szerint rendszeresen ellopják az ott lakók háziállatait és megeszik azokat. Az elnökjelölti vita alatt a csatorna cáfolta az

* dr. Csík Aurél, abszolváltn PhD-hallgató, Miskolci Egyetem Állam-és Jogtudományi Kar, Államtudományi Intézet, Alkotmányjogi Tanszék, Témavezető: Prof. Dr. Paulovics Anita PhD egyetemi tanár, acsik96@gmail.com

¹ Explaining Trump's false claims about immigrants eating pets in Ohio;

<https://abcnews.go.com/Politics/video/explaining-trumps-false-claims-immigrants-eating-pets-ohio-113628292> (2025.03.10.)

elnökjelölt szavait azzal, hogy felkeresték Springfield polgármesteri hivatalát, akik arról tájékoztatták a csatornát, hogy hozzájuk semmilyen bejelentés nem érkezett arról, hogy az ott élő bevándorlók bántalmaznák a helyiek kisállatait. Az elnökjelölt erre azzal reagált, hogy lehet a polgármesteri hivatal nem tapasztalt semmi ilyet, de a helyiek a televízióban is beszámoltak az őket ért atrocitásokról.

Az elnökjelölti vitát követően Trump mondatai végigsöpörték az egész világhálót. Ahogy az várható volt, az abszurditás határait súroló mondatok hamar internetes mémmé váltak², amelyből vitán felül számos szórakoztató kép és videó készült, azonban eddig mélyen meghúzódo feszültségeket is felszínre hozott. Emmanuelle Saliba, az ABC senior riportere szerint komoly veszélyt jelent az, hogy az álhírek a valóságban könnyen tényleges erőszakban realizálódhatnak³. A Springfieldben élő haiti emberek biztonságérzete a róluk terjesztett álhírek hatására jelentősen csökkent. Ez abban öltött testet, hogy nem merték iskolába engedni a gyermekeiket. Egyesek fejében pedig a város elhagyásának a gondolata is megfordult, annak ellenére, hogy már hosszabb ideje ott élnek. Trump elmondásai alapján a kutyaevő haitiakról szóló híresztelések eredeti forrása valamelyik televízió által leadott adás lehetett, amelyben egy helyi lakos szólaltatott meg az ügyről.

A dezinformáció modern korunk egyik legnagyobb problémája, hiszen ma már a legtöbb választáson jól bejáratott eszközként használják a felek egymással szemben. Mivel a hírfogyasztó is előbb vagy utóbb híterjesztővé válik, így az álhírfogyasztó is könnyen álhírtérjesztővé válhat.

A publikációm két nagyobb fejezetből áll. Az első fejezetben az „álhír” fogalmi körét szeretném részletesebben körüljárni, mivel elengedhetetlennek tartom a publikációm második felének tartalma szempontjából. Az elsősorban gyakorlati példákon keresztül szeretném megragadni ezt a fogalmat, mivel álláspontom szerint az álhírek természete a legjobban így érthető meg. Az „álhír” három variánsát szeretném ebben a fejezetben bemutatni. Az egyik, és talán legismertebb változatát, a *disinformation*-t, majd ezt követően a *misinformation*-t és a *malinformation*-t szeretném körbejárni.

2. Az „álhír” definiálási nehézségei

Az „álhír”, illetve annak frekvenciátaliban használt angol megfelelője, a „fake news”, már visszafordíthatatlanul beépültek a magyar köznyelvbe. Ma már a nyomtatott sajtótól kezdve, a lineáris médián át egészen az internet bármelyik

² W. OREMUS: How Trump's pet-eating claim became a meme for right and left alike; <https://www.washingtonpost.com/technology/2024/09/13/eating-cats-springfield-ohio-meme-x-tiktok-campaign/> (2025.03.10.)

³ Explaining Trump's false claims about immigrants eating pets in Ohio; <https://abcnews.go.com/Politics/video/explaining-trumps-false-claims-immigrants-eating-pets-ohio-113628292> (2025.03.10.)

véleménynyilvánítást is tartalmazó oldaláig találkozhatunk ezekkel a szavakkal. A definiálása ennek ellenére igen nehéz. Kenyeres Attila Zoltán és Szűts Zoltán úgy fogalmaz tanulmányukban, hogy „önmagában ez a terminus nehezen megragadható és interpretálható egyetlen világos és mindenre kiterjedő definícióval”⁴. Ezt jelentősen megnehezíti az is, hogy ezeket a kifejezéseket többnyire pongyolán is használják, és megszólaló a vele összefüggő kellemetlenebb hírek és információk hatástalanításának szándékával teszi. Ezen akadályok ellenére ebben a fejezetben kísérletet teszek a „álhír” fogalmi körének a megragadására, mivel ahogy a bevezetőben is említettem, az „álhír” természetének megértése elengedhetetlen a későbbiek szempontjából.

Kenyeres és Szűts fentebb idézett tanulmányában számba vették az „álhír” különböző definíciós kísérleteit. Ezeknek a kísérleteknek a közös jellemzőit a szerzők akként összegzik⁵, hogy az „álhír” hamis információt tartalmaz, amely hírcikk, kép, vagy videó formájában jelenik meg, aktuális eseményekhez vagy közéleti szereplőkhöz kötődnek, a tartalom hamis mivoltával ellentétben megbízhatónak mutatja magát, ellenőrizetlen háttérű, megalkotása mögött konkrét szándékok húzódnak, és leginkább a közösségi oldalakon terjed. A fenti összegzést leegyszerűsítve elmondható, hogy az álhír olyan hírként beállított közlés, amely valótlan információkat tartalmaz, és különböző hátrányok vagy előnyök esetleges bekövetkezésének szándékával készül.

A fenti meghatározást árnyalja, hogy az álhírt az információs zavarkeltés oldaláról is megvizsgálhatjuk. Az információ zavarkeltésnek három fő változatát ismerjük⁶: a dezinformációt (*disinformation*), félretájékoztatást (*misinformation*) és a rosszindulatú torzítást (*malinformation*)⁷. Mivel a fenti kifejezések magyar változatairól megítélásaim szerint konszenzus még nem alakult ki, ezért a továbbiakban azok eredeti, angol kifejezéseit fogom használni a félreértések elkerülése végett.

Első ránézésre a fentiek közül a *disinformation* a legkönnyebben meghatározható, azonban ki szeretném említeni itt, hogy ezt, valamint a *misinformation* egyaránt az „álhír” szinonimájaként használják a mindennapi beszédben, így a kettő elhatárolására kifejezetten nagy hangsúlyt fogok fektetni. Az Európai Demokráciára vonatkozó cselekvési terv (továbbiakban: EDAP) szerint a *disinformation* olyan félrevezető tartalom, amelyet megtévesztés, illetve gazdasági vagy politikai

⁴ KENYERES A. Z. – SZÜTS Z.: Az állhírek (fake news) definíciós kísérletei és nyelvi jelei; Magyar Nyelvőr; 1. o.; <https://nyelvor.mnyknt.hu/wp-content/uploads/148203.pdf> (2025.03.10.)

⁵ U.o., 209. o.

⁶ Dezinformáció és az információs zavar 7 gyakori formája, <https://www.nonprofit.hu/tudastar/Dezinformacio-es-az-informacios-zavar-7-gyakori-formaja> (2025.03.09.)

⁷ HORVÁTH D. Az állhír fogalma és helye a hibrid hadviselésben; Nemzet és Biztonság 2023/1. szám; 25. o.; <https://folyoirat.ludovika.hu/index.php/neb/article/view/6541/5578> (2025.03.09.)

haszonszerzés szándékával terjesztenek, és amely kárt okozhat a nyilvánosságnak.⁸ A *disinformation* tehát kifejezetten kártékony szándékok mentén jön létre, amelynek elsősorban a politikai vagy gazdasági haszonszerzés a célja.

A *misinformation* ezzel szemben az EDAP szerint olyan hamis vagy félrevezető tartalom, amelyet káros szándék nélkül osztanak meg, ám hatásai ettől még lehetnek károsak, pl. ha az emberek jóhiszeműen megosztják a hamis információkat barátaikkal és családjukkal⁹. Látható tehát, hogy a *misinformation* esetében, nem kifejezetten ártó szándék vezérli a hír megosztását, hanem sokkal inkább az, hogy maga az információt megosztó személy is a megtévesztés áldozatául esett, és arról az adott információról azt gondolja, hogy valós. A fentiekből levezethető, hogy a *disinformation* és a *misinformation* közötti legmarkánsabb különbség az, hogy míg a *misinformation* megosztása mögött az intenció jóhiszemű, addig a *disinformation* mögött mindig rosszhiszemű szándékok húzódnak meg.

Az információs zavarkeltés harmadik formája a *malinformation*, amelyet Horváth Dávid úgy ír le¹⁰, hogy a „motiváció tekintetében az egyik legkártékonyabb, hiszen ebben az esetben valós információk kártékony szándékú terjesztéséről van szó”. A *malinformation* esetében tehát kifejezetten ártó motivációk állnak a terjesztésének a hatterében, az előző két kategóriától viszont abban eltér, hogy ebben az esetben az információ forrása nem hamis, hanem teljes mértékben valós. Az ártó szándék abban jelenik meg elsősorban, hogy ezt a valós információt, nem annak eredeti tartalma alapján közlik, hanem pl. kiragadott részleteket új kontextusba helyeznek azért, hogy az olvasó, hallgató, vagy néző félreértse azt. Álláspontom szerint az információs zavarkeltésnek ez a legalattomosabb és legrosszabb formája, mivel az ártó szándékkal kreált hírt ebben az esetben egy valós információból fabrikálták, amely tovább növelheti ezáltal a hírfogyasztó sajtóval szembeni bizonytalanságát.

Az információs zavarkeltésnek vannak egyéb formái is, azonban ezek korántsem ennyire ártalmasak a társadalomra nézve, mint az előbbieken foglaltak. Ezek közül talán a legjelentősebb a *sztátíra* vagy a *paródia* műfaja. Számos olyan „hírporthál” van, amely a világ történéseiről vicces, eltorzított formában ad hírt, azonban ezekben az esetekben nem a megtévesztés az alkotók célja, hanem elsősorban a szórakoztatás. Álláspontom szerint ezek a „hírek” eleve nem is tekinthetők tényközlésnek, sokkal inkább sajátos köntösbe bújtatott véleménynyilvánításnak. Magyarországon a

⁸ A Bizottság Közleménye Az Európai Parlamentnek, A Tanácsnak, Az Európai Gazdasági És Szociális Bizottságnak És A Régiók Bizottságának az Európai Demokráciára vonatkozó cselekvési tervről; 4. pont; <https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52020DC0790> (2025. 03. 09.)

⁹ A Bizottság Közleménye Az Európai Parlamentnek, A Tanácsnak, Az Európai Gazdasági És Szociális Bizottságnak És A Régiók Bizottságának az Európai Demokráciára vonatkozó cselekvési tervről; 4. pont; <https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52020DC0790> (2025. 03. 09.)

¹⁰ HORVÁTH D.: Az álhír fogalma és helye a hibrid hadviselésben; Nemzet és Biztonság 2023/1. szám; 26. o.; <https://folyoirat.ludovika.hu/index.php/neb/article/view/6541/5578> (2025.03.09.)

legismertebb példa erre a Hírcsárda weboldala¹¹. A legfontosabb következtetés, amit az előbbiekből le kell szűrünk az, hogy az álhírek, valamint az információs zavarkeltés különböző típusainak azonosítása során kifejezetten nagy hangsúlyt kell fektetni a szándék vizsgálatára. Ez alapján megállapíthatjuk, melyek azok a „hírek”, amelyek kifejezetten nagy veszélyt (*disinformation, malinformation*) vagy közepesen nagy veszélyt (*misinformation*) jelentenek a közvéleményre, illetve egyáltalán nem veszélyesek (*szatíra, paródia*) arra nézve. A következő fejezetben három gyakorlati példán keresztül szeretném szemléltetni az információs zavarkeltés különböző típusait, és azt, hogy azok fentebb kifejtett jellemzői hogyan jelennek meg a gyakorlatban.

3. Jellemző példák álhírekre

3.1. *Első a sok közül: a Nagy Hold Hoax*

1835 augusztusában a *New York Sun* nevű lap egy forradalmi tudományos eredményről adott hírt a hasábjain. Az újság Sir John Herschel és Andrew Grant kutatási eredményeit közölte, amelyet egy dél-afrikai obszervatóriumban figyeltek meg¹². A cikkek szerint a kutatási eredmények először *Edinburgh Journal Science*-ben jelentek meg, a *New York Sun* pusztán csak átvette azokat.

A cikksorozat időzítése is tökéletes volt, ugyanis pont azon a napon jelent meg az első cikk, amelyen az amerikai csillagászok először megpillantották a Halley-üstökös¹³. Az üstökös megjelenését – amely legutoljára 1986-ban, legközelebb pedig 2061-ben lesz látható¹⁴ – arra az évre prognosztizáltak, így asztronómia szakterületében valódi szenzációnak számított. Ennek a szenzációnak a farvizét ülte meg a *New York Sun* is. Sikeresen.

A hatrészes cikksorozatban a Sun elsősorban a Holdon található különböző életformákról számolt be¹⁵. Az „élet a Holdon” fantáziavilág szépen lassacskán bontakozott ki. Kezdetben különböző épületeket és obeliszkeket „figyeltek meg” a Hold felszínén, amelyek a cikk elmondásai alapján nehezen voltak kivehetők. Ennek az okát a – valójában a Földhöz tartozó – sűrű felhőzettel magyarázták. Az ezt követő legnagyobb felfedezés a Hold domborzatával függött össze. Ezeknek a

¹¹ <https://hircsarda.hu> (2025. 03.10.)

¹² K. YOUNG: Moon Shot: Race, Hoax, and the Birth of Fake News; <https://www.newyorker.com/books/page-turner/moon-shot-race-a-hoax-and-the-birth-of-fake-news> (2025. 03. 10.)

¹³ U.o.

¹⁴ 1P/Halley; <https://science.nasa.gov/solar-system/comets/1p-halley/> (2025.03.10.)

¹⁵ K. YOUNG: Moon Shot: Race, Hoax, and the Birth of Fake News; <https://www.newyorker.com/books/page-turner/moon-shot-race-a-hoax-and-the-birth-of-fake-news> (2025. 03. 10.)

híreknek a középpontjában a „Halál tava” állt, amely egy vulkánokkal körülvett terület, amelyeknek az inspirációját vélhetően a Hold kráterei adták.

A cikksorozat csúcspontja minden kétséget kizáróan az volt, amikor a *New York Sun* a Holdon található életről is beszámolt¹⁶. A cikkek szerint a Holdon többek között bivalyok, egyszarvúak és kétfarkú hódok is élnek. A legnagyobb felfedezés viszont magasan a *Vesperilio-Homo*, az úgynevezett denevérember volt, amely később a cikksorozat egyfajta kabalájává is vált. A denevéremberek leírásuk alapján a XIX. században élő emberek karikatúrái is lehettek volna, a cikkek több utalást is tettek az afrikai emberekhez hasonlító külső jellemzésükre, az infantilis és túlszexualizált természetükre. A jelenből visszatekintve, ahogyan az idézett cikk szerzője is írja¹⁷, a denevéremberek körülírása olyan, mintha a kor kisebbségeket sújtó összes sztereotípiáit egybegyűrték volna.

Nyilvánvaló okokból adódóan sokan nem hittek a cikkben foglaltaknak. Az egyik közülük a költő Edgar Allan Poe volt¹⁸, aki ugyan elismerte Locke retorikai készségeit, azonban elhűlve tekintett arra, hogy hogyan képesek ennyien elhinni a cikkekben felvázolt abszurd történeteket. Poe mögöttes szándéka azonban nem az igazság felderítése volt, hanem sokkal inkább az a sejtés, hogy Locke a saját hoaxát plagizálta, és tette azt közzé a folyóirat hasábjain.

Egy idő után persze nyilvánvalóvá vált, hogy a *New York Sun* tudományosnak beállított cikkei hazugságok. Különösen nagy negatív hatásai a közvéleményre vagy a társadalomra nem voltak, mivel a fenti jellemzők miatt a cikksorozatot akár egy groteszk karikatúráként is fel lehetett fogni. Álláspontom szerint a legaggályosabb pontja ezeknek a cikkeknek nem is a tartalmuk, hanem inkább az, hogy egy valóban élő kutatónak nevével éltek benne vissza azzal, hogy neki tulajdonították a cikk szerzőségét. Ezzel fennállt a veszélye annak, hogy jelentősen aláássák a kutató tudományos hírnevét.

Az előző fejezetben taglalt tipizálás szerint a *Nagy Hold Hoax-t* mindenképp vagy a *paródia/szatíra*, legrosszabb esetben pedig a *misinformation* kategóriájába helyezném. A cikkeket ugyan azzal a céllal hozták létre, hogy az addig alig olvasott újságjuknak nagyobb népszerűséget szerezzenek, azonban én nem gondolnám kifejezetten ártó szándékból fogantak volna, vagy abból a célból, hogy destabilizálják a közvéleményt. A következő két példáról viszont ez sajnos nem mondható el.

¹⁶ K. YOUNG: Moon Shot: Race, Hoax, and the Birth of Fake News;
<https://www.newyorker.com/books/page-turner/moon-shot-race-a-hoax-and-the-birth-of-fake-news>
(2025. 03. 10.)

¹⁷ U.o.

¹⁸ M. MATTHIAS: The Great Moon Hoax of 1835 Was Sci-Fi Passed Off as News;
<https://www.britannica.com/story/the-great-moon-hoax-of-1835-was-sci-fi-passed-off-as-news>
(2025.03.10.)

3.2. A Pizzagate-botrány

Az amerikai James Alefantis és Carlore Greenwood 2006-ban elhatározták, hogy megvásárolják a Washington D.C, Connecticut Avenue-n található közös éttermük mellett addig működő thai étterem épületét¹⁹. Az elhatározásuk mögötti legnagyobb érv az volt, hogy inkább lesznek a saját maguk vetélytársai, minthogy megvárják, hogy egy idegen szerezze meg a helyet. Többféle koncepció is felmerült az étteremmel kapcsolatban, azonban végül egy pizzázó megnyitása mellett döntöttek, amely a Comet Ping-Pong nevet²⁰ kapta. Ha valaki a Alefantisnak és Greenwoodnak azt mondja a kezdeti megpróbáltatásokat követően, hogy tíz év múlva világhírhűek lesznek, valószínűleg a tulajdonosok hamarabb gondoltak volna arra, hogy az ételeik kiemelkedő minősége miatt váltak ismertté, nem pedig azért, mert egy állítólagos pedofil-hálózat főhadiszállása lennének.

A Donald Trump és Hillary Clinton között zajló 2016-os amerikai elnöki kampány bővelkedett a különböző összeesküvés-elméletekben, valamint az álhír fogalmát is ez a választás emelte be a köztudatba. A kampány meghatározó eleme volt az úgynevezett „pizzagate” botrány, amelynek a középpontjában a Comet Ping-Pong állt. A botrányt Hillary Clinton kampányfőnöke, John Podesta email fiókjának a feltörése robbantotta ki. A feltörést követően több email is kiszivárgott, amelyek tartalmába sokan gyermek pornográfiára és más pedofil bűncselekményekre utaló argókat véltek felfedezni. Annak ellenére, hogy erre az összeesküvésre rácaffoltak²¹ elmondható, hogy politikai értelemben mindenképp sikeres volt. Trump szavazóinak a fele, de még Clinton szavazóinak a 15%-a is elhitte, hogy a Demokrata Párt elnökjelöltje egy sátánista és pedofil sötét kör részét képezi²².

A „Pizzagate” botrányra a mai napig a politikai lejárásra irányuló összeesküvéseleméletek mintapéldányaként tekintenek, ugyanis jól szemlélteti a jelenség összes meghatározó jellemzőjét. Kutatásom szempontjából is releváns megállapítás az, hogy maga a botrányt kirobbantó bejegyzést is egy közösségi média portál felületén tették közzé. A pizzagate-tel foglalkozó első poszt egy nappal azután jelent meg a Facebookon, miután a Központi Nyomozó Hivatal (FBI) bejelentette, hogy újra nyitja azt az aktát, amelyben Clinton magánjellegű email szerverének a használatát vizsgálták, amelyet még akkor használt, amikor még államtitkár volt az

¹⁹ T. SIETSEMA: Game for Pizza, <https://www.washingtonpost.com/wp-dyn/content/article/2007/07/05/AR2007070501270.html> (2024.08.12.)

²⁰ U.o.

²¹ K. LACAPRIA: Is Comet Ping Pong Pizzeria Home to a Child Abuse Ring Led by Hillary Clinton?, <https://www.snopes.com/fact-check/pizzagate-conspiracy/> (2024.08.12.)

²² HANULA Zs.: A Trump-szavazók fele szerint Hillary Clinton egy sátánista pedofil, <https://index.hu/kulfold/2016/12/30/a-trump-szavazok-fele-szerint-hillary-clinton-egy-satanista-pedofil/> (2024.08.12.)

előző adminisztráció idején²³. Az FBI azért vizsgálta a szerveret, mert egy volt kongresszusi képviselő Anthony Weiner elektrotechnikai eszközein találtak onnan származó adatokat. Anthony Weiner – aki Clinton egyik közeli tanácsadójának, Huma Abedinnak a férje – korábban rajta kapták azon, hogy egy kiskorúval váltott szexuális jellegű beszélgetéseket. A Facebook felhasználó a posztjában Weiner ügyét összemosta Clintonnal azzal, hogy Weiner eszközein olyan adatok szerepelnek, amelyek arra utalnak, hogy Clinton része egy nemzetközi kereskedelmi hálózatnak, amelyben gyermekeket árulnak szexrabszolgának²⁴.

Álláspontom szerint a „Pizzagate” botrány jó példa a *disinformation*re és arra, hogyan jönnek létre a közösségi média segítségével organikusán ilyen összeesküvés-elméletek. Az álhírek véleményem szerint azért veszélyes eszközök, mivel majdnem minden esetben egy tényekkel alátámasztott és szinte vitathatatlan alappozícióból indulnak. A „pizzagate” ügy is a valóságban gyökerezik, ugyanis az alapját Weiner és a 15 éves beszélgetőpartnere körüli folyamatban lévő bírósági ügy adta. Ezt az ügyet fűzték össze később kitalált elemekkel, a demokraták irányítása alatt álló sátánista-pedofil kör mítoszával. Weiner Demokrata Párthoz való kötődése és a bírósági ügye a pedofil demokraták rémképét hihetővé is tették. Ezt felerősítették az ügy körülményei is: a választási kampány során kialakuló hevesebb érzelmek, és az a tény, hogy ez az álhír elsősorban a közösségi médián keresztül terjedt el. A közösségi média oldalakon a felhasználók rengeteg információhoz juthatnak hozzá rövid idő alatt, ami nem ad lehetőséget az alapos utánajárásnak, így ezek a hamis információkon alapuló üzenetek egyből rögzülnek is az olvasóban. Ezenfelül a botrány elnevezését is meg szeretném említeni. A „Pizzagate” elnevezés az olvasó fejében egyből összekapcsolja ezt az álhírt a Watergate-botránnal, amely Richard Nixon amerikai elnök lemondásához vezetett.

A botrány közvéleményre gyakorolt káros hatásai is egyértelműek. Egyrésztől Donald Trump népszerűsége emelkedett, míg Hillary Clinton népszerűsége csökkent a konteó hatására, másrésztől a társadalomban is feszültségeket generáltak a pedofil demokratákról szóló hírek. Az utóbbira a legérzékletesebb példa egy 29 éves férfi esete²⁵, aki egy AR-15 puskával betört a Comet Ping-Pong helységébe, ahol a fegyverrel leadott három lövést is. A férfi azért tört be a pizzázóba, hogy saját szemével lássa a demokraták által irányított sötét kör működését, és kiszabadítsa az

²³ S. HOROWITZ: FBI Director James B. Comey under fire for his controversial decision on the Clinton email inquiry, https://www.washingtonpost.com/world/national-security/fbi-director-james-b-comey-under-fire-for-his-controversial-decision-on-the-clinton-email-inquiry/2016/10/28/fbad009c-9d57-11e6-a0ed-ab0774c1ea5_story.html (2024.08.12.)

²⁴ A. ROBB: Anatomy of a Fake News Scandal, https://www.washingtonpost.com/world/national-security/fbi-director-james-b-comey-under-fire-for-his-controversial-decision-on-the-clinton-email-inquiry/2016/10/28/fbad009c-9d57-11e6-a0ed-ab0774c1ea5_story.html (2024. 08. 12.)

²⁵ G. HAUCK, CNN: 'Pizzagate' shooter sentenced to 4 years in prison; <https://edition.cnn.com/2017/06/22/politics/pizzagate-sentencing/index.html> (2025.03.11.)

ott foglyul ejtett gyermek-rabszolgákat. Amikor szembesült azzal, hogy semmi ilyesmi nem történik az étteremben megadta magát a rendőrségnek.

3.3. Imán Helíf esete

A 2024-es párizsi Olimpia női ökölvívó száma nem a versenyzők jobbnál jobb eredményeitől volt hangos, hanem egy olyan botránytól, amelyhez hasonlót a sportvilág már régen nem látott.

A botrány középpontjában Imán Helíf (angolosan írva: Imane Khelif) algír származású ökölvívó állt, akiről Angela Carinival vívott mérkőzését követően – amit az olasz versenyző 46 másodperc után feladott – el kezdett terjedni az a hír a közösségi médiában, hogy ő valójában férfiként született, ezért igazságtalan, hogy erősebb fizikumával a nőkből álló mezőnyben mérkőzik meg az Olimpián.

Az álhírt megalapozó egyetlen akkori valós információ az volt, hogy Helífet 2023-as Delhiben megtartott ökölvívó világbajnokságról kizárták, mivel nem felelt meg a Nemzetközi Bokszzövetség bizonyos feltételeinek²⁶. Helífen kívül egy másik bokszolót is kizártak a versenyről, a taiwani Lin Yu-tinget. Mindkettőjük esetében az volt az indok, hogy XY kromoszómákat találtak a szervezetükben, aminek a figyelembevételével nem engedhették meg, hogy nők között versenyezzenek²⁷.

Két szempont miatt szerettem volna külön kiemelni Imán Helíf példáját az információs zavarkeltésre. Az egyik ezek közül, hogy ez az ügy hamar közéleti színezetet is öltött, mivel több politikus és nemzetközi szervezet is megszólalt. Mivel a botrány kirobbanása egy olasz bokszoló vereségével kezdődött, ezért az első érdemi reakciók azzal kapcsolatban is Olaszországhoz fűződnek. Giorgia Meloni úgy nyilatkozott, hogy nem lenne szabad női versenyekben olyan embereket engedni indulni, akik férfias jellegzetességekkel rendelkeznek. Az olasz miniszterelnök viszont azt is kiemelte, hogy ennek a miértje nem a diszkrimináció, hanem az a törekvés, hogy minden női versenyzőnek egyenlő esélyt kell adni a küzdelemhez. Az Egyesült Nemzetek Szervezete (röviden: ENSZ) nőkkel szembeni erőszakért felelős biztosa, Reem Alsalem is megszólalt, aki támogatta Carinit abban a döntésében, hogy inkább feladta a mérkőzést priorizálva testi épségét, illetve szerinte egy nőt sem kellett volna ilyen veszélynek kitenni. Helíf Carinit követő ellenfele a magyar Hámori Luca volt, így a magyar mind a Magyar Olimpiai Bizottság²⁸, mind pedig a

²⁶ R. LOUGH: Who is Imane Khelif, the boxer in Paris Olympics gender debate?;
<https://www.reuters.com/sports/olympics/who-is-algerian-boxer-imane-khelif-2024-08-03/>
(2025.03.12.)

²⁷ U.o.

²⁸ KRASZ E. A MOB is reagált Hámori Luca következő, megosztó algériai ellenfelére;
<https://index.hu/sport/2024/parizs/2024/08/02/parizs-2024-olimpia-okolvivas-boksz-hamori-luca-mob/>
(2025.03.11.)

Magyar Ökölvívó Szövetség²⁹ tiltakozott a mérkőzés ellen.

A másik szempont – az adott esetben az állam szuverenitására is veszélyt jelentő – külföldi beavatkozásokkal függ össze. Vannak olyan feltételezések, amelyek szerint a hírek mögött egy orosz dezinformációs kampány állhatott³⁰. Ennek a feltételezésnek az ad alapot, hogy a Nemzetközi Bokszzövetség jelenlegi elnöke az orosz kormányzatig vezető kötődésekkel is rendelkezik, valamint az Imán Hélif vélt transzmeműségét kezdetben orosz hírportálok terjesztették³¹. A hírek elterjedését több ismert személy is elősegítette a nyilatkozataival. Ezek közé az emberek közé tartozott többek között J.K. Rowling³², a Harry Potter könyvsorozat szerzője, és Donald Trump is, aki akkor még csak az amerikai elnökválasztás egyik jelöltje volt³³.

Imán Hélif esete szerintem a legjobb példa az információs zavarkeltésre, azon belül is a *disinformation*-re, mivel ebben az esetben is megállapítható, hogy a hamis információ terjesztése mögött ártó szándékok álltak, ezen kívül pedig az is látható belőle, hogy ezek a hírek milyen hatékonyan terjednek különböző hírportálokon és a közösségi médiát is használó híres személyek bejegyzésein keresztül. Ez a botrány ráadásul bizonyos esetekben egy belpolitikai előnyt is jelenthet, mivel az érintett országokban akár hetekre is meghatározhatja a közvélemény irányait.

4. Összegzés

Tanulmányomban igyekeztem betekintőt adni az információs zavarkeltés főbb típusaiba, és példát hozni rájuk, hogy azok természete jobban megérthető legyen.

Tanulmányom első részében igyekeztem definiálni az „álhír” fogalmát. Az álhír két főbb komponensből áll. Az álhír egy olyan valótlan információ, amelyet szándékosan károkozás céljából terjesztenek. A fogalommeghatározás viszont nem ennyire egyszerű, mivel az információs zavaroknak többféle fajtája is lehet. Tanulmányom ezen fejezetében ezeket is számba vettem. Az információ zavarkeltés három főbb típusát emeltem ki. Az első ezek közül a *disinformation* volt, amely szinonim fogalom az álhírral: ez a valótlan tényállítások kifejezetten ártó szándékból való terjesztését jelenti. A *disinformation* párja a *misinformation*, amely több jelentős ismérv tekintetében is eltér attól. A szándékot tekintve a *misinformation* nem ártalmas,

²⁹ „Ez vállalhatatlan és felháborító” – a Magyar Ökölvívó Szakszövetség tiltakozik Hátori Luca negyedöntős ellenfele miatt; <https://24.hu/sport/2024/08/01/olimpia-2024-bokszz-szovetseg-tiltakozas/> (2025.03.11.)

³⁰ D. KLAPPER: Russian disinformation slams Paris and amplifies Khelif debate to undermine the Olympics; <https://www.ap.org/news-highlights/spotlights/2024/russian-disinformation-slams-paris-and-amplifies-khelif-debate-to-undermine-the-olympics/> (2025.03.11.)

³¹ D. KLAPPER: Russian disinformation slams Paris and amplifies Khelif debate to undermine the Olympics; <https://www.ap.org/news-highlights/spotlights/2024/russian-disinformation-slams-paris-and-amplifies-khelif-debate-to-undermine-the-olympics/> (2025.03.11.)

³² U.o.

³³ U.o.

és általában úgy történik, ha valaki akaratlanul tovább oszt egy álhírt anélkül, hogy tudna róla, hogy álhír. A harmadik zavarkeltési fajta a *malinformation*, amely a valós információk szándékos eltorzítását jelenti. Az információs zavar negyedik példaként hoztam fel még továbbá a *szatíra* és a *paródia* műfaját is, amelyek nem veszélyesek a társadalomra.

Tanulmányom második részében a fentebb felvázolt információs zavarokra hoztam példákat. Az első ezek közül a *Nagy Hold Hoax* volt, amely egy amerikai újság áltudományos cikksorozata volt arról, hogy életet találtak a Holdon. Ezek a cikkek összehasonlítva a másik kettővel szinte ártalmatlannak tűnnek. A Watergate-botrányra rimelő *Pizzagate-ügy* a 2016-os amerikai elnökválasztás egyik meghatározó eseményévé váltak, illetve jelentős részben hozzájárult a „fake news” beemeléséhez a köztudatba. Az ügy röviden arról szólt, hogy a Demokrata Párt egy sátánizmusra és pedofiliára épülő titkos társaságot üzemeltet, amelyet egy Washingtoni pizzázóból irányítanak. Ezt a feltételezést szinte egyből megcáfolták, azonban az elnökjelöltek támogatásában bekövetkezett érzékelhető változások miatt elmondható, hogy botrány kirobantói valószínűleg elérték a céljukat. Az utolsó példa, amit hoztam *Imán Hélf* tavalyi esete volt, amikor a párizsi olimpián olyan hírek kezdtek el róla terjedni, hogy valójában nem nő, hanem férfi.

Az internet korában a hiteles információ lassan olyan ritka, mint a fehér holló, így az értéke is egyre vélhetően egyre nagyobb lesz. A COVID-19 járvány mutatta meg, hogy információval való túltelítődés milyen mérhetetlen károkat tud okozni társadalmi szintén, és milyen termékeny táptalaja lehet a hamis hírek terjedésének. Az álhírek szinte ellenőrizetlen terjedése óvatosságra kell, hogy minket sarkalljon, mert a társadalom destabilizálása könnyebb lett, mint valaha.

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DOUAA ZAIDAN*

A comparative Analysis of organized Crime Trends in the most high and low prevalence EU Countries During the COVID 19

Abstract: This research examines the impact of the COVID-19 pandemic on organized crime trends in the European Union (EU), focusing on countries with high (e.g., Italy and Spain) and low (e.g., Finland and Estonia) pandemic prevalence. By employing a comparative case study design, this study analyzes variations in organized crime activities, such as drug trafficking, cybercrime, and smuggling, during the pandemic. It explores how differences in national pandemic responses influenced criminal networks and identifies key policy implications for future crisis management. The findings provide insight into the adaptability of organized crime and the role of institutional frameworks in shaping these trends.

Keywords: Covid-19, high prevalence Eu countries, low prevalence Eu countries, organized crime

1. Introduction

The COVID-19 pandemic has significantly disrupted global economic, political, and social systems, presenting unprecedented challenges to governments and societies. Among these disruptions, the pandemic has created new opportunities and constraints for organized crime. This research focuses on the European Union (EU), a region characterized by diverse institutional capacities and policy responses to the pandemic. Specifically, it investigates how organized crime trends evolved in EU countries with high COVID-19 prevalence compared to those with low prevalence.

Organized crime, encompassing activities such as drug trafficking, cybercrime, and human smuggling, thrives on exploiting vulnerabilities in institutional and social systems. The pandemic's impact on border control, economic activity, and law enforcement provides a unique lens to analyze how criminal networks adapt to crises. This study aims to bridge gaps in the literature by providing a comparative analysis of high and low prevalence EU countries, exploring the pandemic's role as a potential critical juncture for organized crime trends.

* Douaa Zaidan, PhD Student, University of Miskolc, Deák Ferenc Doctoral School of Law, Supervisor: Dr. Zoltán Angyal, associate professor, head of department.

1.1. Research Questions

1. How did organized crime trends differ between high and low prevalence EU countries during the pandemic?
2. What factors influenced these differences?
3. How did national pandemic policies affect organized crime activities?
4. What lessons can be drawn for future EU policy on organized crime and crisis management?

1.2. Methodology

Research Design

This study employs a comparative case study approach, analyzing organized crime trends in two sets of EU countries:

- High Prevalence Countries: Italy, Spain.
- Low Prevalence Countries: Finland, Estonia.

Data Collection

- Quantitative Data: National crime statistics, Europol reports, and Interpol data on organized crime trends during 2020–2022.
- Qualitative Data: Policy documents, news reports, and expert interviews with law enforcement officials.

Analysis

- Comparative analysis of crime trends (e.g., drug trafficking, cybercrime).
- Thematic coding of qualitative data to identify patterns related to policy responses and criminal network adaptations.

2. Organized crime trend during covid-19 in high prevalence EU Countries

In a few short weeks, the COVID-19 pandemic has transformed the lives of communities around the world. People are having to adapt to the new restrictions placed on their work life and everyday freedoms, while governments and international organizations are facing the twin challenges of having to enforce public-health measures with reduced services and minimize the economic damage. The first-order public-health imperatives are the primary preoccupation of policymakers in this crisis. But the ‘second order’ social, economic and security implications of the pandemic are increasingly pressing. On the economic front,

governments are ripping up the rulebook of public spending in order to support those who find themselves suddenly without work as swathes of the economy are shutting down¹. UN Secretary General António Guterres warned the international community that a recession ‘perhaps of record dimensions’ is a near certainty². The implications for governance, policing and the evolution of criminal markets will be profound. The locking down of public movement and the sealing of borders have had an immediate impact on some criminal activities, which have slowed or stopped. But, equally, reports are already emerging of criminal groups who have exploited confusion and uncertainty to take advantage of new demand for illicit goods and services. Criminal opportunism will emerge further as the crisis unfolds. In particular, in countries where organized-crime groups have infiltrated health systems, lifesaving resources are diverted and abused for criminal gain, weakening the response of states to the health emergency when it is most needed.

Organised crime is often described from the viewpoint of criminal activities. These activities can be measured and tackled relying on law enforcement expertise specific to different law enforcement domains such as the fight against drug trafficking, migrant smuggling or money laundering, among many others. However, the fight against organised crime ultimately needs to target the criminals and their networks who engage in criminal activities. Understanding how criminals and criminal networks operate will allow law enforcement to more effectively identify and disrupt criminal operations. The most recent data used in the analysis for the SOCTA 2021 reveal that the serious and organised crime landscape is characterised by a networked environment where cooperation between criminals is fluid, systemic and profit-oriented. Criminals cooperate in the framework of criminal networks engaging with criminal service providers and brokers who occupy pivotal roles in the crime landscape. Over 80 % of the reported criminal networks are involved in the trade in drugs, organised property crime, excise fraud, THB, online and other frauds or migrant smuggling. Nearly half of these are involved in the drugs trade (38 %). Despite an increasing number of investigations into cyber-dependent crimes and other cybercrime activities, the number of criminal networks is low. One of the reasons could be that cybercrime involves many criminals operating individually and not in the framework of established networks. Around 40 % of the criminal networks active in the EU engage in more than one main criminal activity. A quarter of the criminal groups have been active

¹ A bold plan to support workers during the virus, Financial Times Editorial Board, 21 March 2020., <https://www.ft.com/content/5d5fb154-6acd-11ea800d-da70cffe6e4d3>.

² GUTERRES A., ‘This is, above all, a human crisis that calls for solidarity’, United Nations, 19 March 2020., <https://www.un.org/en/un-coronaviruscommunications-team/above-all-human-crisis-callssolidarity>

for more than ten years. A third of the criminal networks has been active for less than three years.

2.1. Human trafficking During the COVID-19 Pandemic: A Comparative Analysis of Italy and Spain

Human trafficking, a grave transnational crime, has long been a challenge for both Italy and Spain due to their geographical positions as gateways to Europe. The COVID-19 pandemic, while primarily a health crisis, created unprecedented challenges and opportunities for traffickers. Border closures, lockdowns, and economic downturns altered traditional trafficking routes and methods, forcing criminal networks to adapt swiftly. This chapter provides an analytical and comparative examination of human trafficking trends in Italy and Spain during the pandemic, highlighting similarities, differences, and the role of institutional responses.

2.1.1. Human Trafficking in Italy During COVID-19: Trafficking Routes and Adaptations

Italy's proximity to North Africa has historically made it a primary entry point for migrants, many of whom fall victim to trafficking networks. During the pandemic, border closures and enhanced surveillance disrupted traditional smuggling routes, prompting traffickers to adopt alternative strategies. Sea routes became more perilous, with smugglers increasing fees to offset heightened risks. Reports indicate that traffickers exploited less monitored coastal areas, such as Sicily and Calabria, where enforcement resources were stretched thin³.

The pandemic disrupted traditional trafficking routes in Italy, leading to a greater reliance on clandestine networks and digital platforms to recruit and exploit victims. Traffickers exploited economic precarity by targeting individuals rendered vulnerable by the pandemic, particularly migrants and women⁴.

Exploitation in Labor Sectors

The agricultural sector in Italy, already reliant on migrant labor, saw an uptick in exploitation during the pandemic. Traffickers coerced migrants into exploitative working conditions, often under the guise of providing essential work

³ World Drug Report 2021. United Nations Office on Drugs and Crime (UNODC), 2021.

⁴ Trafficking Trends During the Pandemic. Italian Ministry of Justice, 2021.

opportunities. Limited oversight due to COVID-19 restrictions exacerbated these issues, highlighting systemic vulnerabilities in Italy's labor market⁵.

2.1.2. Human Trafficking in Spain During COVID-19: Trafficking Routes and Adaptations

Spain's role as a transit hub for human trafficking was similarly disrupted by the pandemic. Traffickers exploited smaller ports and less frequented coastal areas to circumvent increased security at major entry points like the Strait of Gibraltar. The use of informal routes saw a notable rise, with traffickers employing small boats to smuggle individuals across the Mediterranean ⁶.

Unlike Italy, Spain experienced a significant shift in trafficking dynamics, with traffickers increasingly targeting domestic populations. Economic vulnerabilities stemming from pandemic-induced unemployment created fertile ground for exploitation. Spanish authorities noted an increase in cases of forced labor and sexual exploitation, particularly in urban centers where informal economies thrived⁷.

Exploitation in Domestic Settings

In Spain, traffickers adapted to the pandemic by moving their operations indoors. Victims were often hidden in private residences or unregistered facilities, complicating detection efforts. This shift reflects the adaptability of traffickers in response to heightened surveillance in public spaces. The reliance on digital platforms for recruitment also grew, as traffickers leveraged social media and online marketplaces to identify and exploit vulnerable individuals⁸.

2.1.3. Comparative Analysis: Italy and Spain

Similarities

Both Italy and Spain experienced a surge in human trafficking activities during the pandemic, driven by economic vulnerabilities and enforcement gaps. The

⁵ CALDERONI F.: The Impact of COVID-19 on Organized Crime in Europe. Journal of Criminology Studies, 2021.

⁶ Serious and Organised Crime Threat Assessment (SOCTA). Europol, 2021.

⁷ SHELLEY L.: Dirty Entanglements: Corruption, Crime, and Terrorism. Cambridge University Press, 2014.

⁸ AGUILERA R. - LÓPEZ J. A. - TORRES M. P.: Cyber Threats and Organized Crime in Spain: Adaptations During the COVID-19 Pandemic. Journal of Spanish Security Studies, 2021/12(3), 89-108.

reliance on informal routes and exploitation of labor-intensive sectors were common trends. In both countries, traffickers increased fees for smuggling services, reflecting the heightened risks associated with stricter border controls⁹.

⁹ Trafficking Trends During the Pandemic. Italian Ministry of Justice, 2021.

Differences

Key differences emerged in the operational strategies of traffickers. In Italy, the focus remained on exploiting sea routes from North Africa, while in Spain, traffickers diversified their methods by using smaller ports and targeting domestic populations. Spain saw a greater reliance on digital platforms for recruitment, highlighting a technological shift in trafficking operations that was less pronounced in Italy¹⁰.

Institutional responses also varied. Italy's enforcement gaps were more pronounced due to the country's struggle with high COVID-19 caseloads, while Spain's relatively better resource allocation enabled more targeted interventions. However, in both countries, the pandemic exposed weaknesses in existing anti-trafficking frameworks, emphasizing the need for more robust cross-border collaboration.

2.2. Drug Trafficking During the COVID-19 Pandemic: A Comparative Analysis of Italy and Spain

The COVID-19 pandemic significantly disrupted global supply chains, including those managed by organized crime networks for drug trafficking. In Italy and Spain, two key European transit and destination countries for illicit drugs, the pandemic reshaped trafficking routes, distribution networks, and enforcement strategies. This chapter examines the adaptations made by drug trafficking networks in both countries during the pandemic and provides a comparative analysis of the similarities and differences in their responses. The analysis offers insights into the resilience of these networks and the challenges faced by law enforcement.

2.2.1. Drug Trafficking in Italy During COVID-19: Disruption and Adaptation in Supply Chains

Italy, a major entry point for drugs from North Africa and the Balkans, witnessed significant disruptions in its trafficking routes during the pandemic. Border closures and heightened security measures reduced the flow of cocaine and heroin, which are typically smuggled through maritime routes and overland via the Balkans (Europol, 2021). In response, traffickers diversified their methods, increasing reliance on smaller, less monitored ports and utilizing informal networks to bypass traditional supply routes¹¹.

¹⁰ GARCÍA-GIL M. - GARCÍA-JIMÉNEZ J. - MARTÍN-CATALÁN J.: Pandemic-Induced Cybercrime: Spain's Response. *Spanish Journal of Digital Security*, 2022/15(2), 45-62.

¹¹ World Drug Report 2021. United Nations Office on Drugs and Crime (UNODC), 2021.

Domestic Drug Production

The disruption in international drug supply chains led to a rise in domestic production of synthetic drugs. Italian organized crime groups, such as the 'Ndrangheta and Camorra, expanded their involvement in the manufacturing and distribution of synthetic substances like amphetamines, exploiting the decreased competition from international suppliers¹². This shift underscores the adaptability of Italy's organized crime networks in maintaining profitability during crises.

Law Enforcement Challenges

Italian law enforcement faced significant challenges as resources were diverted to pandemic management. This reallocation created enforcement gaps that were exploited by traffickers. Despite these challenges, Italy's anti-trafficking operations remained robust, with a focus on dismantling domestic production facilities and intercepting smaller shipments¹³.

2.2.2. Drug Trafficking in Spain During COVID-19: Impact on Traditional Routes

Spain, a primary gateway for cocaine from South America and cannabis from North Africa, also experienced disruptions in trafficking routes. The pandemic led to reduced maritime traffic and increased scrutiny at major ports such as Algeciras and Barcelona. Traffickers adapted by using smaller ports and overland routes through less monitored areas (UNODC, 2021).

Increase in Cannabis Trafficking

The trafficking of cannabis, particularly from Morocco, saw a marked increase during the pandemic. Spain's proximity to Morocco made it a key transit country, and traffickers exploited informal networks and local connections to sustain supply chains. The use of drones for transporting smaller quantities of drugs across borders became more prevalent, reflecting an innovative response to increased border controls (Europol, 2021).

¹² CALDERONI F.: The Impact of COVID-19 on Organized Crime in Europe. Journal of Criminology Studies, 2021.

¹³ Serious and Organised Crime Threat Assessment (SOCTA). Europol, 2021.

Law Enforcement Strategies

Spanish authorities responded to these challenges by enhancing surveillance at key entry points and cracking down on domestic distribution networks. However, the sheer adaptability of traffickers, combined with reduced law enforcement capacity due to the pandemic, allowed some networks to thrive. Spain's focus on inter-agency collaboration and intelligence-sharing mitigated some of these challenges, enabling significant seizures of drugs during the pandemic¹⁴.

2.2.3. Comparative Analysis: Italy and Spain

Similarities

Both Italy and Spain faced significant disruptions in traditional trafficking routes due to the pandemic. Organized crime networks in both countries demonstrated remarkable adaptability by shifting to smaller ports, informal routes, and innovative methods such as drones. The economic vulnerabilities caused by the pandemic also led to increased domestic demand for certain drugs, further fueling local production and distribution.

Differences

Key differences emerged in the types of drugs trafficked and the methods employed. In Italy, there was a noticeable shift toward domestic production of synthetic drugs, while Spain saw an increase in cannabis trafficking from Morocco. Spanish traffickers were quicker to adopt technological innovations such as drones, whereas Italian networks relied more on exploiting local production capabilities. Additionally, Spain's focus on intelligence-sharing allowed for more coordinated law enforcement efforts compared to Italy's regionally fragmented approach.

2.3. Cybercrime During the COVID-19 Pandemic: A Comparative Analysis of Italy and Spain

The COVID-19 pandemic accelerated the digitalization of daily life, creating fertile ground for the proliferation of cybercrime. Organized crime networks in Italy and Spain, already adept at exploiting technological vulnerabilities, capitalized on the pandemic's disruptions. This chapter analyzes the evolution of cybercrime in both countries during the pandemic, examining the strategies employed by criminal organizations and the countermeasures implemented by authorities. By

¹⁴ CALDERONI F.: The Impact of COVID-19 on Organized Crime in Europe. Journal of Criminology Studies, 2021.

comparing Italy and Spain, this chapter provides insights into the similarities and differences in their cybercrime landscapes and responses.

2.3.1. Cybercrime in Italy During COVID-19: Growth of Cybercrime Activities

Italy experienced a significant increase in cybercrime activities during the pandemic, with organized crime groups exploiting the surge in remote work and online transactions. Phishing attacks, ransomware incidents, and fraudulent e-commerce schemes were particularly prevalent. Italian groups also targeted healthcare systems, launching ransomware attacks on hospitals to extract payments during a critical period¹⁵.

Exploitation of Digital Vulnerabilities

The rapid shift to digital platforms exposed vulnerabilities in Italy's cybersecurity infrastructure. Organized crime groups leveraged these weaknesses to conduct large-scale identity theft and financial fraud. Many of these activities were coordinated by well-established mafia organizations, which expanded their influence into the digital sphere¹⁶.

Law Enforcement Challenges

Italian law enforcement faced challenges in addressing the rise in cybercrime due to limited resources and the unprecedented nature of the threats. The pandemic's strain on public services diverted attention away from cybersecurity, allowing criminal networks to operate with greater impunity. However, collaborations with international bodies such as Europol helped mitigate some of the risks through intelligence-sharing and joint operations.

2.3.2. Cybercrime in Spain During COVID-19: Surge in Cybercrime Incidents

In Spain, cybercrime also surged during the pandemic, with an emphasis on fraud targeting individuals and small businesses. Organized crime groups exploited social engineering techniques, launching phishing campaigns that mimicked government communication about pandemic relief measures (UNODC, 2021).

¹⁵ AGOSTINO G. et al.: Cybersecurity During Crises: Italy's Pandemic Challenges. Italian Journal of Cyber Studies, 2022.

¹⁶ CALDERONI F.: The Impact of COVID-19 on Organized Crime in Europe. Journal of Criminology Studies, 2021.

The rise in ransomware attacks on critical infrastructure, including hospitals and energy networks, mirrored broader EU trends.

Use of Advanced Technologies

Spanish organized crime groups demonstrated a high level of sophistication in their cybercrime activities. They utilized advanced technologies, such as encryption and anonymization tools, to evade detection. Additionally, cybercriminals in Spain were adept at exploiting cryptocurrency platforms for money laundering, complicating law enforcement efforts ¹⁷.

Counter-Cybercrime Measures

Spain's response to the cybercrime surge was characterized by robust public awareness campaigns and enhanced collaboration with EU agencies. Spanish authorities prioritized strengthening cybersecurity frameworks and increasing investments in digital infrastructure. Despite these efforts, the rapid evolution of cyber threats posed ongoing challenges¹⁸.

2.3.3. Comparative Analysis: Italy and Spain

Similarities

Both Italy and Spain witnessed a dramatic rise in cybercrime activities during the pandemic, driven by the widespread adoption of digital technologies. Phishing campaigns, ransomware attacks, and online fraud emerged as common threats in both countries. Healthcare systems were frequently targeted, highlighting the opportunistic nature of organized crime networks.

Differences

Key differences emerged in the sophistication and focus of cybercrime activities. In Italy, traditional organized crime groups like the mafia expanded into cybercrime, integrating it into their broader criminal operations. In contrast, Spanish cybercriminals were more specialized, employing advanced technologies and focusing on financial fraud and cryptocurrency-based laundering.

¹⁷ FERNÁNDEZ L.: Cryptocurrency and Cybercrime in Spain: Trends During the Pandemic. Spanish Economic Review, 2021.

¹⁸ AGUILERA R. et al.: Cyber Threats in Spain: An Analysis of COVID-19 Impacts. Journal of Spanish Security Studies, 2021.

Spain's proactive public awareness campaigns and investment in cybersecurity infrastructure provided a more structured response compared to Italy's reactive measures. However, Italy's collaboration with international agencies was instrumental in addressing transnational cyber threats.

3. Organized crime trend during covid-19 in low prevalence EU Countries

The COVID-19 pandemic disrupted global economies, mobility, and law enforcement capacities, creating an environment conducive to human trafficking. In Northern Europe, Finland and Estonia faced unique challenges shaped by their geographic, social, and economic contexts. While Finland's strong welfare systems and stringent border controls aimed to mitigate vulnerabilities, Estonia's position as a transit country and its reliance on cross-border labor intensified the risks. This chapter provides a comparative analysis of human trafficking trends in Finland and Estonia during the pandemic, highlighting differences in trafficking methods, victim demographics, and policy responses, with insights into the broader regional dynamics.

3.1.1. Human Trafficking in Finland During COVID-19: Shifts in Trafficking Dynamics

In Finland, human trafficking during the pandemic primarily revolved around labor exploitation and sexual exploitation. Organized crime groups adapted by targeting vulnerable migrant workers in agriculture, construction, and domestic care industries. With heightened economic insecurity, traffickers lured individuals into exploitative conditions using deceptive recruitment practices. Victims, often undocumented migrants, faced limited access to legal and social protections ¹⁹.

Digital Recruitment and Exploitation

Traffickers in Finland increasingly leveraged digital platforms to recruit victims. Online advertisements and social media were used to exploit individuals under the guise of legitimate employment opportunities. Moreover, the isolation imposed by lockdowns allowed traffickers to exercise greater control over victims, reducing their visibility to authorities ²⁰.

¹⁹ Trafficking in Finland: Trends and Challenges During the Pandemic. Helsinki: EICPRE Reports, 2022.

²⁰ Trafficking in Persons Report: The Impact of COVID-19 on Europe. Vienna: United Nations Office on Drugs and Crime (UNODC), 2022.

Government and NGO Responses

Finland's response to trafficking during the pandemic was characterized by strong institutional frameworks and partnerships with NGOs. The Finnish government prioritized victim identification through mobile outreach units and hotlines. However, the limited capacity of shelters and the reallocation of law enforcement resources to pandemic-related duties created enforcement gaps²¹.

3.1.2. Human Trafficking in Estonia During COVID-19: Increased Exploitation in Transit

As a key transit country, Estonia saw an increase in trafficking activities during the pandemic, particularly in the movement of victims from Eastern Europe to Nordic countries. Traffickers exploited relaxed regulations for essential workers and falsified documents to smuggle victims across borders. The exploitation of women and children for sexual purposes became a prominent issue, often facilitated through online platforms²².

Vulnerable Populations

Estonia's socioeconomic landscape made certain populations particularly vulnerable to trafficking. Economic hardships disproportionately affected rural communities and migrant workers, who were coerced into forced labor in sectors such as agriculture and logistics. The pandemic's economic strain exacerbated these vulnerabilities, increasing victims' dependence on traffickers for survival²³.

Policy and Enforcement Challenges

Estonian authorities faced significant challenges in combating trafficking during the pandemic, including limited resources and the technological sophistication of trafficking networks. Efforts to address these issues included bolstering international cooperation and investing in training programs for law enforcement. However, the rapid digitalization of trafficking operations often outpaced enforcement measures²⁴.

²¹ LAHTI M.: Combating Human Trafficking in Finland: Lessons from the Pandemic. Finnish Journal of Law and Social Policy, 2022/18(1), 12-28.

²² KASEARU K. - LAANEMETS L. - MARKINA A.: Pandemic Vulnerabilities: Trafficking in Estonia. Baltic Journal of Criminology, 2022/8(2), 34-57.

²³ LAANEMETS L. - MARKINA A.: Human Trafficking and Economic Pressures in Estonia During COVID-19. 2021.

²⁴ Serious and Organised Crime Threat Assessment (SOCTA). The Hague: Europol, 2021.

3.1.3. Comparative Analysis

Similarities

Both Finland and Estonia experienced a rise in digital recruitment and exploitation during the pandemic, with traffickers capitalizing on economic vulnerabilities and social isolation. Victims in both countries were often exploited in labor-intensive industries and through online sexual exploitation. Additionally, the pandemic strained enforcement capacities in both nations, allowing traffickers to operate with increased impunity.

Differences

Key differences were observed in the nature and scope of trafficking operations. In Finland, human trafficking predominantly involved labor exploitation within its borders, reflecting the country's reliance on migrant labor and strong internal demand for services. Conversely, Estonia's role as a transit country exposed it to cross-border trafficking dynamics, with traffickers using it as a gateway to Nordic markets. Finland's institutional frameworks and victim support services were more robust than those in Estonia, reflecting differences in governance and resources.

3.2. Drug Trafficking During the COVID-19 Pandemic: A Comparative Analysis of Finland and Estonia

The COVID-19 pandemic, which began in late 2019, has had wide-reaching effects across various sectors of society, from public health to economics and security. While much of the focus has been on the public health implications, the pandemic has also significantly influenced the global illicit drug trade. In this chapter, we will conduct a comparative analysis of the drug trafficking landscape in two neighboring countries, Finland and Estonia, during the COVID-19 pandemic. Both countries have shared geographical and historical contexts, yet they have experienced distinct patterns and challenges in terms of drug trafficking during the pandemic. This chapter will examine the impact of COVID-19 on drug trafficking activities in both nations, with a focus on the shifts in trafficking patterns, enforcement responses, and policy adaptations.

3.2.1. Drug Trafficking Trends in Finland and Estonia

Drug trafficking is an enduring issue for both Finland and Estonia, countries that, despite their proximity, have experienced unique shifts in drug trade dynamics during the pandemic. Finland, with a low population density and extensive border with Russia, has long struggled with the trafficking of various illicit substances, including cannabis, methamphetamine, and heroin. Conversely, Estonia, which has faced greater proximity to Europe's internal drug trade routes, has seen distinct trafficking flows, particularly for synthetic drugs like methamphetamine and MDMA²⁵.

The onset of the pandemic in 2020 brought an abrupt disruption to global supply chains, affecting both legal and illegal trade networks. As travel restrictions and border controls were introduced, international drug trafficking networks, which typically relied on free movement across borders, were forced to adapt to new circumstances (European Monitoring Centre for Drugs and Drug Addiction ²⁶.

A 2021 report by the EMCDDA highlighted that, while the drug trade initially slowed down due to pandemic restrictions, the long-term effect was an adaptation of trafficking methods rather than a cessation of activity. This phenomenon was observed in both Finland and Estonia, albeit to varying extents.

Finland: Continuity and Adaptation of Trafficking Patterns

In Finland, drug trafficking remained largely steady in the early months of the pandemic. The disruption caused by the closure of borders did lead to some reduction in the inflow of illicit drugs, particularly heroin and cocaine, which are typically trafficked via air or sea routes. However, traffickers quickly adjusted to new realities by shifting to alternative routes or increasing the use of digital platforms for the distribution of illicit goods.

The rise of the "dark web" played a significant role in the adaptation of Finland's drug market. A study by Kaakinen (2022)²⁷ revealed that between 2020 and 2021, the use of encrypted digital markets increased significantly, with the online purchase of drugs like cannabis and synthetic drugs surging during the pandemic. Traffickers capitalized on the increased demand for these substances, and buyers increasingly turned to virtual means of obtaining drugs, circumventing traditional trafficking routes.

²⁵ KIVIVUORI J. - LEHTI M.: Drugs and Society in Finland: Current Issues and Trends. Finnish National Police Board, 2020.

²⁶ Impact of COVID-19 on drug markets and trafficking in Europe. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2021.

²⁷ KAAKINEN M.: Dark Web and Drug Markets in Finland during the COVID-19 Pandemic. Finnish Institute for Health and Welfare (THL), 2022.

Estonia: Expansion of Domestic and Regional Trafficking Networks

Estonia, situated on the EU's eastern border, faced a different challenge in drug trafficking patterns during the pandemic. Estonia has historically been a transit point for drugs traveling from Russia and other Eastern European countries to Western European²⁸. The pandemic, with its global shutdowns and border control measures, severely disrupted these routes. Despite this, Estonia witnessed an uptick in domestic trafficking, as organized criminal groups sought to compensate for the interruption in international trade by expanding their operations locally (Saar, 2021).

The most notable shift in Estonia was the rise in synthetic drug production, particularly methamphetamine. As international trafficking routes became harder to navigate, local criminal organizations ramped up their manufacturing capabilities. The use of locally sourced chemicals and the increase in homegrown synthetic drug production posed a new challenge to Estonian law enforcement during the pandemic (Saar, 2021).

3.2.2. Law Enforcement and Policy Responses

Both Finland and Estonia saw their law enforcement agencies responding to new challenges posed by the pandemic's impact on drug trafficking. While both countries share a focus on strong border control and cooperation with EU law enforcement agencies such as Europol and Frontex, their responses to drug trafficking during the pandemic diverged in some key areas.

Finland: Strengthening Border Security and Digital Enforcement

Finland responded to the shifting dynamics of drug trafficking by reinforcing its border security and increasing its emphasis on digital surveillance. The Finnish Customs (Tulli) stepped up efforts to monitor the dark web and prevent the smuggling of synthetic drugs through virtual platforms²⁹. This adaptation to digital trafficking methods required significant investment in cyber capabilities and greater coordination with international organizations such as the European Cybercrime Centre (EC3).

Despite the Finnish authorities' success in intercepting digital drug trade, the border with Russia remained a challenging point for preventing the flow of illicit substances, especially synthetic drugs. Finland, which has seen an increase in the

²⁸ EU Drug Markets Report 2021. European Commission, EMCDDA, 2021.

²⁹ Annual report on drug smuggling and enforcement activities. Finnish Customs, 2021.

smuggling of methamphetamines and cannabis from Russia, faced growing concern over the resilience of traditional drug trafficking routes that were adapting through creative new methods³⁰.

Estonia: Emphasis on Domestic Enforcement and International Cooperation

Estonia faced a different set of challenges in drug enforcement during the pandemic. With increased domestic production of synthetic drugs, Estonian authorities focused on strengthening local drug enforcement. The Estonian Police and Border Guard Board (PPA) worked closely with regional authorities and international partners to break up methamphetamine production networks³¹. However, this increased focus on domestic production also necessitated a greater push for intelligence gathering and the identification of new trafficking methods, including the use of drones and postal systems for drug distribution.

Both Finland and Estonia also enhanced their cooperation with European agencies such as Europol, particularly in sharing intelligence regarding trafficking routes and drug supply chains. However, while Finland's response was centered more on enhancing digital and border enforcement mechanisms, Estonia focused more on regional cooperation and curbing local production (European Commission, 2021).

3.2.3. The Social and Economic Impact of the Pandemic on Drug Markets

Both Finland and Estonia experienced significant social and economic disruptions due to the pandemic. The economic downturn caused by COVID-19 resulted in an increase in substance abuse issues in both countries, as individuals turned to illicit drugs to cope with the mental health challenges posed by lockdowns, unemployment, and isolation³². The increased demand for drugs, particularly cannabis and synthetic substances, added further strain to enforcement efforts.

Finland: The Rise of Domestic Cannabis Use

³⁰ KIVIVUORI J. - LEHTI M.: Drugs and Society in Finland: Current Issues and Trends. Finnish National Police Board, 2020.

³¹ SAAR L.: Methamphetamine Production and Trafficking in Estonia: Challenges and Responses. Estonian Police and Border Guard Board, 2021.

³² KAAKINEN M.: Dark Web and Drug Markets in Finland during the COVID-19 Pandemic. Finnish Institute for Health and Welfare (THL), 2022.

In Finland, the rise of online drug markets coincided with an uptick in the domestic use of cannabis. Studies by the Finnish Institute for Health and Welfare (THL) indicated that during the pandemic, cannabis became the most commonly used illicit substance, with a significant increase in online distribution. This development presented a unique challenge for Finnish law enforcement, which had to balance traditional interdiction efforts with new methods of tackling digital crime³³.

Estonia: Increase in Synthetic Drug Production and Abuse

In Estonia, the most notable impact of the pandemic was the rise in synthetic drug production, particularly methamphetamines. Estonia's position as a key player in the regional production and trafficking of synthetic drugs meant that the economic crisis exacerbated social vulnerabilities, including increased drug use among economically disadvantaged groups³⁴. As a result, the country faced rising health concerns related to addiction and overdoses.

3.2.4. Comparing

In comparing the experiences of Finland and Estonia during the COVID-19 pandemic, it is evident that while both countries share similar regional challenges in drug trafficking, their responses and adaptations were shaped by their unique national contexts. Finland, with its strategic position on the Russian border and reliance on international trade routes, adapted quickly to the rise of digital trafficking networks. Estonia, on the other hand, focused more on combating the domestic production of synthetic drugs, as organized criminal groups took advantage of the disrupted global trade to ramp up local operations.

Both countries have made significant strides in enhancing their law enforcement capabilities, but the pandemic has exposed vulnerabilities in their approaches to drug trafficking. The need for continued international cooperation, as well as adaptive enforcement strategies, will be critical in addressing the evolving drug trade dynamics in both nations in the post-pandemic world. As both Finland and Estonia continue to confront these challenges, their experiences during the pandemic offer valuable insights into the complex relationship between public health crises and the illicit drug trade.

³³ Substance Use and Mental Health in Finland: A Report on the COVID-19 Impact. Finnish Institute for Health and Welfare (THL), 2021.

³⁴ SAAR L.: Methamphetamine Production and Trafficking in Estonia: Challenges and Responses. Estonian Police and Border Guard Board, 2021.

3.3. Cybercrime During the COVID-19 Pandemic: A Comparative Analysis of Finland and Estonia

The COVID-19 pandemic has profoundly altered the global landscape, bringing about significant shifts in many aspects of society, from health care to economics, governance, and security. One of the areas most notably impacted by the pandemic has been cybercrime. As governments, businesses, and individuals increasingly relied on digital technologies to maintain operations and connections, cybercriminals exploited the resulting vulnerabilities, launching a range of attacks from phishing and malware to identity theft and fraud. Finland and Estonia, two neighboring countries in Northern Europe with robust digital infrastructures, present interesting case studies in how cybercrime evolved during the pandemic.

This chapter aims to offer a comparative analysis of cybercrime during the COVID-19 crisis in Finland and Estonia, examining how these nations' pre-existing digital landscapes, governmental responses, and cybercrime trends were affected by the pandemic.

3.3.1. Cybercrime Landscape in Finland and Estonia Pre-COVID-19

Before the onset of the COVID-19 pandemic, both Finland and Estonia were recognized for their advanced digital infrastructures and high levels of internet penetration. Finland consistently ranked among the top countries for digital literacy and cybersecurity awareness³⁵, while Estonia has been at the forefront of digital governance, with innovations like e-residency and widespread use of digital ID³⁶.

Finland: A Robust Cybersecurity Framework

Finland's cybersecurity efforts, led by the National Cyber Security Centre (NCSC-FI), were already well-established prior to the pandemic. Finland had proactively implemented frameworks to deal with cyber threats, focusing on both protecting critical national infrastructure and fostering cybersecurity awareness among businesses and citizens. Finland's strategy included partnerships with international organizations, such as the European Union Agency for Cybersecurity

³⁵ Cybersecurity in the EU: Challenges and Policy Responses. European Commission, 2020.

³⁶ PETTAI V. - KASEKAMP A.: Estonia's Digital Revolution: Cybersecurity and E-Governance. Springer, 2019.

(ENISA) and the European Cybercrime Centre (EC3), to strengthen its defense against cybercrime³⁷.

Estonia: The Digital Pioneer

Estonia, however, had developed a highly advanced cyber environment even before the pandemic. Known for its innovative e-governance systems, Estonia had implemented nationwide digital ID systems and e-residency programs that facilitated online voting, tax filing, and business registration. The country also hosted NATO's Cooperative Cyber Defence Centre of Excellence, a reflection of its commitment to cybersecurity³⁸. Cybercrime in Estonia was viewed not only as a criminal justice issue but also as a matter of national security, leading to the development of a comprehensive and proactive cybersecurity policy³⁹.

3.3.2. The Rise of Cybercrime During the COVID-19 Pandemic

When the COVID-19 pandemic began, both Finland and Estonia faced similar challenges in terms of the rapid shift to remote work and increased reliance on digital platforms for daily activities. As physical borders were closed and social distancing measures implemented, cybercriminals quickly adapted to target individuals, businesses, and government institutions exploiting new vulnerabilities. In both countries, cybercrime experienced a marked increase during the pandemic, with certain types of crimes becoming more prevalent due to the context of widespread digitalization.

Finland: A Surge in Phishing and Malware Attacks

In Finland, the pandemic saw a surge in cybercriminal activities, with phishing and malware attacks becoming the most common threats. According to the Finnish Communications Regulatory Authority (FICORA), phishing attacks targeting both individuals and businesses increased by over 50% during the initial months of the pandemic⁴⁰. These attacks often capitalized on the public's fear of the virus, with scammers posing as health organizations or government bodies offering false COVID-19-related information (Pohjanpalo, 2021). Malware attacks

³⁷ Finland's Cybersecurity Strategy: Adapting to the Digital Age. National Cyber Security Centre Finland, 2020.

³⁸ Ibid.

³⁹ KATTEL R.: Cybercrime and National Security in Estonia: The Impact of the Pandemic. Tallinn University Press, 2020.

⁴⁰ Annual Report on Cybersecurity and Cybercrime in Finland. Finnish Communications Regulatory Authority (FICORA), 2021.

also spiked, often linked to ransomware, which targeted remote-working setups, schools, and hospitals as they shifted their operations online.

The Finnish government responded by increasing public awareness of these emerging threats, launching cybersecurity campaigns to educate citizens about identifying phishing attempts and safe online practices. Additionally, Finland's National Cyber Security Centre worked closely with law enforcement to track and apprehend individuals involved in high-profile cybercrime operations (National Cyber Security Centre, 2021).

Estonia: Exploiting E-Governance Vulnerabilities

Estonia, with its reliance on e-governance and digital identity systems, also witnessed an uptick in cybercrime. The shift to remote working created opportunities for cybercriminals to exploit vulnerabilities in online services, including digital tax filing, e-residency portals, and electronic health services (Kattel, 2020). Estonia's government institutions became prime targets for cybercriminal groups, with significant increases in distributed denial-of-service (DDoS) attacks, which aimed to overload and disrupt critical digital infrastructure. A notable cyberattack that occurred during the pandemic targeted Estonia's healthcare sector, where a sophisticated ransomware attack disabled some healthcare systems, temporarily disrupting the delivery of services⁴¹. Estonia's government responded by reinforcing its cybersecurity infrastructure and focusing on the integration of more robust threat detection systems, specifically in health care and critical infrastructure.

3.3.3. Government Responses and Cybersecurity Policy Adaptations

Both Finland and Estonia had established strong cybersecurity policies before the pandemic, but the COVID-19 crisis forced both nations to quickly adapt their strategies to respond to the rapid increase in cybercrime.

Finland: Strengthening Public-Private Collaboration

In response to the rising cybercrime rates, Finland increased its public-private cooperation. The National Cyber Security Centre in Finland (NCSC-FI) played a pivotal role in bringing together government agencies, private companies, and international cybersecurity bodies to address new and emerging cyber

⁴¹ Cybersecurity in Estonia during the COVID-19 Pandemic. Estonian Information System Authority, 2020.

threats⁴². Finland also saw an expansion of cybersecurity training for employees working from home, focusing on secure remote access, password management, and secure communications.

In addition to enhancing public awareness, Finland worked on enhancing its cyber resilience through the development of new policies aimed at increasing the protection of critical infrastructure, particularly in the healthcare and public service sectors, which were under heightened threat during the pandemic⁴³. These policy responses included the creation of dedicated cybersecurity task forces and the strengthening of law enforcement agencies' capacity to combat cybercrime.

Estonia: Reaffirming Digital Sovereignty

Estonia's response to the rise in cybercrime during the pandemic reaffirmed its commitment to maintaining digital sovereignty. As a leader in digital governance, Estonia quickly adapted by improving its digital identity verification systems and increasing cybersecurity training for the public sector. The Estonian Information System Authority (RIA) established an online platform for citizens to report cybersecurity incidents, enhancing public engagement with government cybersecurity initiatives⁴⁴.

Estonia also focused on maintaining secure communication channels and virtual public services, launching initiatives to secure its e-health and e-government services in the face of increased cyber threats⁴⁵. Recognizing the increasing complexity of cybercrime, Estonia invested further in artificial intelligence and machine learning to improve its capacity for real-time threat detection and response⁴⁶.

3.3.4. The Social and Economic Impact of Cybercrime During the Pandemic

Both Finland and Estonia experienced significant social and economic disruptions due to the pandemic, and the surge in cybercrime exacerbated these challenges. In Finland, individuals and businesses were increasingly targeted by

⁴² POHJANPALO K.: Cyber Threats and Security Measures during the Pandemic in Finland. Finnish Cybersecurity Journal, 2021.

⁴³ Annual Report on Cybersecurity and Cybercrime in Finland. Finnish Communications Regulatory Authority (FICORA), 2021.

⁴⁴ Cybersecurity in Estonia during the COVID-19 Pandemic. Estonian Information System Authority, 2020.

⁴⁵ KATTEL R.: Cybercrime and National Security in Estonia: The Impact of the Pandemic. Tallinn University Press, 2020.

⁴⁶ PETTAI V. - KASEKAMP A.: Estonia's Digital Revolution: Cybersecurity and E-Governance. Springer, 2019.

financial fraud, with scams exploiting government financial support programs designed to assist during the pandemic ⁴⁷. The financial sector, in particular, faced increasing pressure to secure online banking and payment systems.

In Estonia, the economic consequences of cybercrime were felt particularly in the private sector, where businesses experienced financial losses due to cyberattacks, including ransomware and data breaches. The rise in digital crime also led to increased public concerns about the safety of personal information, especially given the widespread use of digital services for government and private sector interactions.

3.3.5. Comparing

The COVID-19 pandemic exposed both Finland and Estonia to new and evolving cybercrime threats, despite their pre-existing advanced cybersecurity frameworks. While Finland focused on enhancing public-private collaboration and securing its remote working infrastructure, Estonia, with its emphasis on digital sovereignty, focused on securing e-government services and critical national infrastructure. Both nations adapted swiftly to the new digital realities and increased cyber threats, reaffirming the importance of robust cybersecurity frameworks in protecting both the public and private sectors. Moving forward, the lessons learned during the pandemic will play a crucial role in shaping both countries' cybersecurity strategies, as they continue to evolve to meet the challenges of an increasingly digital world.

4. Conclusion

The COVID-19 pandemic had far-reaching effects on organized crime across the European Union, influencing both high-prevalence countries, such as Italy and Spain, and low-prevalence countries, such as Estonia and Finland. This comparative analysis reveals distinct trends in the nature and adaptability of organized criminal networks in these nations, shaped by pre-existing crime patterns, law enforcement capacities, and socio-economic conditions exacerbated by the pandemic.

In high-prevalence countries like Italy and Spain, where organized crime has deep historical roots, the pandemic served as a catalyst for diversification. Criminal groups adapted quickly to exploit emerging vulnerabilities, such as government financial support programs, healthcare supply chains, and online platforms. Italy's mafia networks expanded their involvement in legitimate businesses as a means of laundering money, while Spain saw a surge in drug trafficking, facilitated by the

⁴⁷ POHJANPALO K.: Cyber Threats and Security Measures during the Pandemic in Finland. Finnish Cybersecurity Journal, 2021.

disruption of law enforcement operations and border restrictions. These trends highlight the resilience and adaptability of entrenched organized crime groups in leveraging crises for economic gain.

Conversely, in low-prevalence countries like Estonia and Finland, organized crime remained less pervasive but underwent notable shifts during the pandemic. Estonia witnessed an increase in cybercrime activities linked to organized groups, reflecting the country's reliance on digital infrastructure. Finland saw a modest rise in illicit drug trade, facilitated by online platforms and dark web markets, as traditional trafficking routes were disrupted. In both countries, law enforcement agencies responded by bolstering digital surveillance and international cooperation, which proved critical in mitigating the expansion of organized criminal networks.

The comparison underscores that while the nature and scale of organized crime differ significantly between high- and low-prevalence countries, the pandemic created opportunities for all criminal organizations to adapt and exploit systemic vulnerabilities. However, it also highlighted the importance of robust governance, international collaboration, and adaptive law enforcement in combating organized crime during crises. Moving forward, lessons learned from the pandemic will be essential for shaping more resilient and proactive strategies to address the evolving landscape of organized crime across Europe.

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IVAN JOKANOVIĆ*

Consumer Guarantees In Czech, Slovak, And Polish Law

Abstract: This paper analyses the concept of consumer guarantees, as additional protection provided to the consumer compared to the seller's legal liability for the lack of conformity, in the Czech, Slovak, and Polish national legal frameworks. All these national laws were influenced by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees and recently transposed Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods. The most important divergence between the examined national laws and the most notable peculiarity is represented by the existence of the mandatory guarantee in Hungarian law for certain new durable consumer goods, with a three-level hierarchy between the remedies available to the consumer. On the other hand, the national legislators do not establish any mandatory hierarchy between the claims deriving from the voluntary, commercial guarantee. As a novelty, the Hungarian and the Slovak lawmakers introduced the producer's commercial guarantee of durability for certain goods for a specified period, while in Czech law, the guarantor's assuring that the goods will maintain their functions and performance under normal use for a certain period corresponds to the commercial guarantee of durability.

Keywords: Contractual guarantee, Mandatory Guarantee, Consumer, Seller, Producer

DOI:

1. Introduction

In addition to the issues related to the definition of the lack of conformity, the seller's liability, and the remedies available to the consumer, the consumer guarantees, as additional protection provided to the consumer, also have a significant influence on the overall consumer's legal position. The consumer guarantees have been covered by both Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (hereinafter referred to as "Directive 1999/44/EC") and Directive (EU) 2019/771 on certain aspects

* Ivan Jokanović researcher, at the Ferenc Deák Doctoral School Of Law And Researcher At The Central European Academy (CEA).

concerning contracts for the sale of goods (hereinafter referred to as “Directive (EU) 2019/771”) and, consequently, by legal acts of the Member States of the European Union.

This paper analyses the issues of consumer guarantees in the Czech Republic, Slovakia, and Hungary. Each chapter starts with the examination of the relevant regulation in force when the national legal system was influenced by Directive 1999/44/EC, and shows the modifications introduced by the transposition of Directive (EU) 2019/771. The main objective is to determine the similarities and divergences between the analysed national legal systems on this matter, as well as to establish to what extent the consumer’s position changed.

2. The Czech Republic

2.1 Consumer Guarantees

Prior to the transposition of Directive (EU) 2019/771, the Czech Civil Code¹ (hereinafter referred to as “the CzeCC”) contained provisions on the quality (commercial) guarantee both in the general section of contract law and in the subsection on the purchase of movable goods. In the context of a sales contract, the CzeCC envisaged that the seller guaranteed that the goods would remain suitable for their usual purpose for a specified period or that they would retain their usual properties.² Moreover, the CzeCC extended the legal effect of such a guarantee to cases where the duration of the guarantee or the period of usability was indicated on the packaging or in advertising materials.³ These provisions were not limited solely to the consumer sales contract.

However, within the subsection addressing the sales of consumer goods, the CzeCC expanded the applicability of quality guarantee provisions to situations where the duration of usability was indicated not only on the sold goods, packaging, or advertising, but also in the instructions accompanying the goods.⁴ It is important to note that this particular rule applied exclusively to consumer sales contracts.

In the context of a consumer sales contract, the guarantee could be provided only by the seller, thereby excluding the producer from this legal relationship. The CzeCC also departed from the general principle that the quality guarantee applied to the goods as a whole by allowing the guarantee to be issued for a specific component of the item.⁵ Czech legal theory emphasized that the guarantee could

¹ the Czech Civil Code, Collection of Laws, No. 89 of 2012.

² CzeCC, Sec. 2133.

³ CzeCC, Sec. 2133.

⁴ CzeCC, Sec. 2165 (2).

⁵ CzeCC, Sec. 2133.

pertain to a particular property or function of the goods, and that the conditions of the guarantee were not required to be uniform across all guaranteed

properties.⁶ Importantly, the CzeCC did not require the guarantee to be provided free of charge, as contained in Directive 1999/44/EC.

The CzeCC addressed potential discrepancies between the duration of the guarantee specified in the contract and that stated in the guarantee statement by giving priority to the longer period. The guarantee statement was to be interpreted broadly as encompassing “any statement of the seller in the sense of the unilateral manifestation of will”.⁷ Furthermore, the Czech legislature also accorded priority to the guarantee period explicitly agreed upon by the parties over any period of use indicated on the packaging.⁸ These legal solutions were not contained in Directive 1999/44/EC.

Notably, the CzeCC did not specify the duration of the guarantee period or consumer rights arising from the guarantee, leaving these aspects largely at the discretion of the seller.⁹ However, it did establish rules governing the commencement of the guarantee period. As a general rule, this period began to run at the moment the goods were delivered to the buyer (consumer). In cases where the goods were dispatched in accordance with the contract, the guarantee period commenced upon their arrival at the agreed destination. An additional exception applied to goods that were to be put into operation by someone other than the seller. In that case, the guarantee period started on the day the goods were put into operation, provided that the buyer (consumer) ordered commissioning within three weeks of taking over the goods and cooperated as required to ensure proper and timely performance of the service.¹⁰

The Czech legislator also established a situation where the buyer (consumer) was precluded from exercising rights under the guarantee. Namely, these rights were not available where the defect arose from an external event occurring after the risk of damage has passed to the buyer. This limitation, however, did not apply if the defect

⁶ HRÁDEK, J.: Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, 2020, 17.

⁷ Ibid.

⁸ CzeCC, Sec. 2114.

⁹ HRÁDEK, J.: Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, 2020, 16.

¹⁰ CzeCC, Sec. 2115.

was attributable to the seller.¹¹ The term “external event” was interpreted as an occurrence not caused by either the seller or the buyer.¹²

The CzeCC did not expressly provide that a quality guarantee had no effect on the consumer’s rights arising from the seller’s liability for defective performance, as required by Art. 6, Sec. 2 of Directive 1999/44/EC. Nevertheless, an interpretation consistent with the Directive, according to which the guarantee is to be understood as an additional layer of protection for the consumer, was also applicable under Czech law.¹³ Accordingly, the existence of a guarantee did not preclude the consumer from invoking remedies available under the rules on defective performance. Furthermore, the CzeCC did not prescribe any mandatory content or specific form for the guarantee. Czech legal scholarship emphasized that a guarantee could be provided orally, although the consumer was entitled to request that it be made available in written form.¹⁴

The transposition of Directive (EU) 2019/771¹⁵ introduced significant changes to the legal concept of quality guarantee under Czech law. The CzeCC now defines the quality guarantee as arising from a statement made by the guarantor, in which he/she undertakes to satisfy the buyer (consumer) beyond the scope of the rights stemming from defective performance. This may include, in particular, reimbursement of the purchase price, replacement or repair of the goods, or the provision of a related service in cases where the goods fail to exhibit the characteristics specified in the guarantee statement.¹⁶

This provision conceptualizes the guarantee as a unilateral declaration of will by the guarantor, explicitly underlining its supplementary character in relation to the consumer’s rights deriving from defective performance. It also outlines the potential content of the guarantee by listing, in a non-exhaustive manner, the remedies available to the consumer, namely refund of the purchase price (termination of the contract), repair, and replacement. Notably, the CzeCC did not impose any

¹¹ CzeCC, Sec. 2116.

¹² HRÁDEK, J.: Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, 2020, 17.

¹³ HRÁDEK, J.: Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, 2020, 16.

¹⁴ HRÁDEK, J.: Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, 2020, 16-17.

¹⁵ Act amending Act No. 634 of 1992 Coll., on consumer protection, as amended, and Act No. 89 of 2012 Coll., Civil Code, as amended, Collection of Laws, No. 374 of 2022.

¹⁶ CzeCC, Sec. 2113 (1).

hierarchical order between these remedies. Furthermore, the concept of the guarantor is no longer limited to the seller, as it also encompasses the manufacturer or any other person.¹⁷

In addition, a guarantee may also arise from a statement made in advertising, provided that it was available at the latest by the time the sales contract was concluded.¹⁸ The Czech legislator, transposing Art. 17, Sec. 1 (2) of Directive (EU) 2019/771, resolves a potential conflict where the guarantee statement is less favourable to the buyer (consumer) than the warranty provided in the advertisement, by giving priority to the latter, unless the advertisement was additionally modified prior to the conclusion of the sales contract in the same or comparable manner as it was originally communicated.¹⁹

The CzeCC also differentiates a specific form of guarantee in which the guarantor undertakes that the goods will maintain their functions and performance under normal use for a certain period. In that case, the buyer (consumer) should at least be entitled to the rectification of the lack of conformity through either delivery of new, defect-free goods (replacement) or repair. The same legal effect is attributed to the indication of the guarantee period or the period of use displayed on the packaging of the goods.²⁰ This form of guarantee corresponds to the commercial guarantee of durability under Art. 17, Sec. 1 of Directive (EU) 2019/771.²¹ However, in contrast to the Directive, the Czech legislature does not explicitly limit the application of this guarantee exclusively to producers.

The amendment did not materially alter Sec. 2115 of the CzeCC, which governs the commencement of the guarantee period. The sole change concerned replacing the term “seller” with “guarantor”. An external event causing the lack of conformity still precludes the buyer (consumer) from invoking remedies. However, the clause specifying that this exclusion does not apply when the defect is caused by the seller has been omitted, as it is considered implicit.²²

Moreover, additional requirements regarding guarantees provided to consumers are set forth in the subsection of the CzeCC dedicated to the sale of consumer goods. Specifically, the guarantor is obliged to issue a written quality guarantee certificate, formulated in clear and comprehensible language, not later than upon taking over the goods. While the CzCC does not explicitly specify the language in which the guarantee must be provided – an option allowed under Art. 17, Sec. 4 of

¹⁷ SIMON, R. and HRÁDEK, J.: the Czech Republic in De Franceschi, A., Schulze, R. (eds.) *Harmonizing Digital Contract Law: the Impact of EU Directives 2019/770 and 2019/771 and the Regulation of Online Platforms : a Handbook*, Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, 2023, 185.

¹⁸ CzeCC, Sec. 2113 (2).

¹⁹ CzeCC, Sec. 2113 (2).

²⁰ CzeCC, Sec. 2114 (1).

²¹ The Explanatory Memoranda for the Amendments, p. 134.

²² The Explanatory Memoranda for the Amendments, p. 135.

Directive (EU) 2019/771 - the Czech Consumer Protection Act²³ mandates that the seller ensure that information concerning the scope, conditions, and methods for exercising rights related to defective performance are provided in Czech.²⁴

The Czech legislature, transposing Art. 17, Sec. 2 of Directive (EU) 2019/771, mandates that the guarantee certificate must include a statement confirming that the buyer (consumer) retains rights arising from the seller's liability for defective performance which remain unaffected by the quality guarantee, as well as the designation of the goods covered by the guarantee, the content of the guarantee, the name and place of residence or registered office of the guarantor, the procedure for exercising rights under the guarantee, and the terms of the guarantee.²⁵ However, it may be stated that the transposition of Art. 17, Sec. 2 of the mentioned Directive is incomplete since the CzeCC does not require the guarantee certificate to be provided on a durable medium. Nevertheless, any failure by the guarantor to comply with the formal and content requirements concerning the guarantee certificate does not affect the validity of the guarantee itself.²⁶

3. Slovakia

3.1 Consumer Guarantees

Prior to the transposition of Directive (EU) 2019/771, provisions concerning the (commercial) guarantee were found in the first chapter of the Part Eight of the Slovak Civil Code²⁷ (hereinafter referred to as "the SlovCC"), applying generally to all sales contracts, as well as in a section dedicated specifically to consumer sales contracts. Namely, the seller was permitted to provide a guarantee that extended beyond the scope of his/her legal liability for defective performance, by means of a statement in a guarantee certificate or in advertising, directed to the consumer.²⁸

Thus, the guarantor was limited exclusively to the seller, thereby excluding the producer from providing this form of protection. In this respect, the Slovak legislature diverged from Directive 1999/44/EC which, in Art. 1, Sec. 2 (e), explicitly allows guarantees to be granted by either the seller or the producer. Additionally, the SlovCC did not include the requirement that the guarantee be provided free of charge.

It is important to emphasize that the guarantee was intended as an additional and supplementary protection for the consumer in relation to the seller's legal

²³ Consumer Protection Act, Collection of Laws , No. 634 of 1992.

²⁴ CzeCPA, Sec. 11 (1).

²⁵ CzeCC, Sec. 2174a (1).

²⁶ CzeCC, Sec. 2174a (2).

²⁷ the Slovak Civil Code, Collection of Laws, No. 40 of 1964.

²⁸ SlovCC, Sec. 620 (5).

liability for defective performance. The consumer's position was thus supposed to be more favourable when able to exercise rights under the guarantee. Although the SlovCC did not expressly state it, an interpretation consistent with Directive 1999/44/EC suggests that the guarantee did not affect the consumer's rights deriving from the seller's legal liability. Consequently, the consumer had the freedom to choose whether to pursue remedies based on the seller's legal liability or the guarantee.

Furthermore, the guarantee could be granted through a statement contained in a guarantee certificate or the associated advertising, reflecting the transposition of Art. 6, Sec. 1 of Directive 1999/44/EC. The SlovCC did not address how to resolve discrepancies between the terms set out in the guarantee certificate and those presented in advertising. Regarding the content of the guarantee, the Slovak legislature did not impose any mandatory hierarchy between the consumer remedies. The determination of the conditions and scope of the guarantee in the guarantee certificate was left to the discretion of the seller.²⁹ Consequently, the precise content of the commercial guarantee, including the available consumer remedies and the duration of the guarantee period, depended on the seller's unilateral decision.

The seller was obliged to issue a guarantee certificate in writing upon the consumer's request.³⁰ However, where the nature of the goods permitted, it was sufficient for the seller to provide a proof of purchase instead of a separate guarantee certificate.³¹ The SlovCC, in the part applying to all sales contracts, stipulated that the guarantee certificate shall have contained the name and surname, trade or business name of the seller, his/her registered office or place of business, as well as the content, scope and conditions of the guarantee, the duration of the guarantee period and the information necessary for the exercise of the guarantee.³² In line with Art. 6, Sec. 5 of Directive 1999/44/EC, it was stated that the absence of any of these elements did not affect the validity of the guarantee.³³

The transposition of Directive (EU) 2019/771³⁴ brought substantial changes to the Slovak legal framework. Most notably, the guarantee may now also be provided by the producer, defined as the manufacturer of the goods, the importer of goods into the European Union market from a third country, or any person who identifies as the producer by affixing his/her name, trademark, or other distinctive sign to the goods.³⁵

²⁹ SlovCC, Sec. 620 (5).

³⁰ SlovCC, Sec. 620 (4).

³¹ SlovCC, Sec. 620 (4).

³² SlovCC, Sec. 502 (3).

³³ SlovCC, Sec. 502 (3).

³⁴ Act on Consumer Protection and Amending Certain Laws, Collection of Laws, No. 108 of 2024.

³⁵ SlovCC, Sec. 617 (1d).

By issuing a commercial guarantee, the producer or seller undertakes to refund the purchase price to the consumer, repair or replace the sold goods or ensure their maintenance - beyond the scope of the consumer's rights stemming from the seller's legal liability for defective performance.³⁶ Thus, the SlovCC explicitly refers to repair, replacement, and the refund of the purchase price, without prescribing any hierarchical order between them. In addition, the consumer is entitled to claim performance of the guarantee from either the producer or the seller, in accordance with the terms set out in the guarantee certificate or the associated advertising, available prior to the conclusion of the sales contract or at that moment.³⁷ These rules reflect the transposition of Art. 17, Sec. 1 of Directive (EU) 2019/771.

Any discrepancy between the terms of the guarantee as set out in the guarantee certificate and those from the associated advertising is resolved in favour of the latter provided they are more beneficial to the consumer than the terms specified in the guarantee certificate. However, this provision does not apply if the producer or seller, acting as guarantors, before the conclusion of the contract, aligned the associated advertising with the guarantee certificate in the same or similar manner as that advertising was originally communicated.³⁸ These provisions are consistent with Art. 17, Sec. 1 of Directive (EU) 2019/771.

The SlovCC requires the producer or seller to provide the consumer with a guarantee certificate on a durable medium no later than at the moment of delivery of the goods.³⁹ The Slovak legislature made use of the option under Art. 17, Sec. 4 of Directive (EU) 2019/771 by stipulating that the guarantee certificate must be written in Slovak or, with the consumer's consent, in another language.⁴⁰ In addition to the abovementioned information expressed in a clear and comprehensible manner required by Sec. 502 (3), the guarantee certificate must also contain a statement that the consumer's rights arising from the seller's legal liability for defective performance remain unaffected by the guarantee.⁴¹ Importantly, any failure by the producer or the seller to comply with these requirements does not affect the validity of the guarantee.⁴² This provision reflects the transposition of Art. 17, Sec. 3 of Directive (EU) 2019/771.

Finally, the SlovCC, transposing Art. 17, Sec. 1 of the mentioned Directive, introduced the concept of a consumer guarantee of durability, which to be granted by the producer. In this case, the consumer is entitled to demand the rectification of the lack of conformity directly from the producer in accordance with Sec. 623,

³⁶ SlovCC, Sec. 626 (1).

³⁷ SlovCC, Sec. 626 (1).

³⁸ SlovCC, Sec. 626 (5).

³⁹ SlovCC, Sec. 626 (3).

⁴⁰ SlovCC, Sec. 626 (3).

⁴¹ SlovCC, Sec. 626 (3).

⁴² SlovCC, Sec. 626 (4).

during the consumer warranty period, unless the producer has offered more favourable terms in the consumer guarantee of durability statement.⁴³

4. Hungary

4.1 Consumer Guarantees

A distinctive feature of the Hungarian law is the coexistence of both

voluntary/contractual and mandatory guarantees. Given that the Government Decree No. 373/2021 on the sale of goods and the supply of digital content between consumers and businesses and detailed rules for contracts for the provision of digital services⁴⁴ (hereinafter referred to as “the Government Decree”), implementing Directive (EU) 2019/771, introduced several innovations to the regulation of guarantees in Hungary, without excluding the applicability of the relevant provisions of the Hungarian Civil Code⁴⁵ (hereinafter referred to as “the HuCC”), the rules set out in both legal acts will be presented in parallel. It is important to underline that, in the consumer context, the Government Decree and the HuCC apply concurrently, with the former complementing and clarifying the latter’s provisions.

The HuCC provides that whoever voluntarily undertakes a guarantee for the contractual performance or is legally obligated to provide a guarantee during the guarantee period is liable for any lack of conformity in accordance with the terms set out in the guarantee statement or the legal act establishing the guarantee.⁴⁶ Notably, this provision does not refer to the conditions stated in related advertising, in contrast to Directive 1999/44/EC.

Accordingly, the Government Decree extends the guarantor’s liability for defective performance of the contract to include the conditions set out in associated advertising available at the time of or prior to the conclusion of the sales contract.⁴⁷ The Hungarian legislature addresses potential discrepancies between the terms from the contractual guarantee statement and those in the associated advertising, where the latter is less beneficial to the consumer. In that case, the terms set out in the associated advertising prevail unless they were corrected in the same or a comparable manner before the contract was concluded.⁴⁸ This provision constitutes the transposition of Art. 17, Sec. 1 (2) of Directive (EU) 2019/771.

⁴³ SlovCC, Sec. 626 (2).

⁴⁴ Government Decree No. 373 of 2021 on the Sale of Goods and the Supply of Digital Content Between Consumers and Businesses and on Detailed Rules for Contracts for the Provision of Digital Services.

⁴⁵ Act V of 2013 on the Hungarian Civil Code.

⁴⁶ HuCC, Sec. 6:171 (1).

⁴⁷ Government Decree, Art. 16, Sec. 1.

⁴⁸ Government Decree, Art. 16, Sec. 3.

However, the guarantor can be released from the guarantee obligation if he/she shows that the cause of the defect arose after the performance.⁴⁹ The onus probandi for this circumstance is explicitly placed on the guarantor. Notably, the Supreme Court of Hungary, in Decision No. Pfv.V.20.369/2014/4 held that the guarantor shall not be exonerated from liability when he/she failed to demonstrate that the cause of the defect emerged after the performance because it was impossible to determine its cause or when that defect appeared.⁵⁰

Furthermore, the Government Decree, in line with Art. 17, Sec. 2 of Directive (EU) 2019/771, requires that the contractual guarantee statement be provided to the consumer on a durable medium no later than at the time of delivery of the goods and be written in plain, comprehensible language.⁵¹ Using the option given by Art. 17, Sec. 4 of this Directive, it also stipulates that the contractual guarantee statement must be made available to the consumer in the Hungarian language.⁵² A durable medium is defined as “any instrument that enables the consumer or the company to store information addressed to him/her personally in a way accessible for future reference for a period of time suitable for the purposes of the information and that allows the unchanged reproduction of the information stored”.⁵³

The Hungarian legislator has also specified the mandatory content of the contractual guarantee statement in accordance with Art. 17, Sec. 2 of Directive (EU) 2019/771. It must include the following:

- a clear statement that in the event of a defect, the consumer is entitled by law to exercise the remedies against the seller free of charge and that these remedies are not affected by the contractual guarantee;
- the name and address of the guarantor;
- the procedure the consumer must follow to invoke the contractual guarantee;
- information on the goods covered by the contractual guarantee;
- the terms of the commercial guarantee.⁵⁴

However, non-compliance with the rules from Art. 16, Sec. 4 and 5 does not affect the binding nature of the contractual guarantee.⁵⁵ This provision is intended to safeguard the consumer against potential abuses related to the content of the contractual guarantee statement.

⁴⁹ HuCC, Sec. 6:171 (1).

⁵⁰ FÉZER, T., HAJNAL, Zs.: Regulation and Jurisdiction Regarding Issues of Consumer Sales in Hungary” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices: Czechia, Hungary, Poland, Romania, Slovakia*, Debrecen: University of Debrecen, Faculty of Law and Political Studies, 2020, 31.

⁵¹ Government Decree, Art. 16, Sec. 4.

⁵² Government Decree, Art. 16, Sec. 5.

⁵³ Government Decree, Art. 2 (15).

⁵⁴ Government Decree, Art. 16, Sec. 4.

⁵⁵ Government Decree, Art. 16, Sec. 6.

The HuCC expressly states that the guarantee does not affect the consumer's rights stemming from the law.⁵⁶ Therefore, the consumer is still entitled to invoke remedies available under the rules on the warranty for the lack of conformity. It can be inferred that the guarantee is intended to provide additional protection to the consumer.

Moreover, the transfer of ownership over the goods covered by a guarantee does not cause the cessation of its legal effect. In that case, the new owner is entitled to

enforce the rights deriving from the guarantee against the guarantor.⁵⁷ This legal solution was introduced in the novel HuCC.⁵⁸ It may be stated that it represents "a departure from the relative structure of the contractual relationship."⁵⁹

The consumer may enforce the guarantee claim within the guarantee period.⁶⁰ Such a guarantee period is preclusive, meaning that the guarantor is liable for defects emerging before its expiry.⁶¹ However, the consumer may pursue in court his/her rights under the guarantee within three months following the expiration of the time limit determined in the request when the guarantor failed to fulfil his/her obligations at the consumer's request within an appropriate time limit. This possibility remains available to the consumer even after the guarantee period has ended.⁶² The Hungarian legislature emphasized that failing to meet the mentioned deadline results in the forfeiture of rights.⁶³ Finally, the HuCC provides for the *mutatis mutandis* application of the provisions governing the exercise of remedies for the warranty for the defect also in the case of the exercise of the rights deriving from the guarantee.⁶⁴

The innovation brought by the Government Decree is also the establishment of the producer's commercial guarantee of durability for certain goods for a specified

⁵⁶ HuCC, Sec. 6:171 (2).

⁵⁷ HuCC, Sec. 6:172.

⁵⁸ FÉZER, T., HAJNAL, Zs.: Regulation and Jurisdiction Regarding Issues of Consumer Sales in Hungary" in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices: Czechia, Hungary, Poland, Romania, Slovakia*, Debrecen: University of Debrecen, Faculty of Law and Political Studies, 2020, 31; DUDÁS, A.: *Osvrt na regulativu saobraznosti i garancije u mađarskom pravu – primer transpozicije Direktive 1999/44/EZ u opšta pravila ugovornog prava*", *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2020, 1057.

⁵⁹ Kemenés, p. 1603, cited in DUDÁS, A.: *Osvrt na regulativu saobraznosti i garancije u mađarskom pravu – primer transpozicije Direktive 1999/44/EZ u opšta pravila ugovornog prava*", *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2020, 1057.

⁶⁰ HuCC, Sec. 6:173 (1).

⁶¹ FÉZER, T., HAJNAL, Zs.: Regulation and Jurisdiction Regarding Issues of Consumer Sales in Hungary" in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices: Czechia, Hungary, Poland, Romania, Slovakia*, Debrecen: University of Debrecen, Faculty of Law and Political Studies, 2020, 31.

⁶² HuCC, Sec. 6:173 (1).

⁶³ HuCC, Sec. 6:173 (1).

⁶⁴ HuCC, Sec. 6:173 (2).

period. In that case, the consumer can claim directly against the producer throughout the guarantee period, requesting the rectification of the defect through repair or replacement, in accordance with the rules on the exercise of the (legal) warranty rights.⁶⁵ Thus, the consumer possesses the freedom to choose whether to request repair or replacement from the seller or the producer. Furthermore, within the commercial guarantee of durability, the producer may offer the consumer more favourable terms than provided under the rules on the commercial guarantee and legal warranty rights.⁶⁶ These rules represent the transposition of Art. 17, Sec. 1 of Directive (EU) 2019/771.

Regarding the mandatory guarantee, the applicable legal provisions are located in the governmental regulations. A crucial legal act for consumers in this field is Government Decree 151/2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods⁶⁷ (hereinafter referred to as “Government Decree no. 151/2003”), most recently in 2024 by Government Decree no. 93/2024 amending government decrees relating to consumer protection.⁶⁸ The mandatory guarantee is also established by Government Decree no. 181/2003 (XI. 5.) on the mandatory guarantee associated with the construction of dwellings⁶⁹ and Government Decree no. 249/2004 on the mandatory guarantee for certain repair and maintenance services.⁷⁰

The mandatory guarantee established by Government Decree 151/2003 applies exclusively to sales contracts concluded in the consumer context and concerns new durable consumer goods listed in the ministerial decree on the designation of product groups of durable consumer goods.⁷¹ The Ministerial Decree 10/2024 determining the durable goods covered by a mandatory guarantee⁷² enumerates various household and technical goods, as well as motor vehicles, the sales price of which reaches 10,000.00 HUF. In this regard, the guarantor is a company that concluded the sales contract with the consumer, while the beneficiary of the guarantee is the owner of the consumer goods, provided that he/she qualifies as a consumer.⁷³ The consumer’s legal position is strengthened by the provision

⁶⁵ Government Decree, Art. 16, Sec. 2.

⁶⁶ Government Decree, Art. 16, Sec. 2.

⁶⁷ Government Decree N^o. 151 of 2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods.

⁶⁸ Government Decree N^o. 94 of 2024 amending government decrees on consumer protection

⁶⁹ Government Decree N^o. 181 of 2003 (XI. 5.) on a mandatory guarantee associated with the construction of dwellings.

⁷⁰ Government Decree N^o. 249 of 2004 on the mandatory guarantee for certain repair and maintenance services.

⁷¹ Government Decree 151/2003, Art. 1, Sec. 1.

⁷² Ministerial Decree 10 of 2024 determining the durable goods covered by a mandatory guarantee.

⁷³ Government Decree 151/2003, Art. 1, Sec. 2.

rendering any contractual clause that deviates from the rules of the mentioned Government Decree to the detriment of the consumer null and void.⁷⁴

The duration of the guarantee period is determined based on the amount of the sales price of the goods. Specifically, the guarantee lasts for two years when the sales price reaches 10,000.00 HUF without exceeding 250,000.00 HUF and for three years when the sales price exceeds 250,000.00 HUF.⁷⁵ The guarantee period begins either on the date the goods are delivered to the consumer or on the date the installation is carried out by the company or its representative.⁷⁶ Notably, the duration of the guarantee period is extended in the case of repair for the period

starting from the date of delivery of the goods to be repaired, during which the consumer cannot use the goods because of the defect.⁷⁷

The Government Decree 151/2003 requires that the company provide the consumer with a guarantee card alongside the consumer goods, in a form that ensures the legibility of its content for the entire duration of the guarantee period.⁷⁸ This Government Decree also sets out the obligatory content of the guarantee card.⁷⁹ A particular emphasis is placed on indicating that this type of guarantee does not affect the consumer's legal rights.⁸⁰ Accordingly, the consumer retains the right to exercise remedies deriving from the warranty for the lack of conformity. The mandatory guarantee thus strengthens the consumer's position, as it does not replace the consumer's remedies available in the event of a defect, but provides further options to the consumer.

Regarding the remedies at the consumer's disposal, the Government Decree 151/2003 differentiates between repair, replacement, and reimbursement of the sales price. The consumer is entitled to request repair at the company's (seller's) registered office, any of its premises or branches, and at the repair service indicated in the guarantee card.⁸¹ It is explicitly required that only new components be incorporated into the consumer goods during the repair.⁸²

The company is obliged to replace the consumer goods within eight days if, during the first repair attempt within the guarantee period, it is established that these goods cannot be repaired, unless the consumer specifies otherwise. If it is impossible to replace the consumer goods, the company must refund the sales price to the consumer within eight days.⁸³

⁷⁴ Government Decree 151/2003, Art. 1, Sec. 5.

⁷⁵ Government Decree 152/2003, Art. 2, Sec. 1 (a), (b).

⁷⁶ Government Decree 151/2003, Art. 2, Sec. 2.

⁷⁷ Government Decree 151/2003, Art. 2, Sec. 4.

⁷⁸ Government Decree 151/2003, Art. 3, Sec. 1.

⁷⁹ Government Decree, 151/2003 Art. 3, Sec. 2.

⁸⁰ Government Decree 151/2003, Art. 3, Sec. 4.

⁸¹ Government Decree 151/2003, Art. 5, Sec. 1.

⁸² Government Decree 151/2003, Art. 5, Sec. 2.

⁸³ Government Decree 151/2003, Art. 5, Sec. 5.

The consumer is also entitled to replacement of the goods when they continue to exhibit defects after three repair attempts, unless the consumer specifies otherwise. The impossibility of replacing the goods, in this case as well, conditions the company's obligation to refund the sales price to the consumer within eight days.⁸⁴

Finally, the company is obliged to replace the consumer goods if the repair is not completed within 30 days of the notification of the repair request unless otherwise specified by the consumer. In that case, the replacement is to be carried out within eight days following the expiration of the mentioned 30-day period. However, if the replacement of the consumer goods is impossible, the company is required to refund the sales price to the consumer within eight days of the expiry of the 30-day time limit.⁸⁵

It is worth noting that the Government Decree 151/2003 established a three-level hierarchy of remedies available to the consumer. The repair constitutes the primary remedy in the case of a lack of conformity. The replacement is the secondary remedy, becoming available to the consumer if repair is impossible or the company did not carry it out. Refunding the sales price to the consumer is considered the tertiary remedy, available when the replacement of the consumer goods is not feasible. It should be underlined that replacement assumes the position of the primary remedy when a defect emerges within three working days from the purchase or the installation of the consumer goods and impairs their proper use.⁸⁶

5. Conclusion

The legislation of all the examined national countries was influenced by Directive 1999/44/EC and all of them transposed Directive (EU) 2019/771. However, the most significant divergence between them, having a notable beneficial impact on the consumer's legal position, is the existence of the mandatory guarantee in Hungarian law, which covers certain new durable consumer goods. In the case of the mandatory guarantee, the guarantor is a company (seller), while there is a general three-level hierarchical order between the remedies at the consumer's disposal. In that regard, the consumer can invoke the repair as the primary, the replacement as the secondary, and the reimbursement of the sales price as the tertiary remedy. The consumer can make use of these claims concurrently with the remedies deriving from the seller's legal liability for the lack of conformity.

⁸⁴ Government Decree 151/2003, Art. 5, Sec. 6.

⁸⁵ Government Decree 151/2003, Art. 5, Sec. 7.

⁸⁶ DUDÁS, A.: Osvrt na regulativu saobraznosti i garancije u mađarskom pravu – primer transpozicije Direktive 1999/44/EZ u opšta pravila ugovornog prava", Zbornik radova Pravnog fakulteta u Novom Sadu, 3/2020, 1051–1052.

The common trait uniting the analysed legal frameworks is the existence of the voluntary, commercial guarantee, as an additional protection provided to the consumer. While in Czech and Slovak law, the commercial guarantee could be provided solely by the seller, the recent amendments, constituting the transposition of Directive (EU) 2019/771, allowed the producer to become a guarantor. However, although both Czech and Slovak law explicitly mention certain remedies at the consumer's disposal (reimbursement of the purchase price, replacement or repair of the goods, or the provision of a related service in Czech law; reimbursement of the purchase price, repair or replacement of the sold goods or ensuring their maintenance in Slovak law), they do not impose any hierarchy between them. Interestingly, the HuCC and the Government Decree 373/2021, when defining the commercial guarantee, do not explicitly mention the remedies at the consumer's disposal.

Moreover, the Slovak and the Hungarian legislators introduced the producer's commercial guarantee of durability for certain goods for a specified period, in which case the consumer is allowed to demand the rectification of the lack of conformity by repair or replacement directly from the producer. On the other hand, the guarantor's assuring in Czech law that the goods will maintain their functions and performance under normal use for a certain period essentially corresponds to the commercial guarantee of durability. Finally, the Government Decree 373/2021 and the SlovCC explicitly require that the contractual guarantee statement or the guarantee certificate be made available to the consumer respectively in Hungarian and Slovak.

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KESKENY DÁVID*

Fogyasztóvédelem szerepe az elektronikus kereskedelemben

Absztrakt: Az e-kereskedelem térhódítása alapvetően megváltoztatta a fogyasztói szokásokat és a kereskedelmi gyakorlatokat, amelyek új kihívásokat teremtettek a fogyasztóvédelem számára. Az online vásárlás során a fogyasztók nem tudják fizikailag ellenőrizni a termékeket, nehezebben tudnak meggyőződni az eladó megbízhatóságáról, és gyakran bizonytalanok a jogérvényesítési lehetőségeiket illetően, különösen a határokon átnyúló ügyletek tekintetében. A tanulmány részletesen elemzi az e-kereskedelem sajátos fogyasztóvédelmi kockázatait, kiemeli a tájékoztatási kötelezettségeket, a személyes adatok védelmét, amelyet mind az uniós, mind a nemzeti jogszabályok megerősítenek. A digitális környezetben olyan új típusú visszaélések jelentek meg, mint a dinamikus árazás, a nem valódi értékelések, és az influencer marketing, amelyek további szabályozási és felügyeleti válaszokat igényelnek. A tanulmány bemutatja a fogyasztóvédelmi eszköztár alakulását: a jogszabályi keretek mellett egyre nagyobb hangsúlyt kapnak a technológiai megoldások, a fogyasztói tudatosság és az alternatív vitarendezési mechanizmusok. A hatékony fogyasztóvédelem kulcsa az adaptív szabályozás, a hatékony közérdekű jogérvényesítés, a digitális tudatosság és a nemzetközi együttműködés fejlesztése, amelyek együttesen biztosítják a biztonságos és fenntartható online kereskedelem fejlődését.

Kulcsszavak: fogyasztóvédelem, adatvédelem, tisztességtelen kereskedelmi gyakorlatok, digitális szabályozás, online vitarendezés

Abstract: The rise of e-commerce has fundamentally changed consumer habits and commercial practices, creating new challenges for consumer protection. When shopping online, consumers are unable to physically inspect products, find it more difficult to ascertain the reliability of sellers, and are often uncertain about their legal remedies, particularly in cross-border transactions. The study analyzes in detail the specific consumer protection risks of e-commerce, highlighting information obligations and the protection of personal data, which are reinforced by both EU and national legislation. New types of abuses have emerged in the digital environment, such as dynamic pricing, fake reviews, and influencer marketing, which require further regulatory and supervisory responses. The study presents the evolution of the consumer protection toolkit: in addition to the legal framework, increasing emphasis is being placed on technological solutions, consumer awareness, and alternative dispute resolution mechanisms. The key to effective consumer protection is adaptive regulation, effective public enforcement, digital awareness, and the development of international cooperation, which together ensure the development of safe and sustainable online commerce.

Keywords: consumer protection, data protection, unfair commercial practices, digital regulation, online dispute resolution

* dr. Keskeny Dávid, abszolutóriumot szerzett PhD hallgató, Károli Gáspár Református Egyetem, Állam-és Jogi Kar. Témavezető: Prof. Dr. Miskolczy Bodnár Péter

1. Bevezetés

Az elektronikus kereskedelem és a fogyasztóvédelem kapcsolata napjaink egyik legaktuálisabb és legösszetettebb kérdésköre, amely számos jogi és gyakorlati kihívást vet fel. Az online vásárlások térnyerésével és a digitális piacok globális térhódításával a fogyasztóvédelem hagyományos eszközei és megközelítései jelentős átalakuláson mennek keresztül.¹ Az e-kereskedelem rohamos terjedése alapjaiban változtatta meg a fogyasztói szokásokat és a kereskedelmi gyakorlatokat. Az internetes vásárlások során a fogyasztó nem tudja fizikailag megvizsgálni a terméket, személyesen konzultálni az eladóval, és gyakran nehézségekbe ütközik a termék eredetének, minőségének vagy az eladó megbízhatóságának ellenőrzése is. A digitális piacok globális jellege további kihívásokat támaszt. A határon átnyúló online tranzakciók esetében a fogyasztók gyakran bizonytalanok abban, hogy mely ország jogszabályai alkalmazandók, és hogyan érvényesíthetik jogaikat egy esetleges jogvita esetén.² Ez a bizonytalanság alááshatja a fogyasztói bizalmat és gátolhatja az e-kereskedelem további fejlődését. Kutatásunk fő célja, hogy átfogó képet adjon az elektronikus kereskedelem fogyasztóvédelmi aspektusairól, azonosítsa a legfőbb kihívásokat és vizsgálja a lehetséges megoldásokat. Kiemelten foglalkozunk az alábbi kérdésekkel: Milyen speciális fogyasztóvédelmi kockázatokat hordoz az e-kereskedelem? Hogyan biztosítható a fogyasztók megfelelő tájékoztatása és védelme az online térben? Milyen jogi és technológiai eszközök állnak rendelkezésre a fogyasztói jogok érvényesítésére az e-kereskedelemben?

Az elméleti háttér bemutatása során részletesen kitérek az elektronikus kereskedelem fogalmára, jellemzőire, valamint a fogyasztóvédelem alapelveire és jogszabályi hátterére.³ Ezt követően elemzem az e-kereskedelem által felvetett specifikus fogyasztóvédelmi kihívásokat, különös tekintettel az online szerződés-kötés problémáira, a tájékoztatási kötelezettségre, az adatvédelmi kérdésekre és a tisztességtelen kereskedelmi gyakorlatokra. A későbbiekben a fogyasztóvédelmi eszközök és megoldások kerülnek bemutatásra, kitérve mind a jogi szabályozásra (EU-s és hazai szinten), mind a technológiai megoldásokra és a fogyasztói tudatosság növelésének lehetőségeire. Külön figyelmet szentelünk az alternatív vitarendezési mechanizmusoknak, amelyek kulcsfontosságúak lehetnek a határon átnyúló e-kereskedelmi viták hatékony rendezésében.⁴ E kutatás jelentősége abban rejlik, hogy az e-kereskedelem további fejlődéséhez elengedhetetlen a fogyasztói bizalom erősítése és a hatékony fogyasztóvédelmi mechanizmusok

¹ VEREBICS J.: Az elektronikus kereskedelem jogi környezete. *Gazdaság és Jog*, 2020., 21-29.

² NAGY Z.: Problémafelvetés a pénzügyi fogyasztóvédelem területén. *Miskolci Jogi Szemle*, 2017.

³ FAZEKAS J.: Fogyasztóvédelmi jog. *Complex Kiadó*, 2007., 148.

⁴ LENTNER Cs.: Bankmenedzsment - Bankszabályozás - Pénzügyi fogyasztóvédelem. *Nemzeti Közszerkeleti és Tankönyv Kiadó*, 2012. 143.

kialakítása. Csak egy biztonságos és megbízható online kereskedelmi környezetben várható el, hogy a fogyasztók teljes mértékben kihasználják az e-kereskedelem nyújtotta lehetőségeket, hozzájárulva ezzel a digitális gazdaság további növekedéséhez.

Kutatásunk fő célja, hogy átfogó képet adjon az elektronikus kereskedelem fogyasztóvédelmi aspektusairól... A kutatás során a jogszabály-elemzés, az esettanulmány-elemzés és a szakirodalom feldolgozása módszereit alkalmaztuk, figyelembe véve az Európai Unió és Magyarország vonatkozó jogszabályait és gyakorlatát.

2. Az elektronikus kereskedelem

Az elektronikus kereskedelem (e-kereskedelem) az áruk és szolgáltatások elektronikus úton, elsősorban az interneten és számítógépes hálózatokon keresztül történő eladása, vásárlása, illetve cseréje.⁵ Az e-kereskedelem magában foglalja nemcsak a végfelhasználóknak történő értékesítést (B2C), hanem a vállalkozások közötti (B2B) tranzakciókat is. Az e-kereskedelem főbb jellemzői:

1. Folyamatos rendelkezésre állás: A webáruházak általában a nap 24 órájában, az év 365 napján elérhetőek.
2. Globális elérhetőség: Az interneten keresztül a világ bármely pontjáról lehet vásárolni.
3. Széles termékpaletta: A fizikai üzletekkel ellentétben, az online áruházak szinte korlátlan számú terméket kínálhatnak.
4. Személyre szabhatóság: Az online platformok lehetővé teszik a vásárlói élmény és ajánlatok személyre szabását.
5. Gyors tranzakciók: Az elektronikus fizetési rendszerek révén a vásárlások gyorsan lebonyolíthatók.
6. Információgazdagság: A termékekről és szolgáltatásokról részletes információk érhetők el.

Az e-kereskedelem rohamos terjedése új kihívások elé állítja a fogyasztóvédelmet. A hagyományos kereskedelemhez képest az online térben fokozottan jelentkezik az információs aszimmetria és a fogyasztói kiszolgáltatottság problémája.⁶

3. A fogyasztóvédelem alapelvei és jogszabályi háttere

⁵ VEREBICS J.: i.m. 121-123.

⁶ MISKOLCZI BODNÁR P.: Fogyasztóvédelmi jog I-II. Patrocinium Kiadó, 2016., 78.

A fogyasztóvédelem célja a felek közötti egyensúly helyreállítása, a fogyasztó jogainak és érdekeinek képviselése, érvényre juttatása. Az Európai Unióban a fogyasztói érdekek védelme öt alapelve épül:

1. A fogyasztók egészségének és biztonságának védelme
2. A fogyasztók gazdasági érdekeinek védelme
3. A fogyasztók tájékoztatása és oktatása
4. A fogyasztói igények érvényesítése
5. A fogyasztók képviselése⁷

3.1 Magyarországon a fogyasztóvédelem jogszabályi hátterének alapját a következő törvények adják:

1. A fogyasztóvédelemről szóló 1997. évi CLV. törvény: Ez a törvény tartalmazza a fogyasztóvédelem alapvető szabályait, beleértve a panaszkezelést, az ügyfélszolgálatokra vonatkozó előírásokat és a békéltető testületek működését.
2. A Polgári Törvénykönyvről szóló 2013. évi V. törvény: A Ptk. szabályozza a szerződések általános szabályait, beleértve a fogyasztói szerződésekre vonatkozó speciális rendelkezéseket.
3. A fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról szóló 2008. évi XLVII. törvény: Ez a törvény tiltja a tisztességtelen kereskedelmi gyakorlatokat, beleértve a megtévesztő és agresszív gyakorlatokat.
4. A termékek piacfelügyeletéről szóló 2012. évi LXXXVIII. törvény: Ez a törvény biztosítja, hogy a forgalomba hozott termékek megfeleljenek a biztonsági és minőségi követelményeknek.
5. Az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény: Ez a törvény szabályozza az elektronikus kereskedelmi szolgáltatásokat.

3.2 Az elektronikus kereskedelem és a fogyasztóvédelem kapcsolata

Az e-kereskedelem és a fogyasztóvédelem szorosan összekapcsolódik, mivel az online vásárlások térnyerésével új típusú fogyasztóvédelmi kihívások jelentek meg. Az elektronikus kereskedelemben a fogyasztók fokozott védelemre szorulnak, mivel:

⁷ Az Európai Gazdasági Közösség Tanácsa 1975. április 14-én fogadta el az első fogyasztóvédelmi programot, amely az úgynevezett Fogyasztói Jogok Közös Piaci Magna Chartájaként ismert

1. Nem tudják fizikailag megvizsgálni a terméket vásárlás előtt.
2. Nehezebben tudják ellenőrizni az eladó megbízhatóságát.
3. A határon átnyúló tranzakciók esetén bizonytalanság merülhet fel a jogérvényesítés terén.

3.3 Az elektronikus kereskedelem fogyasztóvédelmi kihívásai

Az e-kereskedelem rohamos terjedése számos új fogyasztóvédelmi kihívást hozott magával. Ezek a kihívások elsősorban az online környezet sajátosságaiból, a hagyományos kereskedelemtől eltérő jellegéből fakadnak.

4. Online szerződéskötés problémái

Az online szerződéskötés során a fogyasztók számos nehézséggel szembesülhetnek:

1. A szerződési feltételek átláthatatlansága: Az online felületeken gyakran hosszú és bonyolult általános szerződési feltételeket (ÁSZF) találunk, amelyeket a fogyasztók ritkán olvasnak el alaposan.⁸
2. Tévedések a megrendelés során: Az online felületek nem mindig biztosítanak megfelelő lehetőséget a hibák javítására a megrendelési folyamat során. Ez különösen problematikus lehet, ha a fogyasztó véletlenül rossz terméket vagy mennyiséget rendel meg.⁹
3. A szerződés létrejöttének bizonytalansága: Nem mindig egyértelmű, hogy pontosan mikor jön létre a szerződés az online tranzakciók során. Ez később vitákhoz vezethet a felek között.¹⁰
4. Határon átnyúló ügyletek problémái: Az online kereskedelem gyakran nemzetközi jellegű, ami megnehezíti az alkalmazandó jog meghatározását és a jogérvényesítést.¹¹

5. Tájékoztatási kötelezettség az e-kereskedelemben

Az e-kereskedelem egyik kulcsfontosságú eleme a megfelelő tájékoztatás biztosítása a fogyasztók számára. Ennek hiánya vagy hiányossága számos problémát okozhat:

⁸ VEREBICS J. i.m. 58-60.

⁹ PUSZTAHELYI R.: Unfair commercial practices and vulnerability of consumers in the digital marketplace. Multidiszciplináris Kihívások, Sokszínű Válaszok, 2022., 43-46.

¹⁰ VEREBICS J.: Szerződések az elektronikus kereskedelem körében. Gazdaság és Jog, 2018., 79.

¹¹ NAGY Z.: i.m. 77-82.

1. Hiányos termékinformációk: Az online vásárlás során a fogyasztó nem tudja fizikailag megvizsgálni a terméket.¹²
2. Rejtett költségek: Gyakori probléma, hogy az online kereskedők nem tüntetik fel egyértelműen az összes járulékos költséget (pl. szállítási díj, kezelési költség) a vásárlási folyamat elején.¹³
3. Elállási jog nem megfelelő kommunikálása: Az online vásárlás esetén a fogyasztókat megillető 14 napos elállási jogról való tájékoztatás gyakran hiányos vagy félrevezető.¹⁴
4. Adatvédelmi tájékoztatás hiányosságai: Az e-kereskedelmi oldalak gyakran nem nyújtanak megfelelő tájékoztatást a személyes adatok kezeléséről és védelméről¹⁵

6. Adatvédelmi kérdések

Az adatvédelem az elektronikus kereskedelem egyik legfontosabb és legösszetettebb kérdésköre, amely túlmutat a fogyasztók megfelelő tájékoztatásának biztosításán. Az információs aszimmetria csökkentése és az egyértelmű tájékoztatás elengedhetetlen a fogyasztók jogainak érvényesítéséhez, de önmagában nem elegendő az adatbiztonság garantálásához. Az adatvédelmi szabályok szigorú betartása és az adatokkal való visszaélések elleni hatékony védelem kiemelt szerepet játszanak a fogyasztói bizalom fenntartásában és az elektronikus kereskedelem fenntartható növekedésében.

A digitális gazdaságban a fogyasztók személyes adatai rendkívül értékesek, hiszen az online vállalkozások számos üzleti modelljüket az adatgyűjtésre és adatfeldolgozásra építik. A nagy adatbázisok elemzése lehetővé teszi a vállalatok számára, hogy pontosabb termékajánlatokat és célzott hirdetéseket kínáljanak, de ennek eredményeként az adatvédelem területén új típusú kockázatok jelentkeznek.

6.1 Az adatgyűjtés és -felhasználás kockázatai

Az online platformok jelentős mennyiségű személyes adatot gyűjtenek a felhasználókról, gyakran anélkül, hogy a fogyasztók tisztában lennének azzal, milyen információkat osztanak meg és milyen célból történik ezek felhasználása. A legtöbb e-kereskedelmi weboldal és mobilalkalmazás sütiket, nyomkövetőket és más analitikai eszközöket használ annak érdekében, hogy információkat gyűjtsön a felhasználók viselkedéséről, vásárlási szokásairól és preferenciáiról. Bár ezek az adatok hozzájárulhatnak a jobb felhasználói élményhez, az adatvédelem elégtelen

¹² MISKOLCZI BODNÁR P. i.m. 123-124.

¹³ MISKOLCZI BODNÁR P.: Fogyasztóvédelmi szabályok a Ptk.-ban. Magyar Jog, 2018., 29.

¹⁴ VEREBICS J.; i.m. 56-59.

¹⁵ LING F.: A digitális világ fogyasztói üzleti döntésre gyakorolt hatása. Opuscula Iuvenum, 2018., 54-57.

biztosítása sérülékennyé teheti a fogyasztókat az adatlopásokkal és visszaélésekkel szemben.

Tipikus adatvédelmi problémák az e-kereskedelemben:

- **Beleegyezés nélküli adatgyűjtés:** Sok online áruház nem biztosít egyértelmű választási lehetőséget a felhasználóknak arra vonatkozóan, hogy milyen adatokat kívánnak megosztani.¹⁶
- **Adathalászat és visszaélések:** Egyes csálók és kiberbűnözők az e-kereskedelmi platformokon keresztül próbálnak érzékeny adatokat megszerezni, például hitelkártyaadatokat vagy személyes azonosító információkat.¹⁷
- **Átláthatatlan adatmegosztási gyakorlatok:** Egyes online szolgáltatások az ügyféladatokat harmadik feleknek adják tovább (például reklámcégeknek) anélkül, hogy a fogyasztók ezt egyértelműen jóváhagyták volna.¹⁸
- **Adatbritek és kiszivárgások:** Az elmúlt években több nagy e-kereskedelmi platform is célpontjává vált hackertámadásoknak, amelyek során vásárlók millióinak adatai kerültek veszélybe.¹⁹

6.2 A célzott reklámok és profilalkotás etikai kérdései

A modern e-kereskedelem egyik legnagyobb vívmánya a mesterséges intelligencia (AI) alapú profilalkotás, amely lehetővé teszi a vállalatok számára, hogy személyre szabott ajánlatokat nyújtsanak a vásárlóknak. A problémát az jelenti, hogy a fogyasztók gyakran nincsenek tisztában azzal, hogy az ő viselkedésüket, preferenciáikat, sőt érzelmi reakcióikat is folyamatosan elemzik.²⁰

6.3 Adatvédelmi aggályok a célzott reklámokkal kapcsolatban:

- **Diszkrimináció és manipuláció:** Az AI-alapú rendszerek egyes fogyasztói csoportokat hátrányosan érinthetnek, például magasabb árakat

¹⁶ ZÓDI Z.: Az információs aszimmetria és a big data kapcsolata a digitális piacokon. Infokommunikáció és Jog, 2020/2., 15–27.

¹⁷ KÁRÁSZ A.: Kiberbiztonsági kihívások az online kereskedelemben: A fogyasztók védelmének lehetőségei. Miskolci Jogi Szemle. 2019/1., 45–59.

¹⁸ FORGÁCS A.: A személyes adatok üzleti célú felhasználása az e-kereskedelemben: Etikai és jogi dilemmák. Közgazdasági Szemle, 2021/3., 72–89.

¹⁹ MOLNÁR G.: Adatkezelési incidensek és azok hatása az online fogyasztói bizalomra. Infotér Tudományos Közlemények, 2018/1., 98–112.

²⁰ HOFFMAN M.: A digitális reklámok adatvédelmi aspektusai: GDPR és beyond. Jogi Tanulmányok. 2019/2., 102–118.

mutathatnak bizonyos régiók vagy társadalmi-demográfiai jellemzők alapján.²¹

- **Adatgyűjtés a felhasználók tudta nélkül:** Az algoritmusok sok esetben nem csak az online vásárlási előzményeket, hanem a közösségi médiás tevékenységet és a böngészési előzményeket is felhasználják.²²
- **Felhasználói viselkedés befolyásolása:** A digitális környezetben alkalmazott úgynevezett „dark pattern” tervezési elemek manipulálhatják a vásárlókat, hogy olyan döntéseket hozzanak, amelyeket egyébként nem hoznának meg (például drágább termék vásárlása, hosszabb előfizetés vállalása).²³

6.4 Az adatvédelem és a jogérvényesítés nehézségei

Bár az Európai Unió által bevezetett Általános Adatvédelmi Rendelet (GDPR) jelentős előrelépést hozott az adatvédelem területén, a fogyasztók gyakran még mindig nehezen tudják érvényesíteni jogaikat.²⁴

Jogi és gyakorlati akadályok:

- A fogyasztóknak sok esetben nincs megfelelő ismeretük arról, hogyan kérhetik adataik törlését vagy módosítását.²⁵
- A határon átnyúló e-kereskedelmi ügyekben a jogérvényesítés továbbra is problémás, mivel a különböző országok eltérő adatvédelmi szabályozásokat alkalmazhatnak.²⁶
- A vállalatok gyakran hosszú és bonyolult adatkezelési szabályzatokat alkalmaznak, amelyeket a fogyasztók nem olvasnak el.²⁷

²¹ NAGY M.: Az algoritmusok uralma: Az AI és a digitális piacok fogyasztóvédelmi kihívásai. *Gazdaság és Jog*, 2022/4., 33–46.

²² KOVÁCS T.: A digitális platformok árazási stratégiái és azok fogyasztóvédelmi vonatkozásai. *Verseny és Szabályozás*, 2020/1., 58–73.

²³ LUGURI, J. – STRAHILEVITZ, L. J.: Shining a Light on Dark Patterns. *Journal of Legal Analysis*, 2021/13., 43–66.

²⁴ SÁNDOR I.: A GDPR gyakorlati kihívásai az e-kereskedelemben. *Infokommunikáció és Jog*, 2019/3., 21–34.

²⁵ TÓTH A.: Az adatvédelmi jogérvényesítés határon átnyúló problémái és a nemzetközi együttműködés lehetőségei. *Európai Jog*, 2020/2., 89–105.

²⁶ VEREBICS J. i.m. 34.

²⁷ RÉVÉSZ L.: Fogyasztóvédelem és adatbiztonság: Az állami szerepvállalás dilemmái. *Állam- és Jogtudomány*, 2021/1., 55–69.

7. Lehetséges megoldások a fogyasztók védelmére

Az adatvédelmi kockázatok csökkentése érdekében szükséges a jogalkotás és a technológiai megoldások összehangolása.²⁸

A fogyasztók védelmét elősegítő lépések:

1. **Átlátható adatkezelési gyakorlatok bevezetése:** A vállalatoknak könnyen érthető és rövid adatvédelmi nyilatkozatokat kell biztosítaniuk.²⁹
2. **Erősebb jogi szabályozás és végrehajtás:** A hatóságoknak fokozott figyelmet kell fordítaniuk az adatvédelmi jogsértések feltárására és szankcionálására.³⁰
3. **Kibervédelmi intézkedések erősítése:** Az e-kereskedelmi oldalaknak kötelezővé kellene tenniük a kétfaktoros hitelesítést és az SSL/TLS titkosítást a biztonság növelése érdekében.³¹
4. **Fogyasztói tudatosság növelése:** A fogyasztóknak oktatási kampányokon és online tananyagokon keresztül meg kell ismerniük a digitális világ veszélyeit és jogaikat.³²

Az adatvédelem kérdésköréről elmondható, hogy túlmutat a fogyasztók tájékoztatásán: az adatok gyűjtése, feldolgozása és védelme olyan komplex jogi és technológiai kihívásokat vet fel, amelyekre folyamatosan frissített szabályozásokkal és innovatív megoldásokkal kell válaszolni. A digitális gazdaságban a fogyasztóvédelem egyik alappillére az adatbiztonság, amely nélkül az elektronikus kereskedelem iránti bizalom meginghat.

Az e-kereskedelem során hatalmas mennyiségű személyes adat kerül feldolgozásra, ami számos adatvédelmi kockázatot hordoz magában:

1. **Adatgyűjtés és -felhasználás átláthatatlansága:** A fogyasztók gyakran nincsenek tisztában azzal, hogy milyen adataikat gyűjtik és mire használják fel az e-kereskedelmi platformok.

²⁸ SOLYMOSI B.: A digitális fogyasztóvédelem szabályozási irányai az Európai Unióban. Európai Szemle, 2021/2., 75–91.

²⁹ CSÁNYI G.: Kibervédelem és adatbiztonság az e-kereskedelemben: Technológiai megoldások és kihívások, Informatikai Jog és Politika, 2022/4., 112–129.

³⁰ LING F. i.m. 23–38.

³¹ NAGY Z. i.m. 89–101.

³² KOVÁCS L.: A fogyasztói tudatosság megjelenése a fogyasztóvédelemben. In: KOVÁCS L. (szerk.), Marketing és fogyasztóvédelem, Budapest: Akadémiai Kiadó, 2020, 45–60.

2. Adatbiztonság kockázatai: Az online kereskedők által tárolt személyes és pénzügyi adatok vonzó célpontot jelentenek a kiberbűnözők számára.³³
3. Profilalkotás és személyre szabott hirdetések: Az összegyűjtött adatok alapján történő profilalkotás és célzott reklámozás etikai és adatvédelmi kérdéseket vet fel.³⁴
4. Határon átnyúló adattovábbítás: A nemzetközi e-kereskedelem során az adatok gyakran különböző joghatóságok között mozognak, ami megnehezíti a megfelelő adatvédelmi szabályok betartását és ellenőrzését.³⁵

A fogyasztóvédelem az e-kereskedelemben több területen is megnyilvánul:

1. Tájékoztatási kötelezettség: Az online kereskedőknek részletes tájékoztatást kell nyújtaniuk a termékekről, árakról, szállítási feltételekről és a vállalkozás adatairól.
2. Elállási jog: A fogyasztóknak joguk van 14 napon belül indoklás nélkül elállni az online vásárlástól.
3. Adatvédelem: A GDPR bevezetésével szigorúbb szabályok vonatkoznak a személyes adatok kezelésére az e-kereskedelemben.
4. Tisztességtelen kereskedelmi gyakorlatok tilalma: Az online térben is tilos a megtévesztő vagy agresszív kereskedelmi gyakorlatok alkalmazása.
5. Alternatív vitarendezés: Az online vitarendezési platform bevezetésével egyszerűbbé vált a határon átnyúló fogyasztói jogviták rendezése.

A fentiek a hagyományos fogyasztóvédelemben is létező, ott kialakult jogintézmények, azonban az e-kereskedelem folyamatos fejlődése miatt a fogyasztóvédelmi szabályozásnak is folyamatosan alkalmazkodnia kell az új kihívásokhoz. A digitalizáció okozta kihívások leküzdését az uniós fogyasztóvédelmi szabályok hatékonyabb végrehajtása és korszerűsítése tekintetében történő módosításáról szóló 2019/2161 EU irányelv is alapvető célként határozta meg. A jövőben várhatóan további szabályozási kihívásokkal kell szembenézni, különös tekintettel az olyan új technológiák alkalmazására, mint a mesterséges intelligencia vagy a blokklánc. Az e-kereskedelem és a fogyasztóvédelem kapcsolatának folyamatos fejlesztése elengedhetetlen a fogyasztói bizalom erősítéséhez és a digitális gazdaság további növekedéséhez.

³³ KRIESCH A.: E-kereskedelem és fogyasztóvédelem. Bács-Kiskun Megyei Kereskedelmi és Iparkamara, 2014., 46.

³⁴ M. LESZCZYŃSKA.: Public Perception and Unfair Trade Practices in the Digital Era, Columbia Law School, 2024., 102-120.

³⁵ S. E. ROLLAND.: Consumer protection issues in cross-border ecommerce. Research Handbook on Electronic Commerce Law, 2016., 55-61.

8. Tisztességtelen kereskedelmi gyakorlatok online környezetben

Az online környezet sajátosságai új lehetőségeket teremtettek a tisztességtelen kereskedelmi gyakorlatok számára:

1. Tisztességtelen árazási technikák: Az online kereskedők gyakran alkalmaznak olyan árazási technikákat (pl. dinamikus árazás, személyre szabott árak), amelyek megtéveszthetik a fogyasztókat.³⁶
2. Hamis vélemények és értékelések: Az online értékelések és vélemények manipulálása komoly problémát jelent, mivel ezek jelentősen befolyásolják a fogyasztói döntéseket.³⁷
3. Dark patterns: Az online felületek olyan tervezési elemei, amelyek manipulálják vagy megtévesztik a felhasználókat, például nehezen megtalálható lemondási opciók vagy kényszerített regisztráció formájában.³⁸
4. Influencer marketing átláthatatlansága: A közösségi médiában terjedő influencer marketing gyakran nem teszi egyértelművé a reklámtartalmat, megtévesztve ezzel a fogyasztókat.³⁹

9. Fogyasztóvédelmi eszközök az elektronikus kereskedelemben

Az alábbiakban áttekintjük a főbb fogyasztóvédelmi eszközöket, amelyek az e-kereskedelem területén alkalmazhatók.

9.1 Jogi szabályozás (EU-s és hazai)

Az Európai Unió és Magyarország is számos jogszabályt alkotott az e-kereskedelem fogyasztóvédelmi aspektusainak szabályozására:

1. Az Európai Parlament és a Tanács 2011/83/EU irányelve a fogyasztók jogairól: Ez az irányelv harmonizálja a távollévők között kötött

³⁶ BARA Z.: A kartellek szerepe a verseny alakulásában (2006-2007). Versenytükrő 2009. XL. évf. 2009/5., 2-17.

³⁷ J. P. NEHE: Protecting privacy with "heightened" notice and choice. Research Handbook on Electronic Commerce Law, 2016., 43-44.

³⁸ J. LUGURI – J. STRAHILEVITZ.: Shining a Light on Dark Patterns. Journal of Legal Analysis, 2021., 42-50.

³⁹ S. B. SPENCER: Predictive analytics, consumer privacy, and ecommerce regulation. Research Handbook on Electronic Commerce Law, 2016., 75.

szerződésekre vonatkozó szabályokat, beleértve az e-kereskedelmet is. Fontos eleme a 14 napos elállási jog biztosítása a fogyasztók számára.⁴⁰

2. Az Európai Parlament és a Tanács (EU) 2019/2161 irányelve: Ez az irányelv tovább erősíti a fogyasztóvédelmi szabályokat, különös tekintettel az online piacokra és az összehasonlító weboldalakra.
3. 2001 évi CVIII. törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről: Ez a törvény szabályozza az elektronikus kereskedelmi szolgáltatásokat Magyarországon, beleértve a szolgáltatók tájékoztatási kötelezettségeit és a fogyasztói jogokat.⁴¹
4. 45/2014. (II. 26.) Korm. rendelet a fogyasztó és a vállalkozás közötti szerződések részletes szabályairól: Ez a rendelet részletesen szabályozza a távollévők között kötött szerződéseket, beleértve az elállási jogot és a tájékoztatási kötelezettségeket.⁴²

9.2 Technológiai megoldások

A biztonságos fizetési rendszerek kulcsfontosságúak az e-kereskedelem fogyasztóvédelmében.

1. SSL/TLS titkosítás: Ez a technológia biztosítja a biztonságos adatátvitelt a fogyasztó és a kereskedő között.⁴³
2. Tokenizáció: Ez a módszer lehetővé teszi a érzékeny fizetési adatok biztonságos tárolását és továbbítását.⁴⁴
3. Kétfaktoros hitelesítés: Ez a módszer további biztonsági réteget ad a fizetési folyamathoz, csökkentve a visszaélések kockázatát.⁴⁵
4. Mesterséges intelligencia alapú csalásfelderítés: Az AI és gépi tanulás segítségével a rendszerek képesek azonosítani a gyanús tranzakciókat és megelőzni a visszaéléseket.⁴⁶

9.3 Fogyasztói tudatosság növelése

A fogyasztók oktatása és tájékoztatása kulcsfontosságú az e-kereskedelem biztonságának növelésében:

⁴⁰ VEREBICS J. i.m. 2020., 32-43.

⁴¹ VEREBICS J. i.m. 2018., 99.

⁴² MISKOLCZI BODNÁR i.m. 2015., 76.

⁴³ KRIESCH A. i.m. 21.

⁴⁴ LUGURI - STRAHILEVITZ i.m. 107.

⁴⁵ LING F. i.m. 67.

⁴⁶ NAGY Z. i.m. 87-88.

1. Oktatási kampányok: Az állami szervek és fogyasztóvédelmi szervezetek rendszeresen indítanak kampányokat a fogyasztók tájékoztatására az online vásárlás kockázatairól és jogaikról.
2. Online platformok: Számos weboldal és alkalmazás nyújt információt a fogyasztóknak az e-kereskedelemmel kapcsolatos jogaikról és kötelezettségeikről.⁴⁷
3. Fogyasztóvédelmi chatbotok: Egyre több vállalat alkalmaz chatbotokat, amelyek azonnali választ adnak a fogyasztók kérdéseire és segítenek eligazodni a jogaikban.⁴⁸
4. Iskolai programok: Több országban már az iskolai tantervbe is beépítették az online fogyasztóvédelmi ismereteket.⁴⁹

9.4 Alternatív vitarendezési mechanizmusok

Az alternatív vitarendezési mechanizmusok (ADR) gyors és költséghatékony megoldást kínálnak az e-kereskedelmi viták rendezésére.

1. Ilyen lehet az online vitarendezési platform (OVR): Az Európai Unió által létrehozott platform lehetővé teszi a fogyasztók és kereskedők közötti viták online rendezését.⁵⁰
2. E-mediáció: Az online mediáció lehetővé teszi a felek közötti közvetítést egy semleges harmadik fél segítségével, anélkül, hogy személyesen találkoznának.⁵¹
3. Online arbitrázs: Ez a módszer lehetővé teszi a viták gyors és kötelező erejű rendezését egy online választottbíró segítségével.⁵²
4. Belső panaszkezelési rendszerek: Sok e-kereskedelmi platform saját panaszkezelési rendszert működtet, amely lehetővé teszi a viták gyors és hatékony rendezését a platform keretein belül.⁵³

Elmondható, hogy az e-kereskedelem fogyasztóvédelmi eszköztára folyamatosan fejlődik és bővül. A jogi szabályozás, a technológiai megoldások, a fogyasztói tudatosság növelése és az alternatív vitarendezési mechanizmusok együttesen biztosítják a fogyasztók védelmét az online térben. Ugyanakkor fontos

⁴⁷ VEREBICS J. i.m. 2020., 65.

⁴⁸ LING F. i.m. 41.

⁴⁹ KRIESCH A.: i.m. 24.

⁵⁰ VEREBICS J.: i.m. 2018., 67.

⁵¹ NAGY Z.: i.m. 23-24.

⁵² MISKOLCZI BODNÁR P.: i.m. 2016., 124.

⁵³ LING F.: i.m. 42.

megjegyezni, hogy az e-kereskedelem gyors fejlődése miatt ezeket az eszközöket folyamatosan felül kell vizsgálni és adaptálni kell az új kihívásokhoz.

10. Esettanulmányok az e-kereskedelmi fogyasztóvédelem területéről

Az e-kereskedelem területén számos érdekes jogeset és sikeres fogyasztóvédelmi intézkedés történt az elmúlt években. Az alábbiakban néhány konkrét példát mutatok be és elemzem részletesen.

10.1 Amazon EU Sàrl ügy

2019-ben az Európai Unió Bírósága (EUB) a C-649/17. számú ügyben (Amazon EU Sàrl)⁵⁴ hozott ítéletet. Az ügyben a német fogyasztóvédelmi szövetség kifogásolta, hogy az Amazon nem teszi elérhetővé telefonszámát a fogyasztók számára a szerződéskötés előtt, megsértve ezzel a fogyasztók jogairól szóló 2011/83/EU irányelv 6. cikk (1) bekezdését. Az EUB kimondta, hogy az e-kereskedelmi platformok nem kötelesek minden esetben telefonszámot biztosítani, de kötelesek olyan hatékony kommunikációs eszközt rendelkezésre bocsátani, amely lehetővé teszi a fogyasztók számára a gyors és hatékony kapcsolatfelvételt. Az ítélet értelmében a telefonos elérhetőség hiánya nem feltétlenül minősül jogsértésnek, ha a vállalkozás más, egyenértékű kommunikációs csatornákat biztosít (pl. chat, e-mail). Az ügy tanulsága, hogy a fogyasztóvédelmi szabályoknak a technológiai fejlődéshez kell igazodniuk, és a vállalkozásoknak rugalmasan kell alkalmazkodniuk a fogyasztói igényekhez, miközben biztosítják a hatékony kommunikációt.

10.2 OYO szállásfoglalási alkalmazása

2020 szeptemberében az indonéz Nemzeti Fogyasztóvédelmi Ügynökség (BPKN) számos panaszt kapott fogyasztóktól az OYO szállásfoglalási alkalmazással kapcsolatban. Ez az eset jól példázza az e-kereskedelmi fogyasztóvédelem határon átnyúló kihívásait, mivel az OYO központja nem Indonéziában található.⁵⁵ A panaszok főként a félrevezető hirdetésekre, a nem megfelelő szolgáltatásminőségre és a nehézkes panaszkezelésre vonatkoztak. Az ügy rámutatott arra, hogy a globális e-kereskedelmi platformok esetében különösen fontos a hatékony, országokon átívelő fogyasztóvédelmi együttműködés kialakítása.

⁵⁴ Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e.V. v Amazon EU Sàrl, C-649/17, ECLI:EU:C:2019:576.

⁵⁵ Durianto Darmadi, Riyadi Slamet, Santiago Faisal, Consumer Protection in E-Commerce: A Case Study on Lodging Applications, Proceedings of the 1st International Conference on Law and Human Rights 2020. 120-122.

10.3 Valve Corporation ügy

Az ausztrál versenyhatóság (ACCC) pert indított a Valve Corporation ellen, amely a Steam nevű online játékatplatformot üzemelteti. A vád szerint a Valve megsértette az ausztrál fogyasztóvédelmi törvényt azzal, hogy nem biztosított visszatérítési jogot a fogyasztóknak. Bár a Valve azt állította, hogy nem tartozik az ausztrál joghatóság alá, a bíróság megállapította, hogy a cég Ausztráliában üzleti tevékenységet folytat, ezért vonatkoznak rá az ausztrál fogyasztóvédelmi szabályok.⁵⁶ Ez az eset fontos precedenst teremtett azzal kapcsolatban, hogy a külföldi székhelyű e-kereskedelmi vállalatok is kötelesek betartani a helyi fogyasztóvédelmi előírásokat azokon a piacokon, ahol szolgáltatásaikat kínálják.

11. Sikeres fogyasztóvédelmi jogalkotások

11.1 EU-s geoblokkolás elleni rendelet

Az Európai Unió 2018-ban elfogadta a geoblokkolás elleni rendeletet, amely tiltja az online kereskedők számára, hogy indokolatlanul megkülönböztessék a fogyasztókat nemzetiségük, lakóhelyük vagy letelepedési helyük alapján. Ez az intézkedés jelentősen javította a határon átnyúló e-kereskedelem feltételeit az EU-n belül, és erősítette a fogyasztók jogait.⁵⁷

11.2 Digitális Szolgáltatási Rendelet (DSA)

Az EU 2022-ben elfogadta a Digitális Szolgáltatási Rendelet, amely szigorúbb szabályokat ír elő az online platformok számára a jogellenes tartalmak, az átláthatóság és a fogyasztóvédelem területén. A törvény többek között kötelezi a nagy online platformokat, hogy rendszeresen értékeljék és csökkentsék a rendszereikből eredő kockázatokat, beleértve a fogyasztóvédelmi kockázatokat is.⁵⁸

11.3 Kínai e-kereskedelmi törvény

Kína 2019-ben léptette hatályba új e-kereskedelmi törvényét,⁵⁹ amely szigorú szabályokat ír elő az online kereskedők számára. A törvény többek között kötelezi a platformokat, hogy ellenőrizzék a rajtuk keresztül értékesítő kereskedők engedélyeit, és felelősséget vállaljanak a hamis termékek értékesítéséért. Ez az

⁵⁶ Australian Competition and Consumer Commission v Valve Corporation (No 3) [2016] FCA 196.

⁵⁷ Az Európai Parlament és a Tanács (EU) 2018/302 rendelete

⁵⁸ Az Európai Parlament és a Tanács (EU) 2022/2065 rendelete

⁵⁹ E-commerce Law of the People's Republic of China, 2018.

intézkedés jelentősen javította a kínai e-kereskedelmi piac fogyasztóvédelmi helyzetét.

11.4 Indiai e-kereskedelmi szabályok

India 2020-ban új szabályokat vezetett be az e-kereskedelmi szektorban,⁶⁰ amelyek többek között előírják, hogy az online platformoknak fel kell tüntetniük a termékek származási országát. Ez az intézkedés növelte az átláthatóságot és segítette a fogyasztókat a tájékozott döntéshozatalban. Ezek az esettanulmányok és sikeres intézkedések jól mutatják, hogy az e-kereskedelmi fogyasztóvédelem egy folyamatosan fejlődő terület, amely állandó figyelmet és innovatív megközelítéseket igényel a jogalkotóktól és a szabályozó hatóságoktól. A globális e-kereskedelmi piac sajátosságai, mint például a határon átnyúló tranzakciók és a gyorsan változó technológiai környezet, különleges kihívásokat jelentenek, amelyekre a hagyományos fogyasztóvédelmi eszközök nem mindig adnak megfelelő választ. Az ismertetett esetek azt is mutatják, hogy a sikeres fogyasztóvédelmi intézkedésekhez gyakran szükség van a nemzetközi együttműködésre és a szabályozási keretek folyamatos felülvizsgálatára.

12. Következtetések és javaslatok

Az e-kereskedelem rohamos térnyerésével párhuzamosan egyre nagyobb hangsúlyt kap a fogyasztók védelme az online térben. A tanulmány során áttekintettük a főbb fogyasztóvédelmi kihívásokat és eszközöket az e-kereskedelem területén. A legfontosabb megállapítások az alábbiak:

1. Az online szerződéskötés során továbbra is problémát jelent a szerződési feltételek átláthatatlansága és a fogyasztók nem megfelelő tájékoztatása.
2. A tájékoztatási kötelezettség terén gyakran hiányosak a termékinformációk és nem egyértelműek a járulékos költségek.
3. Az adatvédelem és adatbiztonság kérdése kulcsfontosságú, különös tekintettel a személyes adatok gyűjtésére és felhasználására.
4. A tisztességtelen kereskedelmi gyakorlatok új formái jelennek meg az online térben, mint például a dark patterns vagy a megtévesztő árazási technikák.
5. A határon átnyúló e-kereskedelem további kihívásokat jelent a jogérvényesítés és a fogyasztóvédelmi szabályok harmonizációja terén.

⁶⁰ Consumer Protection (E-Commerce) Rules, 2020, India

12.1 Javaslatok a fogyasztóvédelem hatékonyságának növelésére az e-kereskedelemben

1. Jogszabályi környezet fejlesztése: A meglévő fogyasztóvédelmi jogszabályok folyamatos felülvizsgálata és aktualizálása szükséges az e-kereskedelem sajátosságainak figyelembevételével. Különös figyelmet kell fordítani az új technológiák, mint például a mesterséges intelligencia vagy a blokklánc alkalmazásának szabályozására.
2. Hatékonyabb jogérvényesítés: A fogyasztóvédelmi hatóságok számára biztosítani kell a megfelelő erőforrásokat és technológiai eszközöket az online jogsértések felderítéséhez és szankcionálásához. Fontos a határon átnyúló együttműködés erősítése is a nemzetközi e-kereskedelmi ügyek hatékony kezelése érdekében.
3. Fogyasztói tudatosság növelése: Átfogó oktatási és tájékoztatási programok kidolgozása szükséges a fogyasztók digitális kompetenciáinak fejlesztésére. Ez magában foglalja az online vásárlással kapcsolatos jogok és kötelezettségek ismertetését, valamint a biztonságos internethasználat alapjainak oktatását.
4. Alternatív vitarendezési mechanizmusok fejlesztése: Az online vitarendezési platformok (OVR) továbbfejlesztése és népszerűsítése kulcsfontosságú a gyors és költséghatékony jogérvényesítés érdekében.
5. Adatvédelmi szabályozás szigorítása: A GDPR alapelveinek következetes érvényesítése mellett szükséges lehet további, kifejezetten az e-kereskedelemre vonatkozó adatvédelmi előírások bevezetése.
6. Technológiai megoldások ösztönzése: A biztonságos fizetési rendszerek, a blockchain alapú nyomonkövethetőség és az AI-alapú csalásfelderítés fejlesztésének támogatása állami ösztönzőkkel és kutatás-fejlesztési programokkal.
7. Nemzetközi együttműködés erősítése: Az OECD és az EU keretein belül folytatott együttműködés mellett bilaterális megállapodások kötése a főbb e-kereskedelmi partnerországokkal a fogyasztóvédelmi szabályok harmonizációja érdekében.

12.2 További kutatási irányokat igényelnek az alábbiak

1. A mesterséges intelligencia és a gépi tanulás hatása a fogyasztói döntéshozatalra és az e-kereskedelmi gyakorlatokra.
2. A blockchain technológia alkalmazási lehetőségei az e-kereskedelmi tranzakciók biztonságának növelésében és a termékek eredetiségének igazolásában.

3. A közösségi média platformok és az influencer marketing fogyasztóvédelmi aspektusainak vizsgálata.
4. Az IoT (Internet of Things) eszközök elterjedésének hatása az e-kereskedelemre és a fogyasztói adatvédelemre.
5. A virtuális és kiterjesztett valóság (VR/AR) alkalmazások fogyasztóvédelmi kihívásainak feltérképezése az e-kereskedelemben.
6. Az online platformok felelősségének újraértelmezése a harmadik fél által kínált termékek és szolgáltatások vonatkozásában.
7. A személyre szabott árazás és a dinamikus árazás fogyasztóvédelmi és versenyjogi aspektusainak vizsgálata.
8. A határon átnyúló e-kereskedelem jogi és gyakorlati akadályainak feltárása, különös tekintettel a fejlődő országokra.
9. Az e-kereskedelmi fogyasztóvédelem hatékonyságának mérésére szolgáló módszertan kidolgozása és nemzetközi összehasonlító elemzések készítése.
10. A fogyasztói magatartás változásainak longitudinális vizsgálata az e-kereskedelemben, különös tekintettel a COVID-19 járvány utáni időszakra.

13. Összegzés

Összegezve elmondható, hogy az e-kereskedelem fogyasztóvédelmi kihívásainak kezelése komplex megközelítést igényel. A jogalkotóknak, a fogyasztóvédelmi hatóságoknak és maguknak az e-kereskedelmi vállalatoknak is folyamatosan alkalmazkodniuk kell a változó technológiai környezethez és fogyasztói elvárásokhoz. A hatékony fogyasztóvédelem az online térben elengedhetetlen a digitális gazdaság fenntartható fejlődéséhez és a fogyasztói bizalom erősítéséhez.

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KISFONAI BERNADETT PATRICIA*

Mesterséges intelligencia alapú megoldások a bűnözés előrejelzésére és megelőzésére

Absztrakt: A hagyományos bűncselekmények számának csökkenése mellett a digitalizáció új, kifinomult pénzügyi és kiberbűnözési formákat hozott létre, amelyekre a klasszikus nyomozati eszközök már nem adnak megfelelő választ. A mesterséges intelligencia prediktív elemzései és automatizált adatfeldolgozási módszerei új lehetőségeket teremtenek a bűnmegelőzésben és a felderítésben. A tanulmány nemzetközi példák (USA, Kína, EU) és a hazai fejlesztések bemutatásán keresztül elemzi az MI-alapú rendészeti megoldások előnyeit és korlátait, különös tekintettel a pénzügyi csalások elleni fellépésre. A jövő hatékony bűnüldözése csak az emberi szakértelem és az MI-technológiák felelős, egymást kiegészítő alkalmazásával valósítható meg.

Kulcsszavak: mesterséges intelligencia; prediktív rendészet; big data; kiberbűnözés; pénzügyi csalás; bűnmegelőzés

Abstract: As traditional forms of crime decline, rapid digitalisation has given rise to sophisticated financial and cyber-criminal activities that can no longer be addressed effectively with conventional investigative techniques. Artificial intelligence offers powerful new tools for predictive analysis and automated data processing, reshaping crime prevention and detection. Through an overview of international practices (USA, China, EU) and emerging Hungarian developments, this study evaluates the capabilities and limitations of AI-driven policing, with special focus on combating financial fraud. The paper argues that the future of effective law enforcement depends on the responsible and complementary integration of human expertise and AI-based analytical systems.

Keywords: artificial intelligence; predictive policing; big data; cybercrime; financial fraud; crime prevention

1. Bevezetés

Az elmúlt évtizedekben a bűnözés dinamikája jelentősen megváltozott világszerte és Magyarországon egyaránt. A 2000-es évek elejétől kezdve a regisztrált bűncselekmények száma folyamatosan csökkent hazánkban. Szemléletes példa, míg 2010-ben mintegy 447 ezer bűncselekményt vettek nyilvántartásba, addig 2023-ra ez a szám 187 ezerre csökkent. A statisztikai bűncselekmények ezen tendenciája különösen szembetűnő főleg vagyon elleni bűncselekményeknél és az erőszakos bűncselekményeknél esetében.

* dr. Kisfónai Bernadett Patrícia, PhD hallgató, Pécsi Tudományegyetem, Állam-és Jogtudományi Doktori Iskola, Témavezető: Prof. Dr. Herke Csongor, egyetemi tanár

Ugyanakkor a digitális technológia egyre növekvő kiterjedésével párhuzamosan megfigyelhető, hogy új típusú bűncselekmények jelentek meg, különösen a kiberbűnözés terén. Az online térben elkövetett csalások, adathalász támadások és számos új informatikai bűncselekmények száma dinamikusan növekszik. Például az "információs rendszer vagy adat megsértése" nevű bűncselekmények száma 2018-ban alig 200 volt, míg 2020-ra ez az érték több mint négyszeresére, 830-ra emelkedett, és a növekedés 2021-ben is folytatódott.

Az adattudomány előnyeit számos iparág próbálja a lehető legjobban kihasználni. Ezek a gazdasági szektorok, (a biztosítás, a bankszektor és a tőzsdei elemzések), és számos más ágak jelentős mértékben profitálnak a nyers adatokból szerzett adatelemzésekből. A Big Data egyre nagyobb jelentőséget szerez magának, mivel az óriási adathalmazokban rejlő szerkezetek felfedezése révén pontosabb piaci trendek és befektetői magatartások előrejelzésére nyílik lehetőség. A számítógépes környezetben az adatközpontú megközelítések révén felismerhető minták és minták közötti kapcsolatokkal a gazdasági folyamatok mélyebb megértése elengedhetetlen a gazdaság számára.

A technológiai robbanás gyorsvonata a bankszektor mellett sem tudott elrobbanni, hiszen a kriptopénzek és az azonnali pénzküldést kínáló rendkívül versenyképes digitális megoldások a bankokat is fejlesztésekre inspirálják. A bloklánc (blockchain) technológiát klasszikus banki szolgáltatók is elkezdtek használni a PSD2 irányelvben lefektetett másodlagos azonosítókat melyet Magyarországon már törvény ír elő a 10 millió forint alatti utalások tekintetében.¹ A Revolut (digital-only bank), mint digitális bank, számos olyan lehetőséget kínál ügyfeleinek, amelyeket a hagyományos bankok nem tudnak vagy nem hajlandók biztosítani, ezzel felgyorsítva a pénzügyi szolgáltatások digitalizációját.²

Ugyan a digitalizáció folyamatosan növeli a világ összekapcsoltságát, mégis hatására egyre sürgetőbbé vált a megbízható csalásmegelőző/előrejelző mechanizmusok és rendszerek fejlesztése, ugyanis a számítástechnika gyors ütemű fellendülése a globális összekapcsoltsággal karöltve igen felerősítette a szervezett bűnözést. Az elektronikus adatok mennyiségének növekedése és az egyre magasabb terhet rónak cégekre, fokozva a feljük támasztott elvárásokat. A bűnözők az új technológiai lehetőségeket kihasználva jelentős előnyre tehetnek szert a hatóságokkal szemben. Éppen ezért elengedhetetlen, hogy a bűnüldözés is lépést tartson a fejlődéssel, és folyamatosan dolgozzon a megelőző, elhárító, felderítő és bizonyító eszközök fejlesztésén, különösen a digitális adatok bűnüldözési, bűnfelderítési célú felhasználásán. A fokozódó társadalmi feszültségek és vele

¹ A Magyar Nemzeti Bank elnökének a pénzforgalom lebonyolításáról szóló 35/2017. (XII. 14.) MNB Rendelete 2018. január 13-án léptették hatályba

² IBM (2024) What is digital transformation in banking and financial services? <https://www.ibm.com/think/topics/digital-transformation-banking> (letöltés ideje: 2025.01.21.)

párhuzamosan a bűnözés gyors idomulása az új technológiai vívmányokhoz minden esetben innovatív megoldásokat igényel.

Az mesterséges intelligencia, mint informatikai eszköz, hatékony megoldást kínálhat. Számos kutatás rámutott, hogy az MI szerepe, különösen a kockázatelemzés terén egyre kiemelkedőbb. Véleményem szerint elmúltak azok az idők, amikor a általános csalás felderítési módszerek lépést tudtak tartani a modern csalókkal. 2021-es tanulmány szerint hagyományos szabályalapú rendszereknél sokkal hatékonyabb modern technológiák képesek felismerni a pénzügyi bűnözésre jellemző komplex csalási mintákat és akár 50%-kal is csökkenthetik a csalásokból eredő veszteségeket.³ Előreláthatóan a generatív mesterséges intelligenciák⁴ jelentősen fogják fokozni a gazdasági bűncselekmények veszélyét, és kalkulációk szerint 2027-ig akár 40 milliárd dolláros veszteséget is okozhatnak.⁵ A deepfake-ek használatával a csalók könnyen és olcsón hozzanak létre megtévesztő tartalmakat, és sok esetben könnyedén megkerülhetik az MI alapú rendszereket is. A 2023-as Deloitte United States adatai szerint a deepfake incidensek száma 700%-kal nőtt a fintech szektorban.

A dolgozat célja a mesterséges intelligencia (MI) kiberbiztonsági alkalmazásának lehetőségeit és korlátait feltárni, különös tekintettel a pénzügyi csalások elleni küzdelemre. Az anyag egyrészt elemzi az MI legfontosabb eszközeit és technológiáit, másrészt megvizsgálja, hogyan alkalmazhatók ezek a módszerek a mindennapi gyakorlatban. A dolgozat végigvezeti az olvasót az MI elméleti alapjaitól kezdve az adattudomány alkalmazási lehetőségein át a pénzügyi szektorban megjelenő konkrét példákig. Végül bemutatja Magyarország helyzetét, és összegzi az MI alkalmazásából levonható legfontosabb tanulságokat.

Az elmúlt években a globális pénzügyi csalások száma robbanásszerűen megnőtt. 2022-ben okozott kibertámadásokkal több mint 30 milliárd dollár nyereségre tettek szert a bűnözők⁶, amivel komoly reputációs veszteségeket okoztak világszerte.

Az aggasztó adatok exponenciális növekedést mutatnak évről-évre, amire arra lehet következtetni, hogy a technológiai innováció és a folyamatos társadalmi változás új lehetőséget teremt a digitális pénzügyi visszaéléseknek.⁷ A Federal Trade

³ BAESENS, B.: *Fraud Analytics Using Descriptive, Predictive, and Social Network Techniques: A Guide to Data Science for Fraud Detection*, Wiley, 2015. 31-37.

⁴ U.S. Department of the Treasury (2024) *Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector*. U.S. Department. TREASURY.GOV 2.

⁵ DELOITTE: *How to safeguard against the menace of deepfake technology The battle against digital manipulation*. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/risk/in-ra-safeguarding-against-deepfake-technology-noexp.pdf> (letöltés ideje: 2025.01.21.)

⁶ AKTAS, N., et al.: *The role of big data and machine learning in corporate finance*. Journal of Corporate Finance., 2020.

⁷ KUMAR, S. et al.: *Past, present, and future of sustainable finance: insights from big data analytics through machine learning of scholarly research*. Annals of Operations Research, 2021, <https://doi.org/10.1007/s10479-021-04410-8> (letöltés ideje: 2025.01.21.)

Commission (FTC) által vizsgált csalás bejelentések összértéke elérte a 8,8 milliárd dollárt, ami 30%-os növekedést jelentett 2022-hez képest. Megdöbbentően kiugró érték a múlt évi, 2023-as adatok voltak, melyet a World Economic Forum készített. A felmérés szerint az adott tárgyévben a globális pénzügyi csalások becsült összege elérte a 5,2 billió dollárt (a globális GDP mintegy 6%-át teszi ki)⁸

Az intelligens technológia, különösen a dolgok internete (IoT) által generált kockázatok szintén komoly aggodalomra adnak okot. Az eszközök, amelyek akár érzékeny adatokat gyűjtenek tőlünk rendkívül sebezhetőek lehetnek, különösen ha figyelembe vesszük, hogy sok ilyen eszköz biztonsága jelenleg igen gyenge⁹.

Fontos hangsúlyozni, hogy a kiberbiztonság nemcsak globális gazdasági kérdés, hanem a társadalmi egyenlőtlenségek egyik jelentős tényezője is. Egyes társadalmi csoportok, például az idősek, az alacsony digitális készségekkel rendelkező felhasználók vagy a kisméretű vállalkozások különösen ki vannak téve az ilyen típusú veszélyeknek, mivel korlátozott hozzáféréssel rendelkeznek modern biztonsági rendszerekhez és ismeretekhez. Ezért a dolgozat nemcsak technológiai, hanem társadalmi aspektusokkal is foglalkozik.

A súlyosbodó helyzet orvoslására, az utóbbi időszakban az információra alapozott kockázatkezelés egyre fontosabbá vált. Világszerte milliárdokat fektetnek be a gazdasági bűnözés visszaszorítására. Egyetértve S. Nagy Krisztina a Deloitte Kockázatkezelési tanácsadás vezető partnerével „*A pénzügyi intézményekkel szemben támasztott elvárások nem csak a kormány, a szabályozó hatóságok és a bűnüldöző szervek, hanem az ügyfelek és a társadalom egésze részéről is egyre magasabbak*”¹⁰.

Ugyan akkor a Big Data körüli lelkesedés egyre nagyobb és már olyan mennyiségű adatot gyűjthetünk a magánszemélyekről, vállalatokról –, amelyek korábban elképzelhetetlenek lettek tűntek.

„*Hogy mi mindent tudnak rólunk a gépek, arról leginkább az amerikai hitelképesség- és fogyasztói minősítő tudnának mesélni. Tavaly ősszel a World Privacy Forum nevű szervezet igazgatója egy konferencián azt állította, hogy [...] mintegy ezer ránk jellemző adatot tartanak nyilván és értékelnek, és ezekből különböző indexeket képeznek. Létezik index az emberek munkanélkülivé válásának esélyéről, de ugyanígy arról is, hogy [...] mekkora eséllyel követhetünk el bűncselekményt. Ez komoly emberjogi kérdéseket vet fel*”¹¹

A magyarországi kiberbiztonsági helyzetkép szerint az elmúlt évben a hazai vállalkozások közül minden ötödik vállalkozást ért valamilyen kibertámadás.¹² A

⁸ Information Wall: GCFFC Finding Financial Crime. Global Coalition to Fight Financial Crime, 2021, <https://www.gcffc.org/wp-content/uploads/2021/02/GCFFC-Financial-Crime-Information-Wall-2021.pdf> (letöltés ideje: 2025.01.21.)

⁹ u.o.

¹⁰ DELOITTE: A jövő pénzügyi bűncselekménye már velünk van és mindannyiunkat megkárosít. Sajtóközlemények, 2024, <https://www2.deloitte.com/hu/hu.html> (letöltés ideje: 2025.01.21.)

¹¹ SZABÓ Dániel: Adatbányászat a biztosítási szektorban. Biztosítás és Kockázat, 2015/4, 62-77.

¹² SALLY ADAM: The State of Ransomware. Sophs News, 2023, <https://news.sophos.com/en-us/2023/05/10/the-state-of-ransomware-2023/> (letöltés ideje: 2025.01.21.)

Sophos beszámolója szerint, a CTA független kutatóintézet kiberbűnözéssel foglalkozó felmérésének eredményei arra mutatnak rá, hogy a zsarolóvírussal megtámadott cégek több mint fele saját adatmentési módszereket alkalmazott, ezért nem kellett váltásdíjat fizetnie.¹³

Sajnálatos módon Magyarországon a vállalatok 8%-a nem rendelkezik semmilyen biztonsági védelemmel vagy helyreállítási eszközzel. Mindemellett a felmérés szerint a magyar vállalatok 39%-a a zsarolásnak engedve elutalta a követelt összeget; ezek közül a cégek fele 10 millió forintnál kevesebbet fizetett, míg 29%-uk 10 és 50 millió forint közötti összeget utalt át. Néhány esetben a kifizetett összeg meghaladta az 50 millió forintot, sőt, 7%-uk több mint 100 millió forintot utalt.¹⁴

Mindebből levonható az a következtetés, hogy Magyarországon a pénzügyi bűncselekmények megelőzésére tett intézkedések még gyerekcipőben járnak. „*A becslések szerint a globális GDP 2-5%-át, de a bűncselekményekkel érintett vagyon értékének mindössze 0,2%-át sikerül visszaszerezni.*”¹⁵ Már fenntarthatatlan, hogy „*papíron*” minden rendben legyen. Sajnos egyelőre kilátástalannak tűnik a helyzet, főleg a meglévő geopolitikai feszültségek tovább gerjeszthetik, az amúgy is növekvő bűncselekmény tendenciáit. Úgy gondolom, hogy a fenti kockázatok és korlátok a következő években is velünk maradnak.

A fentiek függvényében áttekintem az MI konkrét rendészeti alkalmazásait – a prediktív rendészetet, arcfelismerést, big data elemzést, online tér figyelését és az MI-támogatott nyomozási eszközöket –, bemutatva nemzetközi példákat (az USA-tól Európán át Kínáig), értékelve hatékonyságukat, és kitérve a felmerülő etikai-jogi kihívásokra, valamint a várható jövőbeli fejlesztésekre.

2. A prediktív rendészet és az MI

A prediktív rendészeti technológia és a mesterséges intelligencia (MI) közötti kapcsolat az elmúlt években egyre nagyobb teret nyert. A prediktív rendészeti tevékenység lényegében különböző forrásokból származó adatok gyűjtése, elemzése, majd az így kapott eredmények felhasználása jövőbeli bűncselekmények előrejelzésére.

A prediktív rendészethez tartozó módszerek és eszközök két fő szempont alapján csoportosíthatók: az egyénekre és a helyszínekre vonatkozó előrejelzések. Az egyénekre vonatkozó predikciós módszerek célja azon egyének azonosítása, akik nagyobb valószínűséggel követnek el bűncselekményt a jövőben vagy válnak áldozatává egy bűncselekménynek. A helyszínekre vonatkozó predikciós módszerek

¹³ u.o.

¹⁴ ADAM, S.: i.m.

¹⁵ DELOITTE (2024) A pénzügyi bűnözés jövője: miért kulcsfontosságú az információ-vezérelt kockázatkezelés? Sajtóközlemények URL: <https://www2.deloitte.com/hu/hu.html> (letöltés ideje: 2025.01.21.)

célja azon helyszínek és időintervallumok azonosítása, ahol nagyobb valószínűséggel várható bűncselekmény.¹⁶

3. Az MI a prediktív rendőrségi tevékenységek támogatása

A nyomozás során adatokból kinyert információkra van szükség. Fenyvesi Csaba álláspontja, hogy „minden rendőrség (nyomozó, felderítő szerv) annyit ér, amennyi információja van”.¹⁷ A hosszú időn át rögzített bűnügyi nyilvántartások „jelentősége abban áll, hogy az adatok rendszerbe foglalása, értékelése lehetővé teszi következtetések levonását a bűncselekmények tettesire vagy a bűncselekmények elkövetésének körülményeire.”¹⁸

A jelenleg használatban álló modern bűnmegelőzési eszközök jelentősen javítják a bűnügyi tervezés és a döntéshozatal folyamatát.¹⁹ A jövő nyomozásában az e-nyomozás és a prediktív rendészet kulcsfontosságú szerepet játszik, mivel ennek eredményeképp jelentős időmegtakarítás érhető el. Ahogyan Nyitrai Endre is megfogalmazta, a „*raszternyomozás olyan adatgyűjtési módszer, amelynek során a kutatás közvetetten vagy közvetlenül elérhető adatbázisokban történik, és az elektronikusan rögzített adatok a nyomozás előre vitelét szolgálhatják.*”²⁰ Az MI algoritmusok és modellek hozzájárulnak a bűnügyi adatok elemzéséhez, anomáliák azonosításához és a jövőbeli események előrejelzéséhez.

Gyakorlati példaként, ide tartoznak azok a szoftverek, mint a *PredPol* (újabbban *Geolítica*) és a német *Precobs*, amelyek a helyszíni és időbeli adatokat használják bűnözési *hotspot*-ok előrejelzésére.²¹ A Los Angeles-i rendőrség és sok más amerikai város rendőrsége éveken át alkalmazta a *PredPol*-t, amely a napi jelentések alapján térképen jelölt ki negyedórás zónákat, ahol nagyobb az adott típusú bűncselekmény kockázata.²² Európában a *Precobs* szoftvert több német tartományban használták elsősorban lakásbetörések előrejelzésére a „közel ismétlődés” elv alapján – azaz egy friss betörés után a szomszédos utcákban hamarosan újabb történhet. Emellett léteznek más prediktív modellek is, mint Franciaországban például kísérleteztek *Risk Terrain Modeling*gel (RTM) Párizsban, illetve a csendőrség *PAVED* programjával

¹⁶ HARMATI Barbara – SZABÓ Imre: A prediktív rendészet és az automatizált igazságszolgáltatás - Predictive policing and automated justice. Belügyi Szemle, 2020/5. 23–37.

¹⁷ TREMMEL Flórián – FENYVESI Csaba – HERKE Csongor: Kriminálisztika Tankönyv és Atlasz. Dialóg Campus, Budapest-Pécs, 2005, 228–238.

¹⁸ Uo.

¹⁹ SZABÓ Imre: Automatizált döntéshozatal és a büntetőeljárás. Ügyészek lapja, 2019/26. 5–20.

²⁰ NYITRAI Endre: A szervezett bűnözés elleni küzdelem büntetőjogi és kriminálisztikai megközelítésből, Pécsi Tudományegyetem, 2018.

²¹ PREDICTION: Bias Predictive Policing Software Terrible At Predicting Crimes, 2023, <https://themarkup.org/> (letöltés ideje: 2025.02.15.)

²² AVI ASHER-SCHAPIRO: In a U.S. first, California city set to ban predictive policing. Reuters, 2020, <https://www.reuters.com/> (letöltés ideje: 2025.02.15.)

autó lopások és betörések becslésére.²³ Személy alapú predikciókra is volt próbálkozás (például Chicagóban a „heat list”), melyben az algoritmusok azt próbálták előrejelezni, kik válhatnak bűnelkövetővé vagy áldozattá – ám ezek ellentmondások és sok kritikát kaptak pontatlanság miatt.²⁴

Az arcfelismerő rendszerek, mint a gépi látás és a mély tanulás fejlődése lehetővé tette a valós idejű arcfelismerést a térfigyelő kamera képeken. Ennek révén a hatóságok gyorsan azonosíthatnak körözött személyeket tömegben vagy közterületen.²⁵

Kína ebben élen világ élen jár, az országban kiépített *Skynet* és *Sharp Eyes* kamerahálózat a világ legnagyobbika, több száz millió kamerával.²⁶ A kínai Guiyang városban az MI-alapú arcfelismerés egy év alatt 375 körözött személy elfogásához vezetett (köztük 39 szökevényhez).²⁷

Az arcfelismerést az USA-ban és Európában is használják nyomozásokban (az FBI és egyes rendőrségek *Clearview AI* adatbázis segítségével azonosítanak gyanúsítottakat közösségi médiás fotók alapján), valamint a határellenőrzésben és tömegrendezvények biztosításában. Ugyanakkor ez a technológia komoly adatvédelmi és pontossági aggodalmakat vet fel – lásd később az etikai kihívásoknál. A Big data elemzést is érdemes megemlíteni. Az MI segít a rendőrségnek óriási adathalmazok feldolgozásában. Ugye ide tartozik a térfigyelő kamerák videóinak automatikus elemzése, a forgalmi és közterületi szenzorok (okos városi IoT eszközök) adatainak felhasználása, vagy épp a pénzügyi tranzakciók monitorozása a szervezett bűnözés felderítésére.²⁸

Az okos város projektekben a kamerák képét valós időben elemzik az algoritmusok, és szokatlan viselkedés esetén riasztást adnak (Franciaország a 2024-es olimpián ilyen automatizált videó-elemzést vezet be a gyanús események kiszűrésére).²⁹ A hálózat elemző MI-t is már számos esetben használnak, hogy a bűnözői csoportok közötti kapcsolatokat, telefonhívásokat, közösségi hálózati kötődéseket elemzi, hogy rejtett összefüggéseket tárjon fel. A mesterséges intelligencia ma már képes a

²³ LA QUADRATURE DU NET, Predictive Policing in France: Against Opacity and Discrimination, the need for a ban, 2024, <https://www.laquadrature.net/en/> (letöltés ideje: 2025.02.15.)

²⁴ RAND: Pitfalls of Predictive Policing, 2016, <https://www.rand.org/> (letöltés ideje: 2025.02.15.)

²⁵ Police Chief: Navigating the Future of Policing, Artificial Intelligence (AI) Use, Pitfalls, and Considerations for Executives, 2024, <https://www.policechiefmagazine.org/> (letöltés ideje: 2025.02.15.)

²⁶ Business Insider: One Chinese city is using facial-recognition that can help police detect and arrest criminals in as little as 2 minutes, 2018, <https://www.businessinsider.com/> (letöltés ideje: 2025.02.15.)

²⁷ u.o.

²⁸ Michelle GUNDY: AI-ready policing: Enhancing law enforcement computer systems for tomorrow's challenges. Police1, 2024, <https://www.police1.com/vision/ai-ready-policing-enhancing-law-enforcement-computer-systems-for-tomorrows-challenges> (letöltés ideje: 2025.02.15.)

²⁹ Yegor HALVA: Predictive Policing and the Paris 2024 Olympic Games: Security vs. Freedom, 2024, <https://unicomriot.ninja/2024/predictive-policing-and-the-paris-2024-olympic-games-security-vs-freedom/> (letöltés ideje: 2025.02.15.)

szöveges adatok elemzésére, rendőrségi jelentések vagy közösségi média posztok automatikus átolvasására és kulcsszavas elemzésére³⁰ – ami segíthet fenyegetések (például iskolai lövöldözés tervei) korai észlelésében.

Az online bűnözés és dark web figyelése szintén lényeges kérdés. Most már a bűnmegelőzés kiterjed az internetes térre is. Az algoritmusok átfésülik a nyilvános közösségi médiát, fórumokat bizonyos kulcsszavak, gyanús mintázatok után kutatva. A terrorelhárítás és a kiberbűnözés ellen küzdő egységek MI-t alkalmaznak a dark web illegális piacainak monitorozására, hogy bűncselekményhez köthető tranzakciókat azonosítsanak.³¹

Szintén használnak MI-t gyermekek kizsákmányolása elleni nyomozásokban nagy mennyiségű kép automatikus szűrésére, vagy adathalász csalások azonosítására. Az Europol és Interpol is kifejlesztett olyan eszközöket, amelyek mesterséges intelligenciával derítik fel a neten terjedő bűnözői tevékenységeket (hálózatba kapcsolt botok tevékenységét vagy a pénzmosás online nyomait).

A hagyományos nyomozati munka is átalakul az MI által. Vannak már automatikus rendszerek ujjlenyomat- vagy DNS-keresésre hatalmas adatbázisokban, arcképek összehasonlítására nemzetközi körözési listákkal, valamint hangfelvételek felismerésére (egy telefonos fenyegetőző hangjának azonosítása ismert bűnözők hangmintái alapján). A gépi tanulás segíthet összekapcsolni különálló ügyeket is, és megállapítani, ha ugyanaz a tettes követett el több, látszólag független bűncselekményt egyedi modus operandi alapján. A nyomozók egyre inkább támaszkodnak olyan elemző platformokra (Palantir, PredPol), amelyek az összes elérhető adatot (rendőrségi jelentések, kamera-felvételek, közösségi média adatok) integrálják, és összefüggéseket tárnak fel, amelyeket emberi erővel nehéz lenne észrevenni.³²

Mindezek mellett kísérleti jelleggel robotok és drónok is bekapcsolódnak, elszerelt drónok figyelhetnek meg nagyobb területeket, míg robotjárőrök például fontos csomópontokon (repterek, pályaudvarok) teljesítenek szolgálatot.

4. Nemzetközi kitekintés

Az USA a prediktív rendészet úttörője volt, már a 2010-es évek elején több város bevezette a PredPol szoftvert. Santa Cruz volt az első, 2011-ben – a cég szerint a városban az első évben 19%-kal csökkent a betörések száma a rendszer használatának köszönhetően.³³

Hasonló algoritmust alkalmazott a Los Angeles-i rendőrség is, ahol egyes területeken 25%-os esést mértek bizonyos bűncselekményekben a prediktív

³⁰ KISFONAI Bernadett: A bűnügyek jövőbeli megelőzése, avagy a prediktív rendészet új arca, 2023, <https://doi.org/10.53304/RT.2023.3.02>

³¹ M. GUNDY: i.m.

³² u.o.

³³ A. ASHER-SCHAPIRO: i.m.

elemzések nyomán. Ugyanakkor idővel kiderültek a módszer problémái. Független elemzések rámutattak, hogy egyes városokban alig vált be: például a New Jersey-beli Plainfield rendőrség PredPol (Geolítica) adatait vizsgálva kiderült, hogy a szoftver előrejelzéseinek kevesebb mint 0,5%-a egyezett ténylegesen bekövetkezett bűncselekménnyel.³⁴ Emiatt több helyen felhagytak az alkalmazásával. Chicagóban egy másik megközelítést próbáltak, az ún. *“Strategic Subject List”* (hírhedt nevén *“beat list”*), amely a legvalószínűbb lövöldözéses elkövetőket és áldozatokat listázta pontszámok alapján. Azonban a RAND Corporation tanulmánya hatástalannak találta – a listán szereplők fokozott rendőri ellenőrzése nem csökkentette mérhetően az erőszakot, és mindössze 3 emberölés áldozata szerepelt előre a több mint 400 valódi esetből.³⁵ Az ilyen eredmények és a közösségi tiltakozások miatt *Santa Cruz városa 2020-ban az országban elsőként betiltotta a prediktív rendészetet* és a rendőrségi arcfelismerést, mivel aránytalanul a színesbőrű közösségeket célozta.

Az arcfelismerés terén is széleskörűen kísérleteznek az USA-ban, a Szövetségi Nyomozó Iroda (FBI) Next Generation Identification rendszerében hatalmas fénykép-adatbázist használ, és több helyi rendőrség is igénybe veszi magáncégek (pl. Clearview AI) szolgáltatásait gyanúsítottak beazonosítására. Ugyanakkor számos nagyváros – San Francisco, Boston és mások – megtiltotta a rendőrségnek a valós idejű arcfelismerést a polgári szabadságjogok védelmében. Az aggodalmak nem alaptalanok: Detroitban legalább három afroamerikai embert tartóztattak le tévesen a rendőrségi arcfelismerő rendszer hibás egyezése miatt.³⁶ Az ilyen esetek nyomán 2020-ban olyan tech cégek, mint az IBM és az Amazon is bejelentették, hogy korlátozzák arcfelismerő szoftvereik rendőrségi használatát, amíg nem születnek megfelelő szabályok. Mindazonáltal az MI egyéb területeken sikerrel segíti az amerikai bűnüldözést, lövöldözés-detektáló akusztikus szenzorhálózat (*ShotSpotter*) figyelni több nagyváros utcáin a fegyverropogást, és másodperceken belül riasztja a járőröket – ez ugyan nem prediktív, de MI elemzi a hangmintákat. Emellett a nagyvárosi rendőrségek *Real Time Crime Center* egységei valós időben elemzik a térfelügyelő kamerák és szenzorok adatait, hogy azonnal reagáljanak az incidensekre.

Európai kitekintéssel érdemes megemlíteni Németországot, ugyan is Európában elsőként Németország kezdett prediktív rendészeti kísérletekbe. *Bajorországban* 2014-től vezették be a Precobs szoftvert a betörések előrejelzésére, majd további öt tartomány követte. A tapasztalatok vegyesek. A baden-württembergi pilot projekt tudományos értékelése szerint a prediktív rendszer csak mérsékelt mértékben járult

³⁴ U.o.

³⁵ Rad: i.m.

³⁶ Michigan Law: Civil Rights Litigation Initiative Helps Achieve the Nation’s Strongest Police Department Policy on Facial Recognition Technology, 2024, [https://michigan.law.umich.edu/\(letöltés ideje: 2025.02.15.\)](https://michigan.law.umich.edu/(letöltés ideje: 2025.02.15.))

hozzá a betörések visszaszorításához, és nem bizonyítható egyértelműen, hogy magában a szoftver miatt csökkent volna a bűnözés.³⁷

Bizonyos városokban csökkentek a betörésszámok a használat idején, máshol viszont növekedtek, így más tényezők is közrejátszhattak. A német rendőrök véleménye is megoszlott – egy felmérés szerint fele hasznosnak látta, a másik fele elutasította az ilyen algoritmusokat.³⁸ Ennek ellenére több helyen ma is használják (Bajorországban és Észak-Rajna Vesztfáliában továbbfejlesztették saját rendszerüket), de hangsúlyt helyeznek arra, hogy csak bizonyos bűncselekménytípusokra (sorozat-betörések) alkalmazzák, elkerülve a személyek profilozását.

A francia rendőrség is kísérletezett MI-alapú bűnmegelőzéssel, de eddig inkább szórványos, pilot jellegű projektek voltak. Párizsban a rendőrség RTM (Risk Terrain Modeling) szoftvert használt kísérletképpen, amely a környezeti jellemzők (iskolák, bárók, forgalmas csomópontok jelenléte) alapján kockázati térképet készített a járőrszolgálat irányításához.³⁹ 2018 körül a csendőrség próbálta ki a *PAVED* nevű rendszert több megyében autólópások és betörések előrejelzésére, de a program országos kiterjesztését végül leállították 2019-ben. Marseille városa egy *Big Data of Public Tranquility* projektben az önkormányzati rendészetet segítő MI-vel kísérletezett, míg egy francia startup (Edicia) *Smart Police* alkalmazását több kisebb önkormányzati rendőri szerv is megvásárolta.⁴⁰ Ezekről azonban kevés nyilvános adat érhető el, és nem folytattak átfogó hatékonyság értékelést. A francia civil szervezetek (La Quadrature du Net) éppen az átláthatóság hiányát és a diszkrimináció veszélyét kritizálják, és moratóriumot sürgetnek az ilyen prediktív rendészeti eszközökre.

Ugyanakkor Franciaország élvonalban van a közterületi megfigyelés terén. A 2024-es párizsi olimpiára törvényt fogadtak el az algoritmikus videómegfigyelés alkalmazásáról, amely MI segítségével szűri ki a gyanús viselkedést a tömegben (hirtelen pánik vagy fegyverrel való hadonászás észlelése).⁴¹

Hazánkban egyelőre nem terjedtek el látványosan a prediktív rendészeti rendszerek, inkább kísérleti fejlesztések folynak. A Magyar Rendőrség 2020-2030 közötti MI Stratégiája említi a prediktív elemzések lehetőségét, és létrejött egy belső munkacsoport a „*Mesterséges Intelligencia és digitális nyomok*” témában.⁴²

Konkrét alkalmazásként említhető, hogy a rendőrség *Nova2* nevű integrált bűnügyi adatbázisa felé terveznek MI-modulokat fejleszteni, melyek a nyomozók

³⁷ Matthias MONROY: Disappointing results for predictive policing. Dissecting Security Architectures, 2017, [https://digit.site36.net/\(letöltés ideje: 2025.02.15.\)](https://digit.site36.net/(letöltés ideje: 2025.02.15.))

³⁸ u.o.

³⁹ La Quadrature du Net: i.m.

⁴⁰ u.o.

⁴¹ Yegor HALVA, Contributor (2024) Predictive Policing and the Paris 2024 Olympic Games: Security vs. Freedom URL: <https://unicomriot.ninja/2024/predictive-policing-and-the-paris-2024-olympic-games-security-vs-freedom/> (letöltés ideje: 2025.02.15.)

⁴² KISFONAI B.: i.m.

munkáját segíthetik majd (például kapcsolatelemző és szövegértelmező funkciókkal). Jelenleg Magyarországon az MI inkább a forenzikus elemzésekben tűnik fel (hang- és képzonosítás szakértői területen), valamint a forgalomfigyelésben (intelligens kamerák a közutakon). Ugyanakkor a GDPR és az uniós jogi környezet szigorúan keretet szab, ugyanis nyíltan személyeket célzó prediktív rendőrségi rendszer bevezetésére eddig nem került sor, és kamerás arcfelismerést is csak célhoz kötötten (pl. körözött személy elfogására) alkalmaznak, általános megfigyelésre nem.

5. Zárógondolat

A bűnözői körök rendkívül gyorsan alkalmazkodnak a digitális technológia fejlődéséhez, ezért a kriminalisztikának folyamatosan lépést kell tartania ezekkel a változásokkal. A bűnmegelőzés és a felderítés hatékonyságának növelése érdekében elengedhetetlen a modern technológiai eszközök, különösen a mesterséges intelligencia alkalmazása. Ahogyan Déri Attila is hangsúlyozta, az MI rendkívüli lehetőségeket kínál a rendőrség számára: nemcsak jelentős humán erőforrás-megtakarítást eredményezhet, hanem hozzájárulhat a közrend és közbiztonság további erősítéséhez is. Az eddigi tapasztalatok azt mutatják, hogy az MI alapú megoldások nemcsak hatékonyabbá teszik a rendőrség munkáját, hanem csökkentik a dolgozók terhelését is azáltal, hogy automatizálják és optimalizálják a munkafolyamatokat. Ezáltal az erőforrásokat hatékonyabban lehet elosztani, miközben a bűnüldözés gyorsabbá és precízebbé válik.

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KÖTELES ÁDÁM*

A jogelmélet és a technológia mai kapcsolódási pontjai

Absztrakt: A jogelmélet és a technológia több ponton is kapcsolódnak egymáshoz, az MI jogi területeket érintő bevonásával viszont nemcsak a kapcsolódási pontok, hanem a kihívások száma is megnövekedett. Napjainkban már nem kimondottan csak jogszabály alapú szabályozási formákkal találkozunk, hanem az úgynevezett algoritmus alapú szabályozással is. Bár mindkettő célja a viselkedés szabályokhoz történő igazítása, mégis sokban különbözik egymástól a technológiai és a jogi szabályozás, melynek egyik fő eleme a normativitás.

Kulcsszavak: jogelmélet, normativitás, nyelv, algoritmus, mesterséges intelligencia, technológia

Abstract: Legal theory and technology are interconnected at many points, but with the involvement of AI in the area of law, not only the points of interconnection but also the challenges have increased. Today, we are no longer dealing exclusively with legislation-based forms of regulation, but also with so-called algorithm-based regulation. While both aim to adapt behaviour to rules, there are many differences between technological and legal regulation, and one of the key elements is normativity.

Keywords: legal theory, normativity, language, algorithm, artificial intelligence, technology

1. Bevezetés

A jogelmélet és a technológia kapcsolódása nem újkeletű dolog, azonban a mesterséges intelligencia – jogi területeket is érintő – térhódításával a jogelmélet területén újabb kihívások és újabb kapcsolódási pontok jelentek meg az MI bevonásával. Az MI megjelent már a jogalkalmazás, sőt bizonyos esetekben a jogalkotás területén is. A jogi normák általi szabályozás mellett egyre inkább megjelenik a „kód”, vagyis az algoritmusok általi szabályozás is, fontos azonban különbséget tenni a kétféle szabályozás között. Elsőre azt gondolhatnánk, hogy a kettő szinte teljes mértékben megegyezik egymással, azonban ez nem így van. A jogi norma és a kód célja is a viselkedés szabályokhoz igazítása, viszont más eszközökkel teszik ezt és míg az egyik normatív erővel bír, addig a másik betartása a személyek szabad akaratát kényszerpályára tereli.

* dr. Köteles Ádám, PhD hallgató, Miskolci Egyetem, Állam- és Jogtudományi Kar, Jogtörténeti és Jogelméleti Intézet, Jogelméleti és Jogszociológiai Tanszék. Témavezető: Prof. Dr. Szabó Miklós, Professor Emeritus.

A jogtudományról megállapítható, hogy a jogi következmények gyakorlati vonatkozásaira – a szankciók esetleges alkalmazására – is összpontosít. A magatartás-vezérlés más típusaitól eltérően a jog nem kizárólag leírja az egyéni cselekvéseket vagy viselkedési szabályszerűségeket. Ehelyett bizonyos cselekvések, állapotok vagy események megnevezése mellett azok következményeiről is tájékoztat. A jogi következmények tisztázásával a jog a viselkedésünket irányítja azáltal, hogy tudatja, milyen cselekedetek megengedettek vagy éppen tiltottak. Például a tulajdonát ruházásra irányuló jogügylet bejegyzése tulajdonossá tesz, a kár okozása kártérítési felelősséghez vezet, a bűncselekmény elkövetése pedig büntetőeljárást eredményez. Hartiánusan fogalmazva a jog elsődleges normákat közvetít másodlagos normákon keresztül.¹ A jog irányítja cselekedeteinket, és tájékoztat bennünket a kikényszeríthető kötelezettségekről és a rendelkezésre álló jogorvoslatokról. Ezzel párhuzamosan a jog mindennapi életünk időbeliségét és térbeliségét is befolyásolja, így társadalmi kereteink alapvető meghatározójává válik.²

2. Normatív viselkedésszabályozás

Kant elméletében felvázolta a Sein (van) és a Sollen (legyen) különbségét. Egy jogszabály esetében mindig azzal találkozunk, mi az, aminek „lennie kell”, hiszen ezek normatív erővel bíró rendelkezések, vagyis kereteket állítanak az emberi cselekvés számára. Kötelezettségeket keletkeztetnek, melyeknek betartása állami eszközökkel kikényszeríthető, minthogy az ilyen normatív szabályok címzettek általi be nem tartásának esetére mindig valamilyen következményt helyez kilátásba. A jogi normák abból nyerik érvényességüket, hogy arra felhatalmazással rendelkező szervek vagy személyek, az előírt módon és formában hozzák létre és teszik közzé őket. Gondoljunk a kelsen-i normapiramisra, ahol minden norma a hierarchiában felette álló normából nyeri érvényességét, eljutva így az alkotmányig, végső fokon a hipotetikus alapnormáig.

A jogi normáknak, ahhoz, hogy kényszerítő erővel rendelkezzenek, minden címzett számára nyilvánosan hozzáférhetőnek és megismerhetőnek kell lennie, hogy ezáltal a címzettek tisztában legyenek azzal, mi az, amit tőlük elvárnak, s amivel szemben engedelmisségi kötelezettségük áll fenn.

A kifejlődött modern jog, amely írott jogi szövegeken – például jogszabályokon, esetjogon és doktrínákon – alapul, megbízható előrejelzéseket nyújt egy társadalom

¹ Herbert Hart különbséget tett elsődleges, illetve másodlagos szabályok között. Azokat a szabályokat tekintette elsődlegesnek, amelyek a társadalom tagjait felruházzák bizonyos jogosultságokkal, vagy épp kötelezettségekkel terhelik. Elmélete szerint, a másodlagos szabályok (elismerési szabályok, a változtatási szabályok és az ítélkezési szabályok) meghatározzák, hogy ki, illetve milyen módon alkothat, ismerhet el, módosíthat, alkalmazhat vagy szüntethet meg elsődleges normákat. Ld.: HART, H. L. A.: *The Concept of Law* Oxford University Press, Oxford, 1972.

² Ehhez lásd HILDEBRANDT, M.: *Law as Information in the Era of Data-Driven Agency*. *The Modern Law Review*, 2016/79/1. 1-30. 11.

tagjainak arról, hogy cselekedeteik kapcsán, a jogalkalmazó szervek részéről, milyen reakciókra számíthatnak. Ez megeremtette a jogbiztonságot és a társadalmi bizalom érzését, tekintve, hogy az egyének és a társadalom egésze ezen törvények alapján tisztán látja a cselekedetekhez kapcsolódó egyes következményeket. A törvények általi uralomról a jogállamiságra való áttérés döntő szerepet játszott ennek a bizalomnak a megszilárdításában, mivel a szuverenitásnak, mint a fékek és ellensúlyok rendszerének újbóli definiálásával járt együtt. Az ilyen szuverén kritériuma, hogy saját magára is kötelező a saját törvényeinek a betartása. Ennek eredményeképpen az írott jog már nem csupán a törvény tartalmáról szóló információ, hanem olyan törvény, amely tájékoztat minket tetteink következményeiről is. A „res judicata” (ítélt dolog) és a „litis finiri oportet” (egyszer minden jogvitának véget kell vetni) révén a pozitív jognak effajta megszületése a társadalom szabályozásának és ezzel egyidejűleg a rend fenntartásának eszközévé is vált.³

A technika fejlődésével azonban a jogállamiságról, a legitimitásról és a jogszerűségről való elképzeléseink újragondolása is szükségessé vált. Erre főleg azért is van szükség, mivel a technológiát – bevonva azt a szabályozási környezetbe –, a jogot, s a szabályozást is újraértelmeztük, így ennek hatására már csak a szabályozási rendszer egy elemét képezik a nemzetállamok jogrendszereinek szabályai.⁴

A jogi normák az alkotmányos demokráciában három lényeges jellemzővel rendelkeznek, mégpedig, hogy 1. a jogalkotó állapítja meg a jogszabályokat, a demokrácia elveivel összhangban, emellett 2. a jogszabályokat meg lehet sérteni, végül pedig 3. a jogsértés megállapítása, illetve annak szankciói bíróság előtt megtámadhatóak. A demokrácia normatív feltételezése az, hogy a jogalkotásban való részvételnek nyilvánosnak és konzultatív jellegűnek kell lennie. Ezek a jogi normák betartásának következményei, és időnként automatikusan érvényesülnek, ilyen például az ingatlan tulajdonjogának ingatlannyilvántartásba történő bejegyzése, mert anélkül a tulajdonjog nem érvényesül.⁵

³ HILDEBRANDT, M.: i.m. 2016, 22.

⁴ BROWNSWORD, R.: *Rethinking Law, Regulation, and Technology*. Cheltenham – Northampton, Edward Elgar Publishing, 2022, 7.

⁵ HILDEBRANDT, M.: *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology*. Cheltenham – Northampton, Edward Elgar Publishing, 2015. 10.

<https://doi.org/10.4337/9781849808774>

3. Algoritmusok általi viselkedésszabályozás

A jog területét elhagyva más típusú szabályokat fedezhetünk fel, melyek indukálnak, gátolnak vagy kikényszerítenek bizonyos típusú cselekedeteket, noha maguk a szabályok nem jogalkotási céllal kerültek kibocsátásra.⁶

A jogászok gyakran úgy vélik, hogy a jogi technikák rugalmasak és képesek megfelelni a modern technológia kihívásainak, de ez a nézet figyelmen kívül hagyja az új adatvezérelt tevékenységeket. A jog az írott szövegeken alapul, ami lineáris feldolgozási igényeket támaszt, és a törvények értelmezésére és alkalmazására összpontosít. Az adatalapú tevékenység azonban más elvet követ, az információ és a viselkedés alapján működik. Ez a változás veszélyeztetheti a jog szerepét, és lehetővé teheti a kormányzat uralmát. A jogállamiság és az egyének jogainak védelme a nagy társadalmi szereplőkkel szemben a jog alapvető eleme, ez viszont kockázatot jelenthet az adatalapú technológiák térnyerése miatt. Fontos felismernünk és megértenünk ezt a veszélyt, és meg kell találni a módját, hogy a jogrendszerek megfeleljenek az új kihívásoknak anélkül, hogy elveszítenénk az egyének jogainak védelmét.⁷

Brownsword úgy véli, hogy a jogállamiságot öt módon szükséges újragondolni. Erre azért van szükség, mert a szabályozási környezet már a technológiát is magában foglalja, amit mind az állami, mind pedig a magánszabályozás körében kifejlesztettek. Továbbá azért is mert a normatív kormányzástól a technológiai eszközökkel történő kormányzás felé való elmozdulás során az ellenőrzésre vagy korlátozásra a jogszerűség eszménye önmagában nem sokat tehet. Az öt mód nem más mint, 1. az offline és online környezetben történő kormányzásra és cselekvésre egyaránt vonatkoznia kell a jogállamiságnak, 2. mind a jogszabályokra, mind pedig a technológiai intézkedésekre alkalmazni kell a jogállamiság fegyelmét, emellett 3. az állami szabályozók mellett a magánszabályozókra is alkalmazni kell a jogállamiságot, ezt követően 4. nemcsak a szabályok megalkotásakor kell figyelemmel lenni a jogállamiság követelményeire, hanem a polgárok számára is biztosítani kell a demokratikus részvételt a jogalkotási folyamatok során, végül 5. alkalmazni kell a jogállamiság anyagi jogi felhatalmazó rendelkezéseit, amikor az új technológiák a jogi és szabályozási funkciók ellátására kerülnek alkalmazására. Ennek köszönhetően a teljes szabályozási környezetre kiterjed a jogállamiság, s betölti azt a fontos szerepet, hogy hozzájáruljon a jog legitimitásának biztosításához.⁸

A kód, az eljárási szabályok és az érvényesség kritériumai mind a compliance (megfelelőségi) szabályok körébe tartoznak. A minket körülvevő környezetben számos olyan dologgal találkozhatunk, melyek kereteket állítanak fel számunkra és

⁶ HILDEBRANDT, M.: Legal and Technological Normativity: More (and Less) than Twin Sisters. *Techné* 2008. 12:3. 169-183. 173.

⁷ HILDEBRANDT, M.: i.m. 2016, 2.

⁸ BROWNSWORD, R.: i.m. 2022, 8-9.

szabályozzák viselkedésünket, és mindezt jogi háttérrel, de jogi kötelezettség telepítése nélkül teszik. Gondoljunk az úthálózatra, egy kávé-automatára vagy éppen egy hitelszerződési kérelem nyomtatványának kitöltésére. Nem rónak ránk kötelezettséget, de ha nem fogadjuk el egy felület által használt felhasználási feltételeket, akkor nem tudunk tovább lépni. Nem köteleességünk megtenni azokat a lépéseket, szabadon dönthetünk arról, hogy továbblépünk-e, vagy lemondunk az eredeti célunkról. Így a kód esetében a normatív szabályokkal ellentétben itt a Seinel találkozunk, vagyis nem normatív, hanem tényleges kényszerekkel. A technológiák bizonyos viselkedésformákat lehetővé téve, másokat pedig korlátozva szabályozzák viselkedésünket. „Szabályozó ereje attól függ, hogy a mérnökök, a tervezők és az üzleti vállalkozások hogyan hozzák forgalomba ezeket a termékeket, és végül attól, hogy a fogyasztók vagy a végfelhasználók hogyan viszonyulnak hozzájuk. Anyagi és társadalmi beágyazottsága bizonyos viselkedésmintákat indukál vagy gátol, például a személyes adatok megosztását.”⁹

Nos, a fenti idézet meglehetősen ellentétes a jogi normativitással, bár kétségkívül igaz. Éles ellentét mutatkozik a technológiai viselkedésszabályozó eszközök és a normatív viselkedésszabályozó eszközök között. Míg a normatív szabályokról elmondható, hogy minden esetben azonos kényszerítő erővel rendelkeznek, addig a technológiai szabályokkal kapcsolatban ez nem így van. A jogszabályok nem függenek attól, hogyan viszonyulnak hozzá a társadalom tagjai. Jogszociológiai szempontból vizsgálhatjuk ugyan egy-egy normatív rendelkezés társadalmi megítélését vagy egy hatályba lépő jogszabály fogadtatását, azonban mindezeknek semmi köze sem lesz ahhoz, hogy milyen erővel bír a benne foglalt jogi norma.

Hildebrandt a jog fogalmi értékeinek, a jogbiztonságnak, valamint az igazságosság és egyenlőség kérdéskörének vizsgálatakor többek között Radbruch elméletét is görcső alá veszi. Rávilágítva azon téziseire, hogy az igazságosság és jogbiztonság közötti összhang hiánya komoly problémát jelent, valamint, hogy egy olyan törvény nem azonosítható jogként, amely mindössze a jogbiztonságra törekszik.¹⁰ Radbruch munkásságát két szakaszra – a II. világháború előtti és utáni szakaszra – oszthatjuk, melyekben a leginkább szembeötlő különbséget a jog alapértékei, pontosabban azok fontosságának sorrendje jelentik. Az első szakaszban a jog céljait elsősorban a jogbiztonságban, majd az igazságosságban és a célhoz kötöttségben jelöli meg, a második szakaszban viszont a sorrend nem más, mint az igazságosság, a jogbiztonság és a célhoz kötöttség, hiszen az igazságosság foglalja el a legfontosabb helyet. Radbruch munkásságának második szakaszában tett megállapításaival egyetértőleg – mellyel mi is egyetértünk – akképp fogalmaz, hogy „a jog céljai az igazságosság, a jogbiztonság és a célhoz kötöttség. Egy olyan világ,

⁹ HILDEBRANDT, M.: i.m. 2015, 11.

¹⁰ Id. HILDEBRANDT, Mireille: *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology*. Cheltenham – Northampton, Edward Elgar Publishing, 2015, 147-156. <https://doi.org/10.4337/9781849808774>

amely a szabályozására, viselkedés befolyásolására vagy akár kikényszerítésére összpontosít, csekély mértékben kapcsolódik a jogi normativitáshoz.”¹¹

A normativitáshoz kapcsolódóan Lucy gondolatmenetében a cselekvőképesség jövőbeni kérdése merül fel, s aggodalmát fejezi ki a technológiai szabályozás terjedésével kapcsolatban, mert véleménye szerint „ha a technológiai irányítás általánossá válik mint szabályozási eszköz, akkor az emberi cselekvőképesség tere beszűkülhet, és ennek következtében maga a cselekvőképesség is elsorvadhat, végül pedig megszűnhet.”¹² Itt azonban fontos megjegyeznünk, hogy a valós társadalmi helyzetek technológiai szabályozásról és így a cselekvőképesség effajta beszűküléséről szó sincs, mivel itt továbbra is a normatív szabályozás érvényesül. Az online térben – vagy akár egy önvezető gépjármű esetében – jelentkező technológiai szabályozás pedig valóban kényszerpályára tereli viselkedésünket. Szabadon dönthetünk azonban arról, hogy elfogadjuk-e ezeket a feltételeket, számolva azzal, hogy amennyiben nem, úgy az elérni kívánt célunkról is lemondunk.

A technológiai szabályozás mindenekelőtt abban különbözik a hagyományos jogi szabályozástól, hogy nincs közvetlenül jelen a demokratikus jogalkotó vagy jogi törvényhozás általi ellenőrzés. Gyakran egy adott funkcióra irányuló konkrét tervezés melléktermékeként jön létre, mint például a „cooky”-k esetében, melyeket a Netscape talált fel az e-kereskedelem támogatása céljából. Azonban ezek megváltoztatták az online környezetünket, mivel lehetővé tették a webes felhasználók nyomon követését és elemzését a keresési eredmények, weboldalak, árképzési stratégiák és hírfolyamok személyre szabásához. Bár ezeknek a technológiáknak számos előnye van, soha nem kínáltak választási lehetőséget az online világban történő alkalmazásukat illetően, és tudattalan alkalmazkodásunknak jelentős következményei vannak. Tehát a technológiai szabályozás meghatározó szerepet játszik online környezetünk alakításában, és korlátozásokat és új lehetőségeket hoz létre számunkra. Lehetőség van a technológiai eszközök olyan típusának tervezésére, amelyek egész egyszerűen kizárják az általuk megtestesített szabály megsértését. Amennyiben nem fogadjuk el egy weboldal által használt „cooky-kat”, úgy nincs lehetőségünk hozzáférni az adott weboldalhoz, így leszűrhetjük következtetésként, hogy ha szeretnénk a weboldalon továbblépni, akkor meg kell felelnünk annak a szabálynak, hogy az oldalon történő továbblépés előtt elfogadjuk azokat. Ezek nem zárják ki az engedetlenséget. Fontos különbség a normatív szabályokhoz képest, hogy ezekkel a szabályokkal szemben legtöbbször nincs lehetőség bírósági úton történő jogérvényesítésre, többek között azért sem, mert gyakran láthatatlanok, így megismerésükre nincs módunk.¹³

¹¹ HILDEBRANDT, M.: i.m. 2015, 226.

¹² LUCY, W.: *The Death of Law: Another Obituary*. Cambridge Law Journal, 2022/81/1. 109–138. 138. <https://doi.org/10.1017/S0008197321001021>

¹³ HILDEBRANDT, M.: i.m. 2015, 12.

Az autonóm informatika az IBM által kifejlesztett koncepció, amelynek célja olyan számítógépes rendszerek létrehozása, amelyek emberi beavatkozás nélkül is képesek széleskörűen működni. Ezek egyfajta önmenedzselő, önkonfiguráló, önoptimalizáló és öngyógyító, emellett egyben önvédő rendszerek is jelentenek. Az elképzelés az ember autonóm idegrendszerén alapul, amely tudatos közreműködésünk nélkül szabályozza az életfunkciókat. Ahogyan a vegetatív idegrendszerünk a kifejezett beleegyezésünk nélkül szabályozza a szervezetünket, az autonóm számítógépes rendszerek ugyanilyen beavatkozásra képesek. Azonban, hasonlóan ahhoz, ahogyan nem férünk hozzá autonóm idegrendszerünk döntéshozatali folyamataihoz, az autonóm számítógépes rendszerek által hozott döntésekben is képtelenség „olvasni”. Tehát az autonóm számítástechnika koncepciója olyan számítógépes rendszereket vázol fel, amelyek képesek önállóan működni, és összetett algoritmusok segítségével, állandó emberi beavatkozás nélkül hozzák meg döntéseiket.¹⁴ Az IBM a mesterséges intelligencia fejlesztése terén is élen jár, hiszen *Watson* nevű fejlesztésük legyőzte a *Jeopardy!* elnevezésű vetélkedő két korábbi győztesét, 2011-ben. A kérdések összetételét tekintve bonyolultabb nyelvi feladatok is szerepeltek az események, tények, illetve adatok megválaszolásaira összpontosító feladatokon túl. A kérdések között szerepelt, hogyan lehet más szavakkal kifejezni azt, „rokonszenves férfi fodrász”? Erre a mesterséges intelligencia nagyon gyorsan azt a választ adta: „szimpatikus hím hajvágó”. Ezáltal úgy vélik, hogy ez a típusú mesterséges intelligencia kreatív feladatok megoldására is alkalmas.¹⁵ Véleményem szerint viszont ehhez nem kreativitásra, hanem pusztán gyors reakcióidőre, illetve a szinonim szavak adekvát ismeretére és használat volt szükség.

„Az ágens olyan entitás, amely cselekszik. Cselekedni annyit jelent, mint tenni valamit. A nyugati józan ész azt mondja, hogy a cselekvéshez valamilyen szándék szükséges ahhoz, hogy cselekvésnek minősüljön. Egy kő, amely leesik egy szikláról, csupán a fizika törvényeinek engedelmeskedik; nem cselekszik.”¹⁶ Azokat az ágenseket, amelyeket az informatikában és a mesterséges intelligenciában alkalmaznak, olyan módon terveznek meg, hogy képesek önállóan reagálni. Emellett érzékelik és reagálnak is a környezet változásaira, valamint hosszabb időn keresztül képesek konzisztens működést tanúsítani, továbbá az új körülményekhez igazodni. A mintafelismerés ezért kulcsfontosságú szerepet játszik, mert többet jelent, mint pusztán a szabályszerűségek észlelése. Ez az észlelt dolgok közötti összefüggések felismerésére utal, amennyiben pedig ezek az összefüggések a jövőre vetíthetők, akkor az időbeni konzisztencia birtokában, a lehetséges jövőbeni válaszok

¹⁴ HILDEBRANDT, M.: i.m. 2015, 55.

¹⁵ LŐRINCZ Gy.: A mesterséges intelligencia alkalmazásával hozott döntés jogi megítélésének egyes kérdései. *Gazdaság és Jog*, 2019/4. 1-7. 1.

¹⁶ HILDEBRANDT, M.: i.m. 2015, 22.

átszervezésére is képessé válnak.¹⁷ A pénzügyi szolgáltatások területén látványos mértékben hódít teret a mesterséges intelligencia. A szoftverbotok elemző feladatán túl megfigyelhető a befektető robotok alkalmazása, amelyek már nem adatokat elemeznek, hanem döntéseket hoznak, ami az úgynevezett „algoritmikus kereskedés”.¹⁸

Az informatikában napjainkban rengeteg az elektronikus ágens, ami olyan szoftverprogramot jelent, amely meghatározott feladatokat lát el egy digitális környezetben. Az első típusú ágenseket determinisztikusnak nevezzük, és csak bizonyos mértékig tekinthetők intelligensnek. A tervező azon képességére támaszkodnak, hogy előre látja a lehetséges problémákat, és konkrét utasításokat ad azok megoldására. Ezek az utasítások az egyszerűtől a bonyolultig terjedhetnek, de lényegében a problémamegoldás lépéseinek meghatározott sorozatát jelentik. Ezt a szekvenciát algoritmusnak nevezzük, amely tartalmazhat összetett függvényeket, de nem feltétlenül. A determinisztikus ágensek azonban, ahol mind az észlelések, mind a válaszok előre meghatározottak, nem tudnak új mintákat felfedezni, és teljesen kiszámítható módon fognak viselkedni. Bármilyen váratlan esemény valószínűleg az ágens összeomlásához vagy nem hatékony viselkedéshez vezet. A második típus az adatbányászat fejlett formáit használja a mintafelismeréshez. A gépi tanulás történhet felügyelt vagy felügyelet nélküli algoritmusok segítségével. A felügyelt tanulás során az ágens saját maga kell, hogy „megértse”, mi számít jó megoldásnak. A tanulási halmaz adatokból áll, míg a modell az adatokban felismert mintákat foglalja magában, statisztikai módszerek, például klaszterezés segítségével. Kezdetben emberi felügyelők irányítják az ágens tanulóhalmazát, amely az első észlelését jelenti. A felügyelt tanulás a helyes megoldások megerősítésével erősíthető, segítve a rendszert, hogy a kívánt irányba javítsa a kimenetét. Miután jól betanították, az ágensnek képesnek kell lennie arra, hogy folytassa mintafelismerő képességeit az új adatokon, ideális esetben olyan kimenetet produkálva, amely megegyezik azzal, amit a felügyelők elértek volna, ha ők maguk végezték volna a munkát, sőt, ideális esetben még jobb kimenetet is produkálhat.¹⁹ A harmadik típusú ágensek az első két típusnál érdekesebbnek, ám egyben merészebbnek is tűnnek, ugyanis nagyfokú kiszámíthatatlanságot hordoznak. Ez a típus már a programozók által előre nem látott problémák megoldásához is képes hozzájárulni. Ennek a típusnak a kapcsán a kitűzött saját célok eléréséhez egymással kommunikáló – az első vagy a második típusba tartozó – ágensek csoportjairól beszélünk. A kommunikációjuk során generált tevékenység nincs előre programozva, így a különálló egységekből a rendszer egyfajta „globális ágens” hoz létre, mely egységes tevékenységet fejt ki. Egy-egy önálló ágens a saját képességeivel lép be az önszerveződő interakcióba. Amennyiben az effajta rendszer – emergens viselkedése folytán – egységes

¹⁷ HILDEBRANDT, M.: i.m. 2015, 22.

¹⁸ LÓRINCZ Gy.: i.m. 3.

¹⁹ HILDEBRANDT, M.: i.m. 2015, 23-24.

cselekvése felismerhető, úgy ágensnek minősíthető. Valós idejű szimulációk alapján használhatóak döntéstámogatásra, de akár döntéshozatalra is, így megfelelő a forgalomirányításban vagy épp a pénzügyi piacokon való kereskedésben történő alkalmazásra. A legfejlettebb szintű mesterséges intelligenciáknak a kiteljesedett ágensek (complete agents) számítanak. A társadalom hajlamos különálló individuumokként azonosítani az elektronikus ágenseket, s talán ez az oka annak, hogy elsősorban nem a Google keresőalgoritmusára, hanem inkább a robotikára terelődik a gondolat, ha mesterséges intelligenciáról esik szó. Ez a típus már a számítógépes rendszereken – noha maguk is számítógépes rendszerekből épülnek fel – kívül is túlélni képes mesterséges vagy biológiai ágenseket jelenti. Míg egy robot elérheti ezt a státuszt, addig egy webbot nem tekinthető ilyennek, de egy robot a jövőben elérheti ezt a státuszt. Az ilyen típusú ügynököknek, nem kell feltétlenül biológiai lényekként megtestesülniük, de beágyazott rendszernek minősülnek. Az ágensek létrejöttét vizsgáló fenomenológiai kutatásokhoz kapcsolható ezen csoport környezeti túlélési képességére, valamint beágyazottságára fektetett hangsúly. A kutatás fő irányvonala a cselekvés és észlelés közötti kapcsolat fontossága, amelyek nem választhatóak külön, hiszen az interakció nem független az észleléstől. Ilyen esetekben egyrészt az organizmus sajátos tulajdonágaitól, másrészt a környezet által biztosított lehetőségektől is függ a mintázatfelismerés. Így a környezetébe való optimális illeszkedés fenntartása során rengeteg új mintázatot tanul meg, annak ellenére, hogy bizonyos mintázatok felismerése előre programozva van.²⁰

Bármilyen nehéz feladatokkal is bírnak el az ágensek, azt mindenképp fontos leszögezni, hogy semmiképpen sem helyettesíthetik az olyan személyeket – legyen szó akár bírókról, ügyészekről és más területen tevékenységet végzőkről – akik jogalkotási vagy jogalkalmazói feladatokat látnak el. Ugyan a compliance világában az ágensek nagyszerűen alkalmazzák a technológiai viselkedésszabályozás eszközeit, valódi ismeretekkel a jog világában nem rendelkeznek, s ez komoly problémát jelentene, ha esetlegesen ilyen döntési jogkörrel ruháznánk fel őket.

4. Nyelvi és fordítási problémák

A nyelv egy dinamikus eszköz, amely az idők során fejlődik, a szókincs és a nyelvtani normák, a stílusok és műfajok fejlődésével változnak. Az emberi nyelv egyik jellemzője az a képesség, hogy másokat második személyben szólítunk meg, embertársként ismerve fel őket. Az én és a másik közötti kölcsönös elismerés alapvető fontosságú a hozzánk hasonló elmék létezésének megállapításához. Az én és a másik fogalma kölcsönös kauzalitáson keresztül alakul ki, ahol mindkét fél hozzájárul egymás konstitúciójához. A mások gondolkodó, érző, szándékokkal és preferenciákkal rendelkező lényekként való megértésének problémája akkor merül

²⁰ HILDEBRANDT, M.: i.m. 2015, 26-27.

fel, amikor elfelejtjük, hogy saját én-érzetünk akkor alakult ki, amikor egyénként megszólítottak bennünket. Összefoglalva, a nyelv lehetővé teszi az egyének közötti felismerést és interakciót, alakítva önmagunk és mások megértését.²¹

Fontos a nyelvi szakadék az ún. „translation gap” vizsgálata, amellyel minden esetben számolnunk kell, ha egy jogszabály és egy algoritmus találkozik, vagy épp egy jogszabályi szöveget szeretnénk algoritmizálni, hogy azt a generatív mesterséges intelligencia alkalmazni tudja az online térben.²²

A Google *gondolatvektora* ugyanazon információ különböző nyelveken történő kódolására, illetve dekódolására képes. Ez az univerzális nyelv emlékeztet Leibniz ideáljára, amely a valóságot, röviden, lényegretörően és pontosan kifejezni képes nyelvről szól. Különösen a matematikai nyelveket tekintik transzlingvisztikai tisztaságúnak, és ez a vonzerő tükröződik a gépi fordításban, amely a matematikai információelméleten alapul. A gépi fordítás célja, hogy bármilyen információt univerzális nyelvvé alakítson át úgy, hogy a tiszta logika helyett statisztikai következtetéseket használ. Egy ilyen univerzális nyelv létrehozása azonban kihívásokkal jár, mivel a fordítás pontossága a bemeneti adatoktól és az alkalmazott számítási technikáktól is függ. A bemeneti adatokat jelentő képzési halmaz és az alkalmazott számítási módszerek határozzák meg a rendszer által levont következtetéseket, és ezekről nem feltételezhető, hogy tévedhetetlenek.²³ Elég a tréninghalmazról és a tanuló algoritmusról rendelkezünk némi ismerettel, ahhoz hogy következtetéseket tudjunk levonni a tanuló algoritmus hatékonyságáról, hiszen ezt a benyomást kelti a modern felügyelt tanuláselmélet nagy része.²⁴

A generatív mesterséges intelligenciák egy része, mint a ChatGPT már az algoritmusokon túllépve a természetes nyelvet is ismeri, így hatással lehet a technológia és az emberek közötti kapcsolatra. Azonban az, hogy ismeri a természetes nyelvet, nem jelenti azt, hogy képes is természetes módon, emberi értelemmel gondolkodva szövegalkotásra, mivel ezt továbbra is logikai lépéseket követve, mesterségesen teszi. A természetes nyelv és az algoritmusok közötti fordítási szakadék áthidalása továbbra is problémát jelent.

Két lehetőség vázolható fel a nyelvi, illetve fordítási hiányosságok kezelésére. Az első esetben a megoldás úgy kínálkozik, hogy a kódok sajátos jellegéhez igazítjuk a technológiai szabályozást, ebben az esetben az állam néhány minimum szabályt fektet le a kódok számára. A „szabályok mint kódok” mozgalom ezzel ellentétben azt a megoldást javasolja, hogy a jogszabályok a természetes nyelv mellett algoritmizálható formában is kerüljenek megalkotásra, vagyis megfogalmazásra.²⁵ A

²¹ HILDEBRANDT, M.: i.m. 2015, 54

²² BÓDIG M. – ZÓDI Zs.: Is Code Destined to Supersede Law? Behavioural Control by Code and Legal Theory. SSRN Electronic Journal, 2024. 29. <http://dx.doi.org/10.2139/ssrn.4873442>

²³ HILDEBRANDT, M.: i.m. 2016, 24.

²⁴ Vö. WOLPERT, D. H.: The Lack of A Priori Distinctions Between Learning Algorithms. Neural Computation. 1996/8. 1341-1390. <https://doi.org/10.1162/neco.1996.8.7.1341>

²⁵ BÓDIG M. – ZÓDI Zs.: i.m. 29-30.

nyelvi problémákkal még akkor is találkozunk, ha egy természetes nyelven megfogalmazott jogszabályt kell egy másik természetes nyelvre lefordítanunk (pl.: angolról magyarra), mivel fontos, hogy a norma bár más formában jelenik meg, tartalma mégis ugyanaz kell, hogy maradjon.

Fontos viszont kiemelni, hogy az ellentét nem pusztán nyelvi, a különbség lényegét abban tudjuk megfogalmazni, hogy rendelkezünk-e döntési szabadsággal a szabálykövetés esetében.

A fentiekben megjelölt képességek kapcsán fontos leszögezni, hogy pusztán logikai lépések sorozatáról van szó, valódi értelemmel nem rendelkeznek. Nem szabad akaratukból és nem értelemmel képesek a lehetséges válaszok kikövetkeztetésére, hanem a minták korábbi alakulásának figyelembe vételével, ezeket a tapasztalatokat építik be a logikai levezetésükbe. Emellett meg kell jegyeznünk, hogy a természetes nyelvről mesterséges nyelvre történő fordítás interszemiotikus fordításnak számít, amely még több nehézséget rejt magában – annak kapcsán, hogy a jogi norma a fordítás során megőrizze eredeti jelentését – mint a természetes nyelvek közötti fordítás.

A fordítási hiányosság abból adódik, hogy a szabályozási hatású kódexek nem nyelvi entitások, míg ezzel szemben a jog összefonódik a természetes nyelvvel. Ahhoz, hogy a normatív iránymutatást technológiai ellenőrzéssel hatékonyan lehessen végrehajtani vagy éppen a kódok által szabályozott viselkedés magánhasználatára vonatkozó paramétereket lehessen megállapítani, szükség van ennek a fordítási szakadéknak az áthidalására. E két különálló szemiotikai rendszer közötti egyenértékűség elérése azonban kihívást jelent. Annak meghatározása, hogy egy kód mikor egyenértékű a természetes nyelvi jogszabályokkal, összetett és nehéz feladat. Mivel a technológiai irányítás egyre fontosabb szerephez jut így, a fordítási szakadék áthidalása egyre nagyobb kihívássá vált. Míg a technológiai irányítási rendszerek jogi környezetükhöz való igazítása a nagy szervezetek számára prioritás, a fordítási folyamat minden érdekelt felet érint. A technológiai fejlődéssel összefüggésben a hatékony szabályozás és a jogszabályoknak való megfelelés biztosítása érdekében elengedhetetlen a fordítási szakadék kezelése.²⁶

Az LPbD (Legal Protection by Design), vagyis a tervezés általi jogvédelem egy olyan módszer, amellyel a jog meghatározott feltételei, mint a jogbiztonság, az igazságosság és a célszerűség, műszaki követelményekké alakíthatóak, így a jog megőrzi normativitását, ezzel más formát öltve és más szerepet töltve be, mint a technológiai – compliance alapú – szabályozás. Fontos, hogy a már bevezetett technológiai szabályozások megszilárdulását követően már nem lesz hatékony az ilyen szabályozás bevezetése. Ki kell emelni azonban, hogy a „hagyományos”, írott jog helyettesítésre az LPbD nem képes, hanem inkább hidat kell jelentenie a normatív jogi szabályozás és az adatvezérelt ágensek tevékenysége között. A

²⁶ BÓDIG M. – ZÓDI Zs: i.m. 29

technológiai semlegességgel – noha a hagyományos jognak annak kell lennie – az LPbD nem számol.²⁷

Az LPbD kapcsán a fő irány az, hogy feltárják és konfigurálják az olyan lehetőségeket, melyek összeegyeztethetők a jogi normákkal, amik egyébként elveszítenék erejüket. Emellett a kísérlet célja konkrét jogi normákat megtestesítő társadalmi-technikai rendszerek kifejlesztése, melyeknek mindig meg kell őrizniük a jogi normativitás jellemzőjét, vagyis a megtámadhatóságot és kiemelt figyelmet kell fordítaniuk arra, hogy a fejlesztések, az igazságosság, célszerűség és jogbiztonság elvét miként tudnák a lehető legkényebben megőrizni. Igen nagy kihívást jelent az LPbD módszertanának kidolgozása, melyhez együttesen kell támaszkodni a jogtudományon belüli hagyományos doktrinális kutatási módszerekre, s emellett az informatika, a követelménymérnöki és az elektronikai módszerekre is. A kiindulópont nem más, mint az, hogy operációs rendszerben, hardver konfigurációban, szabványokban, vagy éppen protokollban megfogalmazhatóvá váljanak a jogi normák.²⁸

Azt még talán el tudjuk képzelni, hogy a célszerűség elve műszaki követelménnyé alakítható, hiszen az adatkezelés során megadható egy olyan műszaki követelmény és elvégezhető olyan beállítás, amely célhoz kötötten kér és kezel bizonyos adatokat. Azonban az, hogy a jog célszerűsége műszaki követelménnyé váljon egy rendszer megalkotásakor már nehezen elképzelhető. Az igazságosság elve kapcsán is elképzelhető, hogy valamely rendszer tervezésekor, abba betáplálható egy ilyen tulajdonság, tehát, aki megsérti egy közösségi oldal felhasználói szabályzatát, az letiltásra kerül, s ez mindenkire egyformán alkalmazandó. Azt azonban már kifejezetten nehéz elképzelni, hogy a jogbiztonság elve egy pusztán műszaki követelményként érvényesüljön, sőt mi több, hogy ezen három elv a technológiával ötvözve megőrizze a jog normativitását. Olyan ez, mintha azt mondanánk, tétellezzük föl, hogy a generatív mesterséges intelligencia képes a megfelelő jogi döntések meghozatalára.

5. A szabályozás kiszervezése

A közpolitikai folyamatból ismert kiszervezés azt jelenti, hogy az állami szervek a részletszabályok megalkotásának jogát átruházzák valamely szervezetre, amelyek az online platformok működtetéséért felelősek. Ezt követően az ilyen szervezetek megalkotják a felhasználási feltételeket, ezeket gyakran el kell fogadnunk már ahhoz is, hogy egy bizonyos alkalmazást használni tudjunk. Gondoljunk csak a kormányablak online rendszerére, amikor pl. elektronikusan szeretnénk egy pdf dokumentumot hitelesíteni, az AVDH hitelesítést használva, a rendszer csak azután helyezi el az elektronikus aláírást a dokumentumon, miután elfogadtuk a felhasználási feltételeket. Előfordul, hogy bizonyos esetekben a platform által kért

²⁷ HILDEBRANDT, M.: i.m. 2015, 218-219.

²⁸ HILDEBRANDT, M.: i.m. 2015, 218.

beleegyezésünk meg nem adása esetén már tovább sem tudunk haladni, ha mégis, akkor viszont nem tudjuk minden funkcióját használni.

A platformokon működő kódok igen nagy mennyiségű adatok gyűjtésére és ezzel együtt feldolgozására is képesek. A magánszabályozás erősödéséhez vezetnek a platform alapú szolgáltatások. Ha az általános szerződési feltételekre gondolunk – melyet főként az elektronikus szerződéskötés során alkalmaznak a gazdálkodó szervezetek –, szintén egy platform alapú online tér jut eszünkbe. Ebben az esetben szintén egy előre elkészített szerződés áll előttünk, amelyet vagy elfogadunk vagy nem, szabadon dönthetünk, de amennyiben nem fogadjuk el, úgy a szerződés nem jön létre, viszont ebben az esetben nem is keletkezik semmilyen kötelezettségünk. Amennyiben a kereskedő nem egy fogyasztóval köt szerződést, hanem egy másik kereskedővel és a két szervezet általános szerződési feltételei lényeges dologban eltérnek egymástól, akkor jellemző a blanketták csatája.

A modern közjog és a magánjog együttese a 20. század eleje óta megfigyelhető. Míg a bírósági döntések a formális jogon alapulnak, addig a mindennapi életben a magánjogi kapcsolatokat, beleértve az üzleti életet is, nagymértékben befolyásolják a saját szabályrendszereik. Ezek a szabályok, amelyek magukban foglalják a szakmai magatartást, a belső vállalati szabályzatokat, az íratlan szokásokat és a magánjogi szabályozás egyéb formáit, mindig is jelentős szerepet játszottak az állami jog mellett. A magánjogi szabályozás nem egyszerűen az állami jog mellett működik, hanem a technológia irányítása kiegyenlítette a kettő közötti játékteret. Elmondhatjuk azt is, hogy az állami hatóságok hajlamosak arra, hogy a társadalmi kapcsolatok szabályozásának terheinek egy részét a magánszabályozókra ruházzák, ahelyett, hogy kizárólag a közjogi szabályozásra támaszkodnának. Ez a „kiszervezett jog” – ahogyan Pauline Westermann nevezi – a szabályozási felelősségeknek a hatóságoktól a magánszervezetekre történő átruházását jelenti.²⁹ Ennek megfelelően háromszintű szabályozói felelősségről beszélhetünk. Az első szint a legalapvetőbb, mely lényegében nem más, mint azoknak az előfeltételeknek a fenntartása, melyek szükségesek az emberi társadalmi létezés fenntartásához. A második szint jelenti az emberi közösségek identitását meghatározó, alapvető értékeik tiszteltetését. Végül pedig a legfelső szint a legitím érdekek közötti egyensúly megalapozásának felelősségét jelenti.³⁰

Az önszabályozás helyzetére kétféle hatással járt az interneten fellelhető virtuális terek, platformok kialakulása. Az egyik, hogy a felhasználók – a fizikai világhoz képest – a platformokkal részben szorosabb, részben pedig gyengébb kapcsolatokat alakítottak ki, mely igencsak sajátos helyzet. A platformokkal való erősebb kapcsolat abban mutatkozik meg, hogy átfogóbban viszonyulnak a felhasználók életéhez, a

²⁹ BÓDIG M. – ZÓDI Zs.: i.m. 26-27.

³⁰ Vö. BROWNSWORD, R.: *Law 3.0. Rules, Regulation, and Technology*. Routledge, Abingdon, Oxon – New York, 2021, 71-72.

gyengeség a fizikai kényszer hiányában mutatható ki. A másik pedig, hogy a technológiai irányítás az alapértelmezett ellenőrzési mechanizmus az online térben. A „Meta” például alkalmaz egy bejegyzéseket ellenőrző algoritmust, amely gépi tanulási módszerrel működik és a terrorizmus megelőzése és felderítése a fő célja.³¹ A magánszabályozók élen járnak a kulcsfontosságú technológiák kiterjesztésében, így értelmetlen lenne őket mentesíteni a jogállamiságnak való megfelelés terhe alól.³²

Az adminisztratív állam a társadalmi élet különböző területeinek szabályozásáért felelős, melynek biztosítására kiterjedt bürokratikus apparátussal is rendelkezik. Ennek eredményeként a végrehajtás és felülvizsgálat a kormányzás minden aspektusával összefonódik. Ennek következtében a pozitív jog nagy része a politikai célok eszközévé válik. Emiatt nő a szabályozási beavatkozások mértéke és mennyisége. A modern állami jogban a közigazgatási intézmények hozzák létre a pozitív jog nagy részét, amit közigazgatási jogként is ismerünk. Ez nemcsak a jogi normák mennyiségét jelenti, hanem a jognak a közigazgatási állam feladataihoz való alkalmazkodását, ami megváltoztatja a jog jellegét.³³ Brownsword három típusú államigazgatási felhasználási lehetőséget különböztet meg, 1. a technológia alkalmazható a normatív kormányzás támogatására, másrészt 2. az emberek kimaradnak a kormányzásból, mert azt teljes mértékben gépek viszik véghez, végül 3. az emberek részére elérhető gyakorlati lehetőségek kezelésének céljából történő technológia használat.³⁴

A kód alapú szabályozás és az alkotmányos demokrácia közötti kapcsolatot a jogelmélet központi kihívása. Bár nem minden közigazgatási állam demokratikus, a közigazgatási állam infrastruktúrája kulcsfontosságú az alkotmányos demokráciák számára is. A demokratikus politikai folyamat a szabályozási igények bővüléséhez vezet, amely magában foglalja a magántermelők és szolgáltatók szabályozását is. Ez jelentős mennyiségű közpolitikát generál, ami hatással van a pozitív jog fejlődésére. Az állampolgárság is változik a „szociális állampolgárság” irányába történő elmozdulással, ahol a demokratikus kormányok kötelezettséget vállalnak a közszolgáltatások és a közjuttatások biztosítására. E kötelezettségvállalások teljesítése érdekében a kormányok nagy közintézményekre támaszkodnak olyan területeken, mint az oktatás és az egészségügy. Ebben az összefüggésben a közigazgatási állam kénytelen a kockázatokat szabályozási beavatkozással és közvetlen fellépéssel – ilyen a katasztrófaelhárítás – mérsékelni. Ez a proaktív megközelítés magában foglalja a válságok, katasztrófák, balesetek, járványok és betegségek megelőzésére szolgáló intézményi kapacitások kiépítését, ami egyben a megelőzés és a védelem összefüggését is mutatja.³⁵ A kormányzásba valamely technológia általi szabályozás bevezetése során, illetve egy technológiai eszköz

³¹ BÓDIG M. – ZÓDI Zs: i.m. 27.

³² BROWNSWORD, R.: i.m. 2022, 8.

³³ BÓDIG M. – ZÓDI Zs: i.m. 16.

³⁴ BROWNSWORD, R.: i.m. 2022, 7.

³⁵ BÓDIG M. – ZÓDI Zs: i.m. 16-17.

használatában történő változás bekövetkezése esetén elengedhetetlen a jogállamiság követelményeinek alkalmazása.³⁶

A kiszervezés esetében fontos, hogy valamilyen ellenőrzés vagy visszacsatolás során a jogalkotási hatáskörrel rendelkező állami szervezet ellenőrizhesse, jóváhagyhassa a külső szervezet által megalkotott részletszabályokat.

Az emberi jogi normák keretet biztosítanak az adminisztratív állam szabályozásához, és fenntartják az emberi cselekvőképesség hagyományos jogi értelmezését. Annak ellenére, hogy a fordítási szakadékokat megnehezítik, az emberi jogi normák nyelvet kínálnak a technológiai kormányzással kapcsolatos aggályok megvitatására anélkül, hogy a technikai részletekbe bonyolódnánk. Az emberi jogi mechanizmusok ráadásul mind az eljárási biztosítékokra, mind az anyagi jogi normákra összpontosítanak. Lehetővé teszik a „stratégiai pereskedést” is, amelynek célja nyomás gyakorlása a hatóságokra és a közpolitikák megváltoztatása. A magánjogi peres ügyek száma összességében csökkenhet, de ez rávilágít a stratégiai pereskedés fontosságára, különösen akkor, amikor a magatartás szabályozással történő ellenőrzéséről van szó. A magatartásszabályozás a normatív iránymutatás hatályát az érdekeltek egy meghatározott csoportjára szűkíti, korlátozva az érintettek cselekvéseit.³⁷ „Az emberi jogok egy olyan nyelvet kínálnak, amellyel igényt lehet formálni a cselekvési szabadság visszanyerésére és az érintettek közötti hatalmi egyensúly helyreállítására. Mivel az emberi jogi normák egyszerre érintik a szabályozás eljárási és tartalmi aspektusait, és tükrözik a gyámkodó („paternalista”) és autonómiát elősegítő kormányzati megközelítések dinamikus egyensúlyát a alkotmányos demokráciákban, képesek megfelelni azon technológiai menedzsment által felvetett kihívások összetettségének, amely inkább az érintettek relatív szabadságával, mint a fizikai veszéllyel foglalkozik.”³⁸

6. Adatvédelmi kihívások az MI korában

A modern technológia korában számolnunk kell azzal, hogy adataink nem feltétlenül vannak biztonságban, hiszen a technológia jó célokra történő felhasználásával együtt a bűnözési célú technológiafelhasználás is rohamos léptekben előre tör, s ez bizony komoly kihívást és kockázatot jelent mind az állami, mind pedig a magán szektor szereplőinek. A hírekből értesülhettünk róla, hogy az olaszországi kormány a ChatGPT ingyenes és díjköteles verzióit is betiltotta egy időre, hiszen kétséges volt alkalmazásának biztonsága, és felmerült a felhasználók adataival történő visszaélés lehetősége is.

³⁶ BROWNSWORD, R.: i.m. 2022, 9.

³⁷ BÓDIG M. – ZÓDI Zs.: i.m. 32-33.

³⁸ BÓDIG M. – ZÓDI Zs.: i.m. 33.

A jelenlegi uniós adatvédelmi rendszer alapszerkezetét vizsgálva látható, hogy az egyéni hozzájáruláson kívül öt további jogalapja van a személyes adatok feldolgozásának. Ezek közé tartozik például a szerződéssel összefüggő, vagy az adatkezelő jogos érdekein alapuló adatkezelés. Ebben az esetben az egyéneknek nincs választási lehetőségük, mert amikor például valaki online vásárol könyvet, akkor a szállítás sikeressége érdekében és a fizetési kötelezettség teljesítése miatt meg kell osztania bizonyos személyes adatait. Az online közösségi hálózatok esetében, ha valaki nem fizet a szolgáltatás használatáért, a szolgáltató azzal érvelhet, hogy a személyes adatok hasznosításán keresztül bevételre tesz szert. Mindkét esetben azonban a szükségesség követelménye a legfontosabb. Az olyan új alkalmazások megjelenése, amelyek lehetővé teszik a fizetést attribútumalapú hitelesítéssel, megváltoztathatja a helyzetet, így nem feltétlenül szükséges bizonyos adatokat bekérni. Az uniós adatvédelmi jogszabályok lehetővé teszik olyan üzleti modellek létrehozását, amelyek kevesebb adatáramlással is működhetnek, ezáltal csökkentve a biztonsággal és felesleges adattudományi beruházásokkal járó költségeket. Ha nincs szükség ezekre az adatokra, akkor továbbra is lehet használni az érvényes jogi alapot a hozzájárulás formájában. Az uniós jog szerint azonban az adatkezeléshez adott hozzájárulást vissza lehet vonni, ami instabil kapcsolatot eredményez az adatokkal. Még hozzájárulás esetén is érvényesül a célhoz kötöttség elve, ami korlátozza az adatok önkényes újrafelhasználását. A célhoz kötöttség elve azt jelenti, hogy az adatkezelőknek előre meghatározott jogszerű célt kell megadniuk, és csak az adatokat e céllal vagy összeegyeztethető céllal dolgozhatják fel. A Gazdasági Együttműködési és Fejlesztési Szervezet iránymutatásaiban először fogalmazták meg a célhoz kötöttség elvét.³⁹

Fontos két dolog kiemelése az adatvédelemmel kapcsolatban. Az adatvédelmi jogszabályok vizsgálata során láthatjuk, hogy a jogok és kötelezettségek alanya is az adatkezelő, vagyis ő felel a jogszabályban foglaltak végrehajtásáért, illetve bizonyos esetekben az adatfeldolgozó is felelősséggel tartozik. Az adatkezelő megbízhatósága kapcsán említést érdemel, hogy a jogszabályoknak való megfelelés elmulasztásához bizonyos esetekben nagyfokú gazdasági érdeke is fűződhet. Nem tűnik helyénvalónak az adatvédelmi hatóságok hatáskörében tartani a megfelelési ellenőrzések teljes feladatát, mivel a háttérrendszer ellenőrzését nagyban megnehezítik a szellemi tulajdonjogok és az üzleti titkok.⁴⁰ Az adatok anonimizálása nem jelent mást, mint azok további feldolgozását, amely minden esetben az adatgyűjtés után történik. A vállalatoknak jogukban áll anonim módon feldolgozni a személyes adatokat, amiket a felhasználók gyakran mindössze egyetlen kattintással adtak meg. Ezek a korábban személyes adatok, már anonim adatokként dolgozhatóak és használhatóak fel, ez együtt jár a harmadik féllel történő megosztás, illetve értékesítés jogával is. Ennek oka, hogy az olyan anonimizált személyes

³⁹ HILDEBRANDT, M.: i.m. 2015, 203-204.

⁴⁰ HILDEBRANDT, M.: i.m. 2015, 222.

adatokra, melyeknél az érintett már nem azonosítható be, az adatvédelmi szabályok nem vonatkoznak.⁴¹

Közismert, hogy a Microsoft is fizetési információkat kér, ahhoz, hogy például a letöltött Office 365 csomagot használni tudjuk – sőt a 30 napos próbaverzió sem indítható el anélkül –, melyet követően havonta vagy évente, a választott opciónak megfelelően az összeg a számlánkról levonásra kerül. Az információk megadásának során a személyes adatok mellett a fizetéshez használandó bankkártya adatait, beleértve a biztonsági kódot is meg kell adnunk. Nem nehéz elképzelni, hogy egy esetleges adathalász támadás esetén számtalan felhasználó bankkártyaadataihoz jut hozzá az illetéktelen személy. Ugyanez a helyzet, ha a mobiltelefonunkhoz rendelünk hozzá egy bankkártyát, hogy megkönnyítsük ezzel a későbbi fizetést, hiszen így nem kell a vásárlás során pénztárcát, s bankkártyát magunknál hordani, elég hozzá a telefonunk. Ugyanez a helyzet az online vásárlások alkalmával is, mivel köztudott, hogy már rengeteg kereskedelmi egység és szolgáltató lehetővé tette a mobiltelefonnal való fizetést, melyhez – mint a személyesen történő vásárlás esetén is – a rendszer a mobiltelefonunkhoz hozzárendelt bankkártyával egyenlíti ki az összeget. Ez azonban sok veszélyt rejtethet magában, bizonyára sokak számára ismerős az a helyzet, amikor az Apple egyik szolgáltatása, az Apple pay kapcsán látták a felhasználók, hogy kisebb-nagyobb összegeknek bizony lába kelt a bankszámlájukról.

A helyzet azért nem annyira drasztikus, mint a Lucy által vázolt végkifejlet, mely szerint – általa két veszélyesnek tartott ok folytán – bekövetkezik a „jog halála”. E két ok közül az egyik, hogy több, mint 50 éve elkezdődött a politikusok, döntéshozók, ügyvédek, s lobbisták egy csoportja által a jog megreformálása, mivel a jog eszméinek gyakorlati megvalósulása aggasztotta őket. Ennek oka, hogy túlzottan problémás eszköznek tartják ahhoz a ténylegesen működő jogrendszereket, hogy ezáltal a társadalmak az emberi jogok és a jogállamiság szerint éljenek. Ezen kívül pedig nem tartják kellően költséghatékonynak a működő jogrendszereket. Mivel ezt kellő ideig hangoztatták, így kialakult az a felfogás, hogy a jog reformra szorul. Emellett a másik, drámaibb ok nem más, mint magának a jognak vagy a hozzá kapcsolódó joggyakorlatnak a megváltoztatása.⁴²

A jogászok kiterjesztett elméjének megformálója nem más, mint a szöveg, amely archívumokból, reflexiókból, doktrinális értekezésekből és egyéb hasonló, rendszerezett adatházisokból meríti ismereteit. A jogi szövegek egyre nagyobb mennyiségben történő előállása tette lehetővé a rendszerezést, s emellett a komplexitást, amely hozzájárult az ismétlődő értelmezés szükségességéhez. A mérlegelés és a felmerülő kétségek mind a jog központi elemeit jelentik, melyek által

⁴¹ Bottis, M. –Bouchagari, G.: Personal Data v. Big Data in the EU: Control Lost, Discrimination Found. *Open Journal of Philosophy*, 2018/8. 192-205. 195. <https://doi.org/10.4236/ojpp.2018.83014>

⁴² Bővebben lásd LUCY, W.: i.m. 117-119.

megvalósult az ítélethozatal antagonisztikus előfeltétele. Ami megismerhetővé teszi a jogi normák jelentését, emellett lehetővé teszi a jogvitákat és a bírói döntéseket, az nem más, mint az írott jog. Ebből eredeztethető az a megállapítás, amely szerint a jogban megfigyelhető az ítéletközvetítő szerep, így az nem semleges a technológiától. Mivel nem várható el az, hogy pusztán az írott jog szabályozza a társadalmat egy modern, online világban, így szükséges a jog megtestesülését újragondolni, mely természetesen nem jelent egyet az írott jog szükségtelenségével. A jog külső jellemzőit, a vitathatóság és a kényszerítő erő megőrzése érdekében fenn kell tartani, azonban, amint megoldások születnek a jogi normáknak, a preemtív informatikai rendszerekbe történő importálására, az írott jog irányító szerepe megszűnik. Ez a megoldás nem jelent mindenképpen egyet a jog végével, ha megfelelő módszerek jönnek létre a jognak, technológiai szabályozástól való megkülönböztetésére.⁴³

7. Összegzés

Következtetésképp megállapíthatjuk, hogy a jogi norma és a kód között nem pusztán nyelvi különbséget tehetünk. Azonos a rendeltetésükben, hogy mindkettő viselkedésszabályozási céllal jön létre, de különböznek abban, hogy a jogszabály normatív erővel bír és be nem tartása esetén a címzetteknek számolniuk kell a lehetséges, kilátásba helyezett szankciók alkalmazásával. Ezzel ellentétben egy platformon alkalmazott kód, illetve algoritmus el nem fogadása vagy a technológia által szabott keretek megsértése „pusztán” annyi következményt von maga után, hogy nem tudjuk az adott alkalmazást tovább használni, vagy épp nem teljes körűen tudjuk használni azt. A jog és az MI kapcsán fontos leszögezni, hogy a generatív mesterséges intelligenciák, mint a ChatGPT ismerik ugyan az emberi nyelvet, de a szöveg megalkotásakor mégis logikai műveleteket követnek és így áll elő az általuk megalkotott szöveg.

Fontos leszögezni továbbá, hogy a „jogállamiság” fogalmának digitális kódra való lefordításához két fontos tényezőt kell figyelembe venni. Először is, a kód használatát demokratikus folyamat keretében kell engedélyezni, biztosítva annak jogszerűségét. Másodszor, el kell ismerni és minimalizálni kell az automatikus alkalmazás lehetséges következményeit. Az írott törvényekkel ellentétben a technológiák hatékonyabban tudják kikényszeríteni a szabályok betartását. Ahhoz azonban, hogy ezek a technológiák összhangban legyenek az alkotmányos demokrácia elveivel, lehetőséget kell biztosítaniuk saját alkalmazásuk megtámadására. Átláthatóságra van szükség ahhoz, hogy a társadalom tagjait képessé tegyünk a társadalmi-technikai infrastruktúrával való interakciójukra. Az egyik példa erre a személyes adatok védelmére való összpontosítás kiterjesztése a csoportprofilokhoz való hozzáférés jogára, ami jelentős hatással lehet a társadalmi

⁴³ HILDEBRANDT, M.: i.m. 2015, 217-218.

szelekcióra. Az ilyen információkhoz való hozzáférés biztosítása segítene az egyéneknek megérteni az egyes csoportokhoz kapcsolódó kockázatokat és lehetőségeket.⁴⁴

Bronsword szerint annak ellenére, hogy a helyi prioritások, preferenciák és politikák nagymértékben befolyásolják a technológiai szabályozás környezetét, a szabályozó szervezeteknek – egy olyan közösségben, ahol az innováció előnyeit és azt is elvárják, hogy ezek biztonságosak legyenek, s alkalmazásuk az alapvető közösségi érdekeket is tiszteletben tartsa – három elvárással szembe kell nézniük. Ezek pedig, 1. a hasznos innovációk elnyomása helyett azok támogatása, illetve 2. megfelelő kockázatkezelés kialakítása az emberi egészséget, biztonságot, és környezetet érintően, végül 3. az olyan értékek, min a magánélet, a bizalmas információ, szólásszabadság tiszteletben tartása.⁴⁵

Széles körben elfogadott tény, hogy egy állandó adatáramlással teli világban nem lesz hatékony egy olyan jogrendszer, amely csak az egyes információkra összpontosít. Minden datálható és korrelálható, így nem az egyénekre kellene bízni annak meghatározását, hogy mely adatok oszthatók meg a szolgáltatókkal, illetve harmadik felekkel. Emellett egy olyan online világban, ahol az adatvezérelt ágensek tevékenysége az uralkodó, az anonimizált profilokon alapuló csatlakozás és profilalkotás következményei sokkal jelentősebbek, mint pusztán a személyes adatok megosztásának kérdése.⁴⁶

Láthatjuk, hogy az online platformok és a technológia mind-mind kényszerpályára terelik viselkedésünket, azonban megállapítható, hogy az ehhez felhasznált szabályok nem rendelkeznek normativitással. Születnek ugyan megoldási javaslatok – mint például az LPbD – arra, hogy a jogi normákat az informatika világában fellelhető eszközökbe, azok által használt nyelven ültessük át, azonban erre még nem hoztak létre megfelelő eljárást, ahogyan nem állnak rendelkezésre megfelelő eszközök sem. Véleményem szerint az effajta törekvések térhódítása, mivel több kivetni valót is tartalmaznak, nem történik meg, emellett nem szabad elfeledni a különbséget a megfelelőségi és a normatív szabályok között.

Fontos tehát – bár ez most még nagyon sok kihívást rejt magában –, hogy a technológia és a jog között megtaláljuk a megfelelő egyensúlyt és fenntartsuk azt, ne engedjünk a technológiának olyan téren szerepet, amelyre az nem megfelelő, valamint ne tévesszük össze a megfelelőségi szabályokat a normatív szabályokkal. Semmiképp sem ajánlatos az MI számára olyan jogosultságokat és feladatköröket biztosítani, legyen szó jogalkotásról vagy jogalkalmazásról, melyhez nem rendelkezik annak megfelelő tulajdonságokkal, mint az emberi értelem. Emellett nagy hangsúlyt kell fektetnünk arra is, hogy a hatóságok törekedjenek a jogtalan információszerzés,

⁴⁴ HILDEBRANDT, M.: i.m. 2008, 178.

⁴⁵ BROWNSWORD, R.: i.m. 2021, 22.

⁴⁶ HILDEBRANDT, M.: i.m. 2015, 203.

s egyéb, a technológiát jogellenes cselekedetekre történő felhasználással kapcsolatos szabálysértések megfelelő szankcionálására és – ideális esetben – megakadályozására, valamint visszaszorítására, illetve megelőzésére.

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LÁSZLÓ MEZEY*

Hungary's Legal Heritage in Outer Space: Honoring Contributions to International Space Law

“Much like the star Sirius, which lights up our celestial canvas from twelve light-years away, our historical legal existence—though fragmented and dimmed—still reaches us as the last remaining fragment of our history.”

Béni Grosschmidt¹

Abstract: Imre Zlinszky, Károly Szladits, Ferenc Mádl, Gyula Gál. Any Hungarian lawyer or law student is likely familiar with the works of these renowned lawyers and academics, whose contributions are widely recognized in the legal domain and demonstrate their significant impact on both the Hungarian and international legal systems. Controversially, only a handful of individuals are aware of their crucial role in safeguarding the rule of law in outer space and contributing to the establishment of the fundamental legal concepts that govern space exploration. Hungary has played an important part in forming a legal framework for outer space since the very beginning of space exploration and has actively participated in diplomatic initiatives during the Cold War, with notable Hungarian legal scholars contributing their insights on space at international forums, including the U.N. Therefore, this article examines the historical development of space law discourse in Hungary, tracing its roots back to the late 19th century, as well as it highlights the contributions of prominent Hungarian legal scholars who dealt with the legal implications of celestial bodies and outer space long before the advent of space technology, and acknowledging their vital role in promoting a relatively calm legal structure for space exploration. Ultimately, the article emphasizes the value of understanding the historical context of space law discourse, as this perspective can offer valuable insights and inform current legal and policy debates on space exploration and utilization.

Keywords: liability for damages, space law, Gyula Gál, Ferenc Mádl, property rights

1. Introduction

Can a small nation impact international space law? What is Hungary's involvement in this domain? This little nation in the Carpathian Basin has been a significant

* PhD student at the Ferenc Deák Doctoral School of Faculty of Law of the University of Miskolc, Hungary, Intern at Central European Academy mezey.laszlo@centraleuropeanacademy.hu, [tps://orcid.org/0009-0009-3830-1259](https://orcid.org/0009-0009-3830-1259)

¹ GROSSCHMIDT, B: Magánjogi előadások. Jogszabálytan. Budapest, 1905, Atheneum Irod. és Nyomdai Rt. kiadása, p. 35. "Miként a Sirius csillag az ő tizenkét fényévnyi távolából a mi egünk kárpitján, úgy hatol el hozzájuk, bár eltörtelt és elhalványult sugárral, történelmi jogi létünknek ezen maholnap már-már csak egyedüli maradványa." Available at: https://adt.arcanum.com/hu/view/JogiKonyvtar_024, (date of download 14/01/2025).

participant in space diplomacy and space law during the Cold War. Although Hungary was part of the Soviet bloc following World War II, it retained its distinct viewpoint, therefore, this essay provides an insightful lesson on how a nation can influence space exploration and policy while not being a leading participant in the domain.

Hungarian culture holds a uniquely strong connection to celestial bodies, deeply embedded in its folklore, language, and historical practices.² Linguistically, the Hungarian words for "day" ("nap")³ and "month" ("hónap")⁴ are directly tied to celestial phenomena, with "nap" referencing the Sun and "hónap" combining the words for Moon ("hold") and day ("nap"). These terms also feature in legal contexts as fundamental units of time measurement. Historically, celestial bodies played a significant spiritual role for the ancestors of Hungarians, such as the Huns „worshipped celestial bodies, such as the sun, moon, and stars”.⁵ This worldview influenced their rudimentary 'justice system'⁶ and 'property protection' (which, during their nomadic lifestyle, was limited to personal belongings like livestock and weapons).⁷ Property security relied on individual and communal strength, guided by celestial events symbolizing divine order.

The transition to a settled lifestyle in the Carpathian Basin introduced private property and agricultural customs,⁸ many influenced by celestial positions. The "Hold" (Latin: *jugerum*, English: 'moon'),⁹ a land measurement unit representing the area cultivated in one day until moonrise,¹⁰ emerged in the 13th century and

² Folktales such as the "Csillag szemű juhász," songs like *Csillagok csillagok*, or the 'Szekreland anthem.'

³ GELLÉRT, F.: *Csillag-nap, Hold-nap, Nap-nap – a magyarok Istenének tanításából*. Available at: <https://www.megismeres.hu/cikkek/antropozofiai-szemleletu-irasok/csillagnap-holdnap-napnap-a-magyarok-istenenek-tanitasaibol>, (date of download 14/01/2025).

⁴ GELLÉRT, F.

⁵ KRÁLIK, L.: *Az Árpádok kora / I. Korszak. A honalapítás. A vezérek kora*, in *A Magyar Ügyvédség - Az ügyvédség múltjából*. 1. kötet *Az Árpádok kora*. Budapest, Franklin Társulat, Magyar Irod. Intézet és Könyvnyomda, 1906. Available at:

https://adt.arcanum.com/hu/view/JogiKonyvtar_024/?query=csillag&pg=12&layout=s, (date of download 14/01/2025): *Solem, lunam astraque alia alii adorant et quidquid eis primum occurrit.*

⁶ According to the website of *A turulmadár nyomán*, based on the article on *Álmos, az első magyar szakrális uralkodó*. Available at: <https://turul.info/turul/almos>, (date of download 14/01/2025)..

⁷ KRÁLIK, L.: (1906) p. 59

⁸ Based on the *Magyar Néprajzi Lexikon*, available at: <https://www.arcanum.com/hu/online-kiadvanyok/Lexikonok-magyar-neprajzi-lexikon-71DCC/h-7297A/hold-lat-jugerum-nem-joch-morgen-72B50/>, (date of download 14/01/2025).

⁹ Based on *Magyar Néprajzi Lexikon*, Akadémiai Kiadó, Budapest 1977-1982, available at: <http://mek.niif.hu/02100/02115/html/2-1344.html>, (date of download 14/01/2025).

¹⁰ Based on the webpage of *Magro* (2014): *Honnan ered az egy hold mint mértékegység?*, available at: <https://www.magro.hu/hu/agrarhirek/cikk/honnan-ered-az-egy-hold-mint-mertekevseg/>, (date of download 14/01/2025).

remained in use until 1972.¹¹ This integration of celestial phenomena highlights Hungary's deep-rooted cultural and legal ties to outer space.

This study begins by exploring early legal sources that are mentioning stars and the status of outer space, showing that Hungarian legal experts were considering these issues as early as the late 19th century. It then highlights Hungary's diplomatic role in bridging discussions between the U.S. and the Soviet Bloc, while also examining a major legal framework related to damages caused by space objects. This includes an analysis of Hungary's proposed draft provisions and comparing them with the final legal version. Finally, the article looks at Hungary's role in promoting the future safety of space activities, addressing nuclear power concerns, and advocating for the strengthening of UNOOSA (United Nations Office for Outer Space Affairs).

With applying comparative, historical, normative methodology to the subject, the article's aim is to emphasize the significance of exploring the historical evolution of space law discourse in the Hungarian context. This understanding can offer valuable perspectives for current legal and policy discussions related to space exploration and use.

2. Leading Hungarian jurists and space law

Numerous legal professors and prominent authors have examined the complex legal issues associated with celestial bodies and their property rights long before the appearance of space technology that enabled direct human exploration.

Beginning in the end of the 19th century, Bertalan Lányi (1851-1921) in his 1889 work states that *"by their natural nature, celestial bodies (such as the sun, moon, stars, atmosphere, and open sea) cannot be subjected to human control (res communes omnium), and the obstacle to acquiring property and engaging in transactions lies in the physical impossibility of taking possession."*¹²

Imre Zlinszky (1834-1880) asserted in 1899 that, within the framework of property law, celestial bodies such as the sun, moon, and stars could be classified as legal "things" due to their utility to humanity. However, certain scientific understanding has dismissed this old perspective, and the prevailing view around that time was that the concept of a "thing" as a legal entity is not fixed,¹³ instead, it

¹¹ 1972. évi 31. törvényerejű rendelet az ingatlan-nyilvántartásról, "III. Fejezet: Az ingatlan-nyilvántartás módja 10. § (1) Az ingatlan területét méterrendszerben (hektár, négyzetméter) kell nyilvántartani," available at: https://jogkodex.hu/jisz/1972_31_tvr_7810365, (date of download 14/01/2025).

¹² LÁNYI, B: Az elidegenítési és terhelési tilalom. Budapest, 1889, Pesti Könyvnyomda Részvénytársaság, p. 37.: "természetes minőségüknél fogva nem vethetők alá az ember uralmának (res communes omnium, mint pl. a nap, hold, csillagok, légkör, a nyílt tenger, stb.), a tulajdonszerzés és a forgalom akadályai a birtokbavétel fizikai lehetetlenségében gyökereznek."

¹³ ZLINSZKY, I: A magyar magánjog mai érvényében különös tekintettel a gyakorlat igényeire, 7th edition, Budapest, 1899, First part. Általános rész, p. 111. Available at: https://adt.arcanum.com/hu/view/ELTEkonyvek_Bf_4026/?pg=0&layout=s, date of download

always depends on positive law, cultural development, and the corresponding commercial perspective.¹⁴

In 1912, Dr. Gyula Zachár (1865-1964) defined physical items appropriate for human utilization as "things." Consequently, the sun, moon, and stars cannot be classified as "things" in a legal context, as they are not suitable to the will of humans.¹⁵

In the same year Bálint Kolosváry (1875-1954) and Károly Szladits (1871-1956) stated that the physical possession of certain entities is impossible, and thus, bringing them into private legal relations is inherently excluded. *"Such entities, in technical legal terms, could not even be considered 'things' ('natural things'). What are these? The laws of nature dictate this. The sun, moon, celestial bodies, air, sky, flowing water (aquaprofluens), and the sea are not owned or possessed by anyone."*¹⁶

14/01/2025). "A dolog szakasz értelmében szorosan véve a nap, hold, csillagok is jogi értelemben vett dolgok lennének, mert az emberek használatára szolgálnak. Azonban az újabb tudomány ezen téves meghatározást és felfogást elvetette és azon helyes alapgondolatból indul ki ki, hogy a dolognak — mint jogtárgynak — fogalma nem abszolút, hanem mindig a pozitív jogtól s a kultúrfeljesztéstől, illetőleg az ennek megfelelő forgalmi felfogástól függ; így, aki szerint a dolog az ész nélküli természet darabja, melyet a jog az emberi gazdálkodás önálló tárgyának elismer, vagy aki szerint testi, anyagi dolog jogi szempontból minden anyagi jelenség, mely a gazdasági — jogi forgalomban használati és csere- értékkel bír s ekként a forgalmi felfogás szerint önálló tárgyként szerepelhet."

¹⁴ ZILINSZKY, I. p. 111.: "A dolog szakasz értelmében szorosan véve a nap, hold, csillagok is jogi értelemben vett dolgok lennének, mert az emberek használatára szolgálnak. Azonban az újabb tudomány ezen téves meghatározást és felfogást elvetette és azon helyes alapgondolatból indul ki ki, hogy a dolognak — mint jogtárgynak — fogalma nem abszolút, hanem mindig a pozitív jogtól s a kultúrfeljesztéstől, illetőleg az ennek megfelelő forgalmi felfogástól függ; így, aki szerint a dolog az ész nélküli természet darabja, melyet a jog az emberi gazdálkodás önálló tárgyának elismer, vagy aki szerint testi, anyagi dolog jogi szempontból minden anyagi jelenség, mely a gazdasági — jogi forgalomban használati és csere- értékkel bír s ekként a forgalmi felfogás szerint önálló tárgyként szerepelhet."

¹⁵ ZACHÁR, GY: A magyar magánjog alaptanai. Budapest, 1912, Grill Károly Könyvkiadóvállalat, p. 23. Available at:

https://adt.arcanum.com/hu/view/JogiKonyvtar_005/?pg=21&layout=s&query=csillagok, (date of download 14/01/2025): "Az oly testi tárgyak, amelyek alkalmasak arra, hogy az ember által felhasználtassanak, dolgoknak nevezetnek. A nap, a hold, a csillagok tehát nem tekinthetők jogi értelemben vett dolgoknak, mert az emberi akaratnak alája nem vethetők."

¹⁶ KOLOSVÁRY, B: A dologi jog általános tanai, in SZLADITS, K. (ed.): Magyar magánjog 5. Dologi jog. Budapest, 1942, Available at:

https://adt.arcanum.com/hu/view/MagyarMaganjogSzladits_05/?pg=55&layout=s&query=hold (date of download 14/01/2025).

ELSŐ CÍM. A dologi jog általános tanai / II. FEJEZET. A dolgok osztályozása / „6. §. A dolgok osztályozása a forgalomra való képességük szempontjából melyekre nézve az uralom alá vonás fizikailag lehetetlen és így azoknak a magánjogi viszonyokkal való érintkezésbe hozása eleve ki van zárva. Az ilyen dolgok, technikus jogi értelemben véve „dolgokénak” voltaképp nem is volnának nevezhetők („természetidolgok”) hogy melyek ezek? ezt a természet törvényei mondják meg. A nap, a hold, az égitestek, a levegő, é, a lefolyó vízhullám (aquaprofluens) a tenger—senkinek tulajdonában, birtokában nincs”

In 1959, László Szádeczky-Kardoss authored one of the earliest articles exclusively addressing the legal position and concerns relevant to space law in Hungary, focusing on Sovereign Rights in Outer Space.¹⁷

In 1960, Gyula Gál published his initial study on space law, examining the interplay between aviation law and space law.¹⁸ Four years later, he authored an essential 365-page volume book, entitled "Space Law," which is recognized as one of the most important works in the history of the field. This work was subsequently translated into English in 1969 granting its author worldwide recognition as a distinguished researcher in the topic.¹⁹

Young Ferenc Mádl (1931-2011, the former President of Hungary from 4 August 2000 to 5 August 2005), authored a significant study in 1963 addressing liability issues in outer space. Space law gained significant popularity in Hungary, leading the Hungarian Bar Association to establish the Space Law Committee in 1962, while the Hungarian Technical Society formed the Space Law Working Group.²⁰

The aforementioned research papers demonstrate that celestial bodies and outer space have been topics of discourse among Hungarian scholars since the late 19th century. This historical context should encourage legal scholars, diplomats, and politicians to address and clarify the essential issues in space law. This participation will help in the preservation of our national legal tradition as a foundation for the development of the future international legal system. This assertion of mine has been supported by Gyula Gál's research, which is founded on the contributions of previous Hungarian legal scholars and has profoundly impacted the modern framework of international space law.

3. Hungary's engagement in the formation of international space law

Hungary is a signatory to the major international treaties that form the basis of space law, signifying that the Hungarian legal framework acknowledges most of the standards widely acknowledged in international law. The Outer Space Treaty has been effective in Hungary since October 10, 1967, followed by the Rescue Agreement on June 4, 1969, the Liability Convention on December 27, 1972, and the Registration Convention on October 26, 1977. The Moon Agreement is neither ratified nor signed in Hungary, which is noteworthy. This signifies that the principal agreements are currently operative in Hungary and are enforceable. Furthermore,

¹⁷ALMÁR, I.: Előszó in BARTÓKI-GÖNCZY, B. – SÜLYÖK, G.: Világűrjog, Budapest, 2022, Ludovika Egyetemi Kiadó, p. 14. Available at: https://webshop.ludovika.hu/wp-content/plugins/olvasoprobak/Olvasoproba_966_Vilagurjog_Web.pdf, (date of download 14/01/2025).

¹⁸ ALMÁR, I p.14.-19.

¹⁹ ALMÁR, I p.14.-19.

²⁰ ALMÁR, I p.14.-19.

Hungary ratified these treaties within two years of their global adoption, demonstrating the country's ongoing commitment to and involvement in outer space matters.

However, it is not widely acknowledged that Hungary has made significant contributions to the formulation and drafting of these widely accepted treaties, which means that the nation was exercising great diplomatic influence over these agreements. An examination of documents from UNOOSA's digital library related to Hungary (conducted during the preparation of this article)²¹ indicates that, despite its relatively modest size and belonging to the Soviet bloc, Hungary has significantly contributed to the development of international space law and possesses a unique legal legacy in this domain that is globally noteworthy.²²

Starting with the fact, that Hungary became one of the earliest members of UNOOSA, joining in 1959 through General Assembly Resolution 1472 (XIV), just one year following the establishment of UNOOSA, therefore the advancement of space law in Hungary experienced significant growth following the nation's membership to the UN Committee on the Peaceful Uses of Outer Space (COPUOS). The growing interest in space exploration has gone beyond technical aspects, resulting in numerous detailed studies from Hungary, which have laid the foundation for the nation's first-ever comprehensive publication on space law (by Gyula Gál).²³

3.1. The Hungarian proposal for the Liability convention²⁴

The Liability Convention serves as a crucial legal framework for outer space activities. The convention illustrates that socialist nations founded on public ownership and capitalist states based on private ownership coexist, in accordance with the principle of "peaceful purposes" expressed in several treaties.²⁵ The reason

²¹ UNOOSA: Documents and Resolutions Database. Available at: <https://www.unoosa.org/oosa/documents-and-resolutions/search.aspx?view=documents&match=hungary>, (date of download 14/01/2025).

²² UNOOSA: Committee on the Peaceful Uses of Outer Space: Membership Evolution. Available at: <https://www.unoosa.org/oosa/de/ourwork/copuos/members/evolution.html>, (date of download 14/01/2025).

²³ GÁL, GY.: Világűrjog, Közgazdasági és Jogi Könyvkiadó, Budapest, 1964, p. 6.: "A világűrjog művelése Magyarországon különleges lendületet vett azzal, hogy hazánk az ENSZ világűrbiztonságának tagjává lett. Az űrkutatás nemcsak technikai, de társadalomtudományi vonatkozásai iránt is tapasztalható érdeklődés indokolta számos magyar részlettanulmány megjelenése után az összefoglaló világűrjogi munka megírását."

²⁴ Draft Convention Concerning Liability for Damage Caused by the Launching of Objects into Outer Space, U.N. Doc. A/AC.105/C.2/L.10, 1964.

²⁵ MÁDL, F: A kozmikus térség meghódítása és az anyagi felelősség egyes kérdései, in Jogtudományi Közlöny 1963, p. 205.: "Az emberiség fejlődésében ma egymás mellett élnek a társadalmi tulajdon alapján álló szocialista és a magántulajdon alapján álló kapitalista államok, és hogy ezt az egymásmellett élést békés koexistencia elve uralja."

for this may lie in the inherent high-risk characteristics of space activities, where any event could result in catastrophic consequences.²⁶ Given that outer space lacks any kind of territorial boundaries, activities undertaken by one state may easily put harm on another.²⁷ It is clear that, despite nations' best intentions, accidents may and do happen, especially in the predominantly unexplored domain of outer space. One of the most serious violations of the rights of other nations, is the damage inflicted on valuable space assets by other states.²⁸ As such, addressing this issue is a key priority in the establishment of legal standards. Therefore, principles established by the convention ensure that, in the unfortunate event of any damage caused by space objects, the states that are parties to the agreement will provide just compensation. Furthermore, the convention promotes international cooperation, as liability issues are solved primarily through diplomatic channels before escalating to a commission.²⁹ Additionally it also operates through the absolute liability principle outlined in Article II, ensuring that states take all necessary measures to prevent causing harm. However, the formation of this convention was not without questions.

The Soviet Union argued that, although the matter of liability is significant, but the general and binding rules regulating outer space exploration (particularly the rescue of astronauts), should take priority to ensure peace and security,³⁰ therefore, any other issue should be addressed through resolutions.

But in 1962, the Hungarian delegation articulated its own unique viewpoint, advocating for formal treaties over general assembly decisions on critical issues, especially addressing the questions of liability. *"It has been said that the Sub-Committee should express its opinion on rescue of astronauts and space vehicles by drafting a general assembly resolution rather than an international treaty."*³¹ Hungary rejected this idea, arguing that

²⁶ SCHMALENBACH, K: Convention on International Liability for Damage Caused by Space Objects, in Peter Gailhofer et al. (eds), *Corporate Liability for Transboundary Environmental Harm*, Springer, 2023, pp. 523–36, 523–24.

²⁷ BHAT, S.: 6 State Responsibility and International Liability, in *International Space Law in the New Space Era: Principles and Challenges*, edited by Sandeepa Bhat B., Dilip Ukey, and Adithya Variath, Oxford University Press, 2024, p. 105-121. Available at: <https://academic-oup.com/peacepalace.idm.oclc.org/book/56493/chapter/452649193>, (date of download 14/01/2025).

²⁸ NAKAMURA, K: Norm Formation in Space Law (Executive Summary), Shinzansha Publisher, Co., Ltd., Tokyo, 2023, p. 9. Available at: <https://bpb-us-e1.wpmucdn.com/blogs.gvu.edu/dist/7/314/files/2023/05/Norm-Formation-in-Space-Law.pdf>, (date of download 14/01/2025).

²⁹ Art. IX. A claim for compensation for damage shall be presented to a launching State through diplomatic channels.

³⁰ MÁDL, F: Szovjetunió azt vallotta, hogy a felelősség problémája ugyan fontos, in *Jogtudományi Közlöny* 1963, p. 201.: "Szovjetunió azt vallotta, hogy a felelősség problémája ugyan fontos, de a béke és biztonság szempontjából a kozmikus térség használatának általános elveit, az űrhajósok megmentését illetve az erre vonatkozó deklarációkat kell előtérbe helyezni."

³¹ COPUOS, Legal Subcommittee: Summary record of the fifth meeting, 21 August 1962. Available at: https://www.unoosa.org/pdf/transcripts/legal/AC105_C2_SR005E.pdf, (date of download 14/01/2025).

an international convention would offer greater safety measures against the risks associated with space vehicles, particularly for smaller nations with limited capabilities. *"The Hungarian delegation favored an international treaty because space vehicles could cause tremendous damage, particularly in densely populated countries like Hungary"*. The country accepted that its general position was not even close to the significant space powers and had *"no sufficient economic and technical resources for effective defense against damage by space vehicles. There should also be an international treaty on the rescue of astronauts and space vehicles."*³² This revealed a substantial distinction in legal perspectives between Hungary and most nations. Despite being part of the Soviet bloc, Hungary's proposal for a convention concerning damages caused by space vehicles, in contrast to the USSR's emphasis on astronaut rescue, illustrates the country's unique viewpoint on the legal structures regulating outer space. The Soviet Union, recognizing Hungary's legal expertise and distinct perspective, tasked the nation with the development of liability principles that would support the general goals of the Soviet bloc while integrating Hungary's put forward protective measures.

In 1963, one year later, the United States proposed an international treaty concerning liability for damage caused by space vehicles.³³ Therefore, in the same year, both the United States and the USSR agreed to address liability problems in the 1963 General Assembly Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.³⁴ This resolution was the first attempt by the international community to formulate legal norms regulating outer space activity.³⁵

The overarching declaration about liability was later contained in Article VII of the Outer Space Treaty.³⁶ However, the state parties to the Outer Space Treaty recognized that the protections for damages caused by space objects outlined in the treaty were insufficient, as they did not adequately address specific provisions related to responsibility and financial liability. Although norms regarding state responsibility under the Outer Space Treaty were not further developed through a separate

³² Ibid.

³³ REIS, H: Some Reflections on the Liability Convention for Outer Space, 6(2) Journal of Space Law 125 (1978).

³⁴ "Each State which launches or procures the launching of an object into outer space, and each State from whose territory or facility an object is launched is internationally liable for damage to a foreign State or to its natural or juridical persons by such object or its component parts on the earth, in air space, or in outer space."

³⁵ HOFMANN, M: Chapter 7: Registration of Space Objects, in International Space Law in the New Space Era: Principles and Challenges (Sandeepa Bhat B., ed.), Oxford University Press, 2024. Available at: <https://academic-oup-com.peacepalace.idm.oclc.org/book/56493/chapter/452649343>, (date of download 14/01/2025).

HOBE, S: 'Historical Background' in Cologne Commentary on Space Law, Vol. I, edited by Stephan Hobe et al., Carl Heymanns Verlag 2009, p. 12.

³⁶ REIS, H: Some Reflections on the Liability Convention for Outer Space, Available at: <https://airandspaceclaw.olemiss.edu/pdfs/jsl-6-2.pdf>, (date of download 14/01/2025).

treaty,³⁷ the drafting of an international treaty on liability continued, with Hungarian legal scholars playing an increasingly significant role. International discussions, however, revealed that, according to Herbert Reis, *the delegations initially struggled to maintain connection with the Soviet Union, which preferred, throughout the subsequent eight years of negotiations, to rely on Hungary rather than propose initiatives under its own name.*³⁸ This raises the question for the reader: why Hungary?

The fact that the scope of space exploration had *"far exceeded the capitalist production relations that produced traditional systems of liability, which varied significantly from country to country".*³⁹ The Soviet Union recognized the remarkable legal issues arising from the earliest satellite launches and later manned space missions, which required the experience of leading legal specialists. Consequently, the Soviet Union involved Hungary's outstanding jurists—Ferenc Mádl, Gyula Gál, István Herczeg, and Gyula Eörsi⁴⁰—to address and provide remedies to the emerging legal difficulties, which were often the subject of discussion in specialized journals of the time. Consequently, Hungary presented its draft on space liability in 1964, strengthened by comprehensive research and legal insight from these famous Hungarian jurists.

3.2. Specific provisions in the Hungarian draft

The Hungarian draft differs from the final version by emphasizing another primary purpose. The preamble of the draft intends to generally *„insure protection against damage caused by objects launched into outer space”*⁴¹ while the final treaty describes it aim as *“to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage.”*⁴²

The draft paragraph recognizes that disparities between the U.S. and Soviet blocs could lead to certain challenges, suggesting that while effective compensation is essential, the immediacy of its delivery is not crucial (contrary to the objectives of the final text). The explanation for this is the fact, that determining and agreeing

³⁷BHAT, S: 6th Chapter: State Responsibility and International Liability, in *International Space Law in the New Space Era: Principles and Challenges*, edited by Sandeepa Bhat B., Oxford University Press, 2024. Available at:

<https://academic-oup-com.peacepalace.idm.oclc.org/book/56493/chapter/452649193>, date of download 14/01/2025).

³⁸ REIS, H. (1978): "At first found it difficult to engage the serious attention of the Soviet Union, which, indeed, preferred throughout the following eight years of negotiation not to put forward proposals under its own name but instead to rely upon Hungary."

³⁹ MÁDL, F. p. 203.: "Messze túlnőtte azokat a tőkészés termelési viszonyokat, amelyek az országonként különböző fokon eltérő hagyományos felelősségi rendszereket produkálták."

⁴⁰ According to the website of INSTITUTE OF SPACE LAW AND POLICY, EÖTVÖS JÓZSEF RESEARCH CENTRE: Liability Conference, available at: <https://space.uni-nke.hu/hirek/2022/12/01/space-liability-conference>, (date of download 14/01/2025).

⁴¹ Preamble of the Draft Treaty.

⁴² Preamble of the Liability Convention.

upon the forms and price of compensation will undoubtedly require time, especially in such political circumstances.

In contrast to the final convention, the third paragraph of the first article of the Hungarian draft offers a specific and strict description of 'space objects' differing from the accepted draft. The latter does not provide a definition for 'space object' merely stating that *"it contains the component parts of a space object as well, along with its launch vehicle and its associated parts"*. The Hungarian draft, however, explicitly defines 'space objects' to include *„spacecraft, satellites, orbital laboratories, containers, and any other devices intended for movement in outer space, maintained there without reliance on air reaction, as well as the means of delivering such objects and their components”*.⁴³ It is significant to note that there is currently no widely recognized legal definition for space objects, which acknowledges the significance of the Hungarian perspective.

Article II of draft is notably interesting, emphasizing the distinctions between the U.S. and Soviet blocs: The initial paragraph suggests a restriction on state liability (as it states: *"shall not exceed..."*). However, Hungarian jurist Ferenc Mádl argued that there should be no place on limiting state liability in international law. Mádl believed that compensation should cover the full extent of damages, including both actual losses (*damnum emergens*) and lost profits (*lucrum cessans*) according to a general civil law approach.⁴⁴ The second paragraph of the article also elaborates on the definition of 'damage' involving *"loss of profits and moral damage"*. This principle presents challenges, particularly as issues related to 'moral' damages have been widely accepted in Hungary.

Firstly, how can we accurately define moral damages? The conventional understanding of damage does not apply in this context. Non-material damage is connected to the loss of certain values intrinsic to human personality, as well as the negative impact on the quality of life associated with these values.⁴⁵ Typically, non-material harm manifests as physical pain or mental suffering; however, it can also have material implications, such as harm to bodily integrity or damage to business reputation, which may lead to disadvantages like medical expenses or loss of business profits.⁴⁶ This concept, however, lacks universal acceptance, which could result in unforeseen consequences, particularly if immaterial damage occurs in a jurisdiction that does not recognize moral damage. Therefore, secondly, if a state causes damage while acknowledging moral damage, it would be obligated to compensate, irrespective of the legal framework of the other state. Nevertheless, what would occur if only the state suffering the damage recognizes moral damage

⁴³ "Space Object" means space ships, satellites, orbital laboratories, containers and any other devices designed for movement in outer space and sustained there otherwise than by the reaction of air, as well as the means of delivery of such objects and any parts thereof."

⁴⁴ GÁL, G. (1963): p. 259.

⁴⁵ MÁTYÁS, M. (2009): A nem vagyoni kártérítés elméleti alapjai, available at: https://www.debreceinijogimuhely.hu/archivum/4_2009/a_nem_vagyoni_karterites_elmeleti_alapjai/, (date of download 14/01/2025).

⁴⁶ MÁTYÁS, M. (2009).

while the other does not? Furthermore, how would compensation be determined if the applicable law of the state causing the damage is in question?

The same paragraph also raises an issue connected to the compensation, which suggests that it would be „*handed according to the law of the state responsible for the damage*”. Hungary has advocated that the law of the launching state should be dictating both the nature and the amount of compensation owed to foreign victims, thereby promoting consistency and clarity in such matters. This position was also supported by the principle of sovereign immunity, which asserts that no state is obligated to submit to the judicial authority of another state.⁴⁷ In contrary to this approach the United States argued that this perspective was illogical and clearly reflected “*Eastern European skepticism towards foreign tort law principles prevalent in the non-Communist world.*”⁴⁸

The second and third articles talk about the determination of damage attributed to the space object as being ‘caused’ by it. Hungary and the Soviet Union rejected an interpretation that would even allow for the recovery of indirect damages, which do not stem strictly from the initial harm but occur as a consequence, including all types of indirect, consequential, special, incidental, punitive, and aggravated damages and losses, such as profit loss.⁴⁹ The question remained unsolved, as it was decided that the term ‘caused’ necessitates a direct causal link between the occurrence and the damage, while permitting substantial flexibility to analyze each claim on its own grounds.⁵⁰

Article V of the proposal included a provision indicating that exceptions or exemptions from liability would not apply to “*unlawful activities*”.⁵¹ The objective was to impose absolute liability in all cases, with certain allowable exceptions. Article VI addressed exceptions from absolute liability through intentional acts and gross negligence of the state resulting in damage. Significantly, although the proposal seemingly supported a level of absolute liability, it also presented the undefined and ambiguous term: natural disasters.⁵² We must agree with Ferenc Mádl, who posed the question: “*Where is the judge who could reassuringly claim that in a specific case, the damage was caused by an unavoidable external factor, and that the launch of the spacecraft played no significant role in the damage?*” Who could conclusively prove the opposite in an exact manner? Another question is: “*Can the victim bear the consequences of the circumstance where*

⁴⁷ GÁL, G. p. 264.

⁴⁸ REIS, H. (1978): Some Reflections on the Liability Convention for Outer Space, 6(2) Journal of Space Law 125 (1978).

⁴⁹ According to the LAW INSIDER: Definition of Indirect Damages, available at: <https://www.lawinsider.com/dictionary/indirect-damages>, accessed on January 14, 2025.

⁵⁰ UNITED NATIONS: Proceedings of the United Nations/Republic of Korea Workshop on Space Law: United Nations Treaties on Outer Space - Actions at the National Level, 2024, New York, available at: https://www.unoosa.org/pdf/publications/st_space_22E.pdf, p. 457, (date of download 14/01/2025).

⁵¹ MÁDL, F., p. 203.

⁵² REIS, H. (1978)

*spaceflight, now and then, may lead to damage due to some natural phenomenon?"*⁵³ The draft convention failed to provide a resolution to such inquiries. Article XII of their treaty once again highlighted the Soviet Block's skepticism towards international mediation and arbitration. They suggested that a claimant State dissatisfied with the outcome should have the right to appeal to a "committee of arbitration," which, as they proposed, would be composed "on a basis of parity."

Interestingly, Hungary expressed significant concern about liability for atomic damage during the negotiations of the treaty. As they pointed out: *"If atomic energy is used as a propulsion source for rockets, which is imminent, the need for an international regulation on liability for nuclear damage will arise."*⁵⁴ While the final version of the Liability Convention does not address such damage, a launching state would still be held liable independently of the Convention. The Hungarian delegation proposed the exclusion of nuclear damage from the Liability Convention's scope and the establishment of a new international convention on this matter, (which remained largely neglected).⁵⁵ They believed that nuclear damage, arising from space operations would likely differ significantly from other types of damage linked to these activities, therefore making it more practicable to govern through a separate convention.⁵⁶ They have further underscored that it aligns with established international norms to treat nuclear damage separately, as evidenced by various existing nuclear liability conventions. Ultimately, they proposed that the most effective approach might be to address all nuclear-related damage within a singular, dedicated convention.⁵⁷

3.3. Questions on the definition and delamination of outer space

As it has previously been introduced, the Hungarian legal literature has been trying to define the parameters and terminology associated with the legal perspective of outer space. Therefore, when the problem of delamination and determination of

⁵³ MÁDL, F. (1963), p. 203.: "Hol van az a bíró, aki megnyugtatóan állíthatná, hogy egy konkrét esetben az elháríthatatlan külső ok volt-e a káresemény kiváltója, hogy a kárban az űrhajó felbocsátásának nem volt lényeges szerepe? Ki tudná az ellenkezőjét egzakt módon bebizonyítani? A másik: viselheti-e a károsult annak a körülménynek a következményeit, hogy az űrhajózás egyszer-másszor esetleg valamilyen természeti jelenség kapcsán vezet kárhozásra?"

⁵⁴ MÁDL, F. (1963): [No title provided for the specific book or article], p. 203.: "Amennyiben a kilőórakéták hajtóanyagaul az atomenergia is felhasználásra kerül, ami már küszöbön áll, fel fog merülni az atomkárokért való felelősség általános nemzetközi szabályozásának szükségessége, elkerülhetetlensége is."

⁵⁵ FOSTER, W. F. (2016): The Convention on International Liability for Damage Caused by Space Objects, published online by Cambridge University Press, available at: <https://www.cambridge.org/core/journals/canadian-yearbook-of-international-law-annuaire-canadien-de-droit-international/article/abs/convention-on-international-liability-for-damage-caused-by-space-objects/ADE9DE6CDEFC3CD0D5E79149D9633F929>, (date of download 14/01/2025).

⁵⁶ FOSTER, W. F. (2016).

⁵⁷ Ibid.

outer space became a problem on an international level, the representative of Hungary proposed that if the Legal Sub-Committee is unable to establish scientific or objective criteria for defining outer space, it may be necessary to reference other legal domains (for example air law) or to create a precise definition of ‘space object’.⁵⁸ (This effort has already been done within the drafting procedure of the Hungarian conventions concerning liability for damages resulting from the launch of objects into outer space, however has been refused in the final convention).⁵⁹ Nevertheless, differentiating between an aircraft (defined in Air Law) and a space object, but comparing space law to aviation law, specific issues arise: Considering that complete and exclusive sovereignty over airspace is a well-established norm in aviation law, an incorrect interpretation may arise, influencing space law. This would interpret “complete” as indicating “without limit” or “without height restrictions”. In this interpretation, state sovereignty would extend *ad infinitum* over a state’s land and maritime territories.⁶⁰ However, socialist legal theory uniformly rejected the *ad infinitum* doctrine, clarifying that the principle of unlimited sovereignty applies only to airspace, as specified by the Chicago Convention.⁶¹ Regarding the legal status of outer space, the *res communis* nature of outer space—meaning that it is a shared and common domain—has long been deeply rooted in legal opinion, and the Hungarian scholars have consistently advocating this view from the beginning.⁶² It is therefore evident that Hungary has made considerable efforts to address this issue (for example through a background paper prepared by the Secretariat in 1970 and updated in 1977),⁶³ however, it remains a matter that is still under discussion.

4. Other important contributions to international space law

4.1. *Moon Agreement*⁶⁴

⁵⁸ A/AC.105/C.2/7 (1970), The Question of the Definition and/or the Delimitation of Outer Space, Background paper prepared by the Secretariat T, available at: https://www.unoosa.org/pdf/limited/c2/AC105_C2_L007E.pdf, p. 29, (date of download 14/01/2025).

⁵⁹ A/AC.105/C.2/7 (1970), p. 41.

⁶⁰ GÁL, G. (1963), p. 81.

⁶¹ GÁL, G. (1963), p. 81.

⁶² GÁL, G. (1963), p. 153.

⁶³ A/AC.105/C.2/7, available at: https://www.unoosa.org/oosa/oosadoc/data/documents/1970/aac.105c.2/aac.105c.27_0.html, (date of download 14/01/2025).

⁶⁴ Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement), available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/travaux-preparatoires/moon-agreement.html>, (date of download 14/01/2025).

Hungary actively engaged in and contributed to discussions related to the collaborative drafting of the Moon Agreement.⁶⁵ This agreement was based on the Draft Treaty Concerning the Moon created by the USSR, later joint by Hungary, and due to some modifications it has become a joint convention, which also included participation from other nations such as Belgium, India, and Sweden, and interestingly, maintained a neutral stance during the Cold War.

This participation demonstrates that Hungary, although a member of the Soviet bloc, aimed to further the global progress of humanity. Nonetheless, similar to several other nations, Hungary hesitated from signing the final version of the treaty.⁶⁶ While no official explanation has been given for Hungary's decision not to ratify the agreement to which it contributed. The lack of ratification is not unexpected as most of the states decided to withhold their support thanks to the agreement's demanding provisions and vague sections.

4.2. Hungary nuclear powered satellites and Space Debris

Ferenc Mádl's article and the formulation of Hungary's liability convention already indicated the nation's longstanding concerns regarding the implications of nuclear power in outer space. As a result, Hungary has assumed an advisory and supportive role in addressing nuclear-related issues in space, particularly concerning the dangers associated with nuclear-powered satellites and their potential collision with space debris.⁶⁷ Hungary has acknowledged the importance of the situation, asserting that while the challenges posed by nuclear-powered sources and collisions with space debris are significant, effective solutions are most likely to emerge from countries with advanced space capabilities and from international organizations dedicated to space activities (not from states such as Hungary). Nevertheless, in the hope that they can show a good example to follow, the country has contributed to these initiatives through theoretical research, including mathematical modeling of collision scenarios, knowing exactly that larger, technologically advanced nations are better positioned to conduct comprehensive investigations in this area. This highlights the fact that due to its limited resources, Hungary has focused on enhancing its contributions through diplomatic efforts, negotiations, and active participation in international forums, where its insights can help raise awareness and foster collaborative strategies. Hungary has also indicated that improved

⁶⁵ Status of International Agreements relating to activities in outer space as at 1 January 2024, available at:

https://www.unoosa.org/res/oosadoc/data/documents/2024/aac_105c_22024crp/aac_105c_22024crp_3_0_html/AC105_C2_2024_CRP03E.pdf, (date of download 14/01/2025).

⁶⁶ Ibid.

⁶⁷ UNOOSA General Assembly Document (1994) on National Research on Space Debris, Safety of Nuclear Powered Satellites, Problems of Collisions of Nuclear Power Sources with Space Debris, available at: https://www.unoosa.org/pdf/reports/ac105/AC105_593E.pdf, p. 4, (date of download 14/01/2025).

information-sharing would significantly benefit smaller nations, empowering them to engage more actively in research on this critical global challenge.⁶⁸

4.3. Advocating for collaboration

Hungary has acknowledged that promoting education may successfully promote international collaboration, information sharing, and the advancement of humanity. In 1996, Hungary was involved in a coalition with Bulgaria, Greece, Poland, Romania, Slovakia, and Turkey, promoting the creation of an educational network centered on space science and technology. This initiative aimed to establish a cooperative framework of institutions that would integrate with existing European educational systems and increase international collaboration, thereby emphasizing the importance of developing educational and research interactions among Hungary and its partner nations to improve regional expertise in space science across Central, Eastern, and Southeastern Europe.⁶⁹

4.4. Strengthening UNOOSA

Hungary has strongly supported the expansion of the United Nations' jurisdiction, particularly with the regulation of specific space missions. This is evident in the documents pertaining to the Draft Resolution concerning the United Nations' acceptance of supervisory responsibilities under the Protocol to the 2001

⁶⁸ Ibid: "Hungary is well aware that the existence is a common and very serious problem. However, real steps towards the solution of this dangerous problem can only be taken by states already substantially engaged in space research and international organizations and bodies working in different fields of space activities... Hungary has attempted to conduct theoretical investigations (e.g., mathematical modelling) of collision cases. We are informed, however, that a number of member states with much better backgrounds than Hungary have applied for conducting these investigations. Unfortunately, Hungary, as in the case with some other small member states, is not in a position to start a programme in this area. The only means of contributing is through negotiations, meetings, and other forums, where statements of each country can help in solving this growing problem. It would be most beneficial, however, if the exchange of information on this subject were promoted, enabling nations such as Hungary to participate in the ongoing research."

⁶⁹ A/AC.105/703 (1998), Committee on the Peaceful Uses of Outer Space: Regional Centres for Space Science and Technology Education (Affiliated to the United Nations), available at: https://www.unoosa.org/pdf/reports/ac105/AC105_703E.pdf, (date of download 14/01/2025). "In 1996, Bulgaria, Greece, Hungary, Poland, Romania, Slovakia, and Turkey proposed that an educational system should be established consisting of a network of space science and technology education institutions and that the activities of each member of the network would be in harmony with existing institutions in Europe and open to international cooperation. Following that offer, meetings of experts on the establishment of a network of space science and technology education and research institutions for central eastern and south-eastern European countries were held at Vienna in 1996 and 1997 with the participation of representatives of Bulgaria, Greece, Hungary, Poland, Romania, Slovakia, and Turkey. As a result of those activities, a technical study mission is planned for the third quarter of 1998 on the implementation of the network. The mission will focus on the technical requirements, design, operating mechanism, and funding of the proposed network."

Convention on International Interests in Mobile Equipment, which addresses issues related to space assets.⁷⁰ Hungary endorses the review of the preliminary draft protocol regarding space assets, associated with the Convention on International Interests in Mobile Equipment, which was opened for signature in Cape Town, South Africa, on November 16, 2001.⁷¹

4.5. Proposed regime for launching state

The concept of a "launching State"⁷² holds significant importance within the realm of space law. The "Outer Space Treaty" references this term, while the "Liability Convention" positions launching States as the primary entities liable for damage caused by space object, with the "Registration Convention" also acknowledging their role. In 2003, the Hungarian delegation emphasized the need for governments to consider entering into agreements about cooperation or joint launches among countries. As in the realm of on-orbit spacecraft ownership transfer, it would be beneficial for States look into voluntary practices that promote uniformity. By standardizing these processes, states would enhance the unity and predictability of their national space laws, thereby repairing any shortcomings in the implementation of international treaties. These voluntary practices may be established by bilateral or multilateral agreements, or on larger levels, possibly with the support of the United Nations.⁷³

5. Conclusion

In conclusion, the contributions of Hungarian legal scholars have been crucial in formulating the current legislation governing outer space. Our nation has continuously functioned as a neutral diplomatic channel, promoting not just its own interests but also the peace and welfare of all humanity, even during the period of belonging to the Soviet Bloc. The article's primary concept can be simply summarized by a quotation by Gyula Gál:

⁷⁰ Committee on the Peaceful Uses of Outer Space Legal Subcommittee Forty-fourth session Vienna, 4-15 April 2005, Draft Resolution on the Assumption by the United Nations of the Function of Supervisory Authority under the Protocol to the 2001 Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets, available at: https://www.unoosa.org/pdf/limited/c2/AC105_C2_I258E.pdf, (date of download 14/01/2025).

⁷¹ Committee on the Peaceful Uses of Outer Space Forty-eighth session Vienna, 8-17 June 2005, Report of the Legal Subcommittee on Its Forty-fourth Session, Held in Vienna from 4 to 15 April 2005, available at: https://www.unoosa.org/pdf/reports/ac105/AC105_850E.pdf, p. 28, (date of download 14/01/2025).

⁷² Committee on the Peaceful Uses of Outer Space Legal Subcommittee Forty-second session Vienna, 24 March-4 April 2003 PROPOSED GENERAL ASSEMBLY RESOLUTION APPLICATION OF THE LEGAL CONCEPT OF THE "LAUNCHING STATE" Available at: https://www.unoosa.org/pdf/limited/c2/AC105_C2_I242E.pdf (date of download 14/01/2025).

⁷³ Ibid.

*"Our work is driven by a sense of responsibility for the peace of all humanity. It is gratifying to note that on the fundamental questions of the peaceful use of outer space, a large part of the capitalist space lawyers agree with us. In the international implications of our work, we wish, of course, to promote not ideological assumptions but the peaceful coexistence of peoples, and to contribute to a similar consensus among the many scientific consensus-makers in the field of international cooperation for the peaceful use of outer space."*⁷⁴

The statement symbolizes Hungary's contribution to space law: despite ideological and political differences, Hungary serves as a link between socialism and capitalism, so enriching international law.

Since the disintegration of the USSR, certain Eastern European States (such as Poland, Romania, Hungary, the Czech Republic and Ukraine) have created autonomous structures for their space activities. Although the education of space law at universities continued, the practice and research of space law in Hungary suffered a substantial decline.⁷⁵

The primary takeaway from the article is the necessity for Hungary to develop its own viewpoint on various legal issues, while also focusing on formulating innovative legal solutions related to outer space. This approach should not only aim to ensure national prosperity and future but also improve the well-being of humanity as a whole, as our predecessors did so. We need to conclude the article with a line again from Ferenc Mádl: "If mankind is to use its wonderful technical achievements to conquer, explore and use outer space, and not to destroy itself, it must collectively settle its great common cause: what norms should govern the cosmic-scale actions of man in the new age of conquering space."⁷⁶

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⁷⁴ GÁI, GY. (1963). Világűrjog, p. 6. : "Munkánk lendületét az egész emberiség békéjéért érzett felelősségtudat adja meg. Elégtétellül szolgál, hogy a világűr békés felhasználásának alapvető kérdéseiben a kapitalista világűrjogászaiknak jelentős része egyetért velünk. Munkásságunk nemzetközi kihatásaiban természetesen nem az ideológiai előfeltevések, hanem a népek békés együttélését kívánjuk szolgálni, s hozzájárulni ahhoz, hogy a tudományban tapasztalható számos konszenzus hasonló egyetértéshez vezessen a világűr békés felhasználását elősegítő nemzetközi együttműködés terén."

⁷⁵ ÁLMÁR, I. (2022). p. 16.

⁷⁶ MÁDL, F. (1963). A kozmikus térség meghódítása és az anyagi felelősség egyes kérdései, p. 203.: "Ha az emberiség csodálatos technikai vívmányaival a világűr meghódítani, felkutatni és felhasználni, nem pedig saját magát is elpusztítani akarja, közös erővel rendeznie kell közös nagy ügyét: milyen normák uralkodnak a kozmikus méretekbe táguló új kor kozmikus méretekben cselekvő emberének a világűr meghódításával kapcsolatos tetteit."

A/AC.105/703: *Committee on the Peaceful Uses of Outer Space: Regional Centres for Space Science and Technology Education (Affiliated to the United Nations)*, 1998. Available at: https://www.unoosa.org/pdf/reports/ac105/AC105_703E.pdf, (accessed on January 14, 2025).

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MARIAM GOBEJISHVILI*

*Labour Safety and Surveillance Standards according to Georgian
Legislation*

Abstract: Georgia is a Post-Soviet Union country, taking significant steps in order to achieve a strong economy, get closer to international regulations and share the important values and principles of the European Union. It should be emphasized that the strong workforce is a precondition of the strong economy. We will discuss the constitutional meaning of the labour freedom from Georgian perspective, the meaning of labour safety, what are the employer's responsibilities to maintain the safe and healthy working environment, and what are the employee's rights in this regard in this article. Moreover, We will overview the steps Georgia took in order to improve labour safety legislation in the recent past. However, in order to protect the safe working environment, the employers are collecting the employees' personal information with the help of the various means, which can be the expressed in video monitoring, audio monitoring, collecting biometric data, etc.. Therefore, there will be discussed the personal data protection mechanisms from Georgian perspective.

Keywords: Labour safety, surveillance, Personal data, employer's interests, employee's rights, workplace monitoring

1. Introduction

The labour legislation has a significant impact on the country's social and economic standards and plays valuable role in the social justice and democratic and economic progress. It is one of the most pivotal aspects of jurisprudence, regulating relations between the employers and the employees. It is important since employer frequently collects and processes personal information of the employees or potential employees, including very sensitive ones. Therefore, labour relationship has strong bond with rules and terms of personal data protection, especially when the employer appears to be a strong party and employee as a weak party, having less opportunity to affect the labour relation and is obliged to accept the terms, which are already drawn up by the employer in advance.¹ In Georgia, the law on Personal Data

* Mariam Gobejishvili, PhD Student, Caucasus International University, Faculty of Law, Supervisor Dr. Zviad Gabisonia, university professor, Advisor to Chancellor on Science and Innovations at Caucasus International University

¹ Kaladze, Z.: Personal Data Protection in Labour Law, Topical Issues On Personal Data Protection, A Collection of Essays, 2021, 46-47, <https://idfi.ge/ge/topical-issues-of-personal-data-protection-a-collection-of-essays> (Date of Access: 29/10/2023)

Protection applies to almost all types of legal relationships, including labour relations. The law imposes certain obligations on employers, who are considered data processors, and grants the employees, applicants or former workers, referred to as the data subjects the relevant rights.² Previously, norms on personal data were regulated in General Administrative Code of Georgia, which only applied to public institutions. Norms were not exhaustive and the General Administrative Code did not provide the proper regulation of personal data processing.³ On December 28, 2011, the Georgian Parliament adopted the bill on personal data protection, which enacted on May 1, 2012. The basic goal of the law was to ensure the protection of human rights and freedoms while processing the personal data, including privacy. The law explains the definition of data processor; it can be public institution, natural or legal entity, determining the goals and meaning of data processing.⁴ On June 14, 2023, the Parliament of Georgia adopted a new bill on the personal data protection and most of its norms will enact on March 1, 2024. Harmonization and consolidation of the legal base of personal data protection is an obligation assumed by Georgia under the association agreement with the European Union and the association agenda. On April 27, 2016, the European Parliament and the Council adopted the new regulation 2016/679 (GDPR), which enacted on May 25, 2018. The aforementioned regulation established new standards for personal data protection, introduced new important concepts and institutions in the field of personal data protection, considering modern technological progress. It is extremely significant to harmonize the Georgian legislation on personal data protection with GDPR and EU legislation for Georgia, as a country, being a part of European legal culture, and accordingly, ensure the implementation and integration of new democratic standards in the national legislation.⁵ The Constitutional Court of Georgia has mentioned in its judgement that private, personal life is the constitution right, which is an integral part of concept of freedom. It is a person's right to develop relationships with other people and build up connections with society. The Constitutional Court also shares the opinion of the European Court of Human Rights that the right of privacy is the cornerstone of the individual autonomy, independent development and protection of person's dignity.⁶ Personal data is part

² Goshadze, K.: op.cit. 27-28.

³ Jokhadze, G.: Personal data protection in the context of human rights: Georgia's example, challenges and trends, International standards of human rights protection and Georgia, Collection of Articles, 2011, 341-342 <https://dspace.nplg.gov.ge/handle/1234/203245?locale=ka>

⁴ Jgerenaia, L.: Guarantees for protection of privacy in Georgia and international aspects, Reaserch, Tbilisi: Ilia State University, 2012, 9 <http://library.court.ge/upload/2962013-03-29.pdf> (Date of Access: 29/10/2023)

⁵ Explanatory Note on the bill of Georgia About "Personal Data Protection", 2019, 1-2 <https://info.parliament.ge/file/1/BillReviewContent/222087>

⁶ June 10, 2009, Rulling N1/2/458 of the constitutional court of Georgia on the case - Citizens of Georgia, - David Sartania and Alexander Macharashvili against the Parliament of Georgia and the Ministry of Justice of Georgia <https://constcourt.ge/en/judicial-acts?legal=404> (Date of Access: 29/10/2023)

of the person's right to privacy. The concept of privacy protects personal data from unauthorized disclosure and application. By realizing this idea, the law should not only give the person a sense that she/he has an exclusive right, but also should actually create a mechanism for effective protection of this right.⁷

2. Personal Data Protection Service

Inspectorate Service of the personal data protection as Personal Data Protection Supervisory Authority was established in 2013 and the main goal of its activity was to supervise the legality of data processing in Georgia. Due to the reform, which

was carried out in Georgia, the State Inspector Service and its main rights replaced the Personal Data Protection Inspectorate service in 2019, and its duties were expanded. In 2021, the Parliament of Georgia voted on the amendments in the Georgian laws on "State Inspector Service" and "Personal Data Protection", presenting the issue of institutional and functional reform of the State Inspector Service. Since 2022, the Personal Data Protection Service and the Special Investigation Service started functioning.⁸

Personal Data Protection Service has main functions in the personal data protection process: consult on issues regarding the personal data protection, review appeals on the personal data protection, inspection and checking legality of personal data collecting and processing.⁹

2.1 Definition of Personal Data

First, we have to identify the legal definition of personal data. According to Personal Data Protection Law, personal data is any information related to an identified or identifiable natural person. A person shall be identifiable when she/he may be directly or indirectly identified.¹⁰

The Law also regulates definition of the special category data. The data of special category are related "to a person's racial or ethnic origin, political views, religious or

⁷ Bichia, M.: Structural analyzes of article 18¹ of Civil Code of Georgia, Justice and Law #1(65)'20 Legal Journal, 2020, 51-52 <http://old.supremecourt.ge/files/upload-file/pdf/martlmsajuleba-da-kanoni-2020w-n1.pdf> (Date of Access: 29/10/2023)

⁸ Gugava, N.: Reform of the State Inspector Service of Georgia and supervisory bodies on personal data protection in comparative perspective, Journal Orbeliani, 2023/5, 36-37, <https://doi.org/10.52340/jo.2022.05.01.02> (Date of Access: 29/10/2023)

⁹ Order of the President of the Personal Data Protection Service of March 1, 2022, Order No. 01 On the approval of the provision of the Personal Data Protection Service, appendix, article 4 (1) Initial version (02/03/2022-30/12/2022) <https://matsne.gov.ge/ka/document/view/5398923?publication=0>

¹⁰ Law of Georgia on Personal Data Protection, article 2 (a), 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

philosophical beliefs, membership of professional organisations, state of health, sexual life, criminal history, administrative detention, putting a person under restraint, plea bargains, abatement, recognition as a victim of crime or as a person affected, also biometric and genetic data that allow to identify a natural person by the above features.”¹¹

In the context of labour relations, the employer starts collecting information on individuals at the stage of announcing the vacancy, which might include collecting and processing special category data as well. Generally, the employers need this information to make decision regarding employment, but they must consider the requirements of Personal Data Protection Law. The proper protection of personal data does not affect only pre-contractual relations, the requirements of the law must be fulfilled during labour relationship and after the retiring from work, as the employer keeps some sort of personal information regarding the former employees after their dismissal. Hence, personal data must be protected through pre-contractual, contractual, and post-contractual labour relationships.¹² According to the Labour Code of Georgia, the employer can obtain information related to the job from the potential employee; this information cannot be the data irrelevant for the job, does not help the potential employer in decision-making process and provides no information to evaluate candidate’s ability and skills for performing a specific job. On the other hand, the employee is obliged to inform the employer about any circumstances that can hinder their ability to work and questions the interest of the employer.¹³

Another question arises: what is the personal data procession? This can be any activity, affecting the personal data, e.g. collection, recording, storage, application, disclosure, transfer them to the third parties, deletion etc. According to the practice, personal data is collected in order to improve the service quality, record entry and exit from the building, surveil the workplace and etc..¹⁴ These personal data can be

various information: ID card, diplomas, certificates, curriculum vitae, letters of the recommendations, test results, photos, email, medical and drug tests, etc. All of the above-mentioned information could be processed for various reasons: to select qualified personal, raise the qualification of the employees, conclude the labour contract, protect safety of organization and property.¹⁵

¹¹ Law of Georgia on Personal Data Protection, article 2 (b), 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

¹² Goshadze, K: op.cit. 30-31.

¹³ Organic Law of Georgia, Labour Code of Georgia, <https://matsne.gov.ge/ka/document/view/1155567?publication=25> (Date of Access: 29/10/2023)

¹⁴ Office of Personal Data Protection Inspector, ‘Personal data protection-guidelines for start-ups’, p.5 [online]. Available at: <https://personaldata.ge/ka/recommendations> (Date of Access: 29/10/2023)

¹⁵ Office of Personal Data Protection Inspector, Recommendations Regarding Personal Data Protection in Labor Relations, p. 2 [online]. Available at: <https://personaldata.ge/cdn/2018/12/Labour-Rec.pdf> (Date of Access: 29/10/2023)

2.2 The Principles of Personal Data Protection

The main and pivotal principle of personal data protection is legality and lawfulness, meaning that personal data must be legally processed, in accordance with legal requirements without disturbing the person's dignity. In order to adhere the instructions of this principle, we should consider that personal data must not be processed without employee's knowledge, it cannot be hidden, and she/he must be informed transparently regarding the activities with full knowledge of the purpose of data processing, who is collecting the data, etc.¹⁶

Moreover, processing of personal data will be considered lawful, when it has at least one proper legal ground.¹⁷ The mostly used legal foundation is consent, which means "a voluntary consent of a data subject, after receipt of the respective information, on his/her personal data processing for specific purposes expressed orally, through telecommunication or other appropriate means, which enables clearly establishing the will of the data subject."¹⁸ According to the personal data protection law there is a specific definition about writing consent which means, "a voluntary consent expressed by a data subject, after receipt of the respective information on his/her personal data processing for specific purposes, which was signed or otherwise acknowledged by the data subject in writing or in any other equivalent form."¹⁹ The consent can be given on following issues, about the category of data, the goal of data processing, who is allowed to have excess on personal data, about giving information to third parties. The consent from the employee is not strictly necessary if there are accessible other legal grounds.²⁰ Despite the employee's consent, there are other legal grounds, e.g. procession provided by the law; also, in case of necessity for a data collector to control statutory duties; to protect interest of the data subject, data collector or third party, except when there is much higher interest in data subject's rights and freedoms. Furthermore, if this information is already public or if public interest hinders the much less private interest, also if data processing is necessary to provide proper

¹⁶ Goshadze, K.: op.cit. 34-35.

¹⁷ Office of Personal Data Protection Inspector, 'Personal data protection-guidelines for start-ups', p.7 <https://personaldata.ge/ka/recommendations> (Date of Access: 29/10/2023)

¹⁸ Law of Georgia on Personal Data Protection, article 2 (g), 2011 <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

¹⁹ Law of Georgia on Personal Data Protection, article 2 (h), 2011 <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²⁰ Office of Personal Data Protection Inspector, Recommendations Regarding Personal Data Protection in Labor Relations, 5-6. <https://personaldata.ge/cdn/2018/12/Labour-Rec.pdf> (Date of Access: 29/10/2023)

service to data subject.²¹ However, there is special category data, which is protected very strongly, according to law, “Special category data processing shall be prohibited.” Besides this clause, there are exceptional cases, which are quite relevant for labour relations, e.g. when: “processing of the data related to previous convictions and state of health is necessary for labour obligations and labour relations, including making a decision regarding employment.”²²

There is another principle, the existence of the clearly defined purpose for data processing. The person who collects the personal data must specify and define the legal purpose in advance before she/he starts data collection. The first objective cannot be changed or used for other purposes.²³

The proportionate and adequacy principle is an important one. It establishes that personal data must be processed to the extent, which is necessary to achieve the legitimate purpose. E.g. if there is a vacancy for the English teacher, the potential employer should not be interested if she/he knows other foreign language. Unfortunately, this principle is frequently violated as the employers often have special forms for the applicants in which there is a list of questions, which are not relevant to the vacancy, thus, there is strong bond between principles of proportionality and clearly defined legitimate purpose. The data which is processed by the employer must comply with the real facts and must be updated, if necessary. The employer can use this information when she/he is sure in its correctness. If the personal data is collected or processed without proper legitimate purpose, it must be blocked, deleted or destroyed. The information can be updated or corrected by the statement of the employee; however, it can be done with the employer’s initiative, if this information needs modification or destruction with the precondition of informing the employee.²⁴ The employer should keep the information till it is essential to achieve the legitimate goal and when it is already achieved, and the information is no longer important, relevant or necessary, it must be deleted, destroyed or adjusted. However, data will be saved in archive, if the employee gives a consent on it, if there are special terms in law for keeping the information, if the data is necessary as an evidence for proving existence of labour relationship. The employer is responsible for the correctness, safety and timeliness of the employee’s personal data.²⁵

²¹ Law of Georgia on Personal Data Protection, article 5, 2011 <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²² Law of Georgia on Personal Data Protection, article 6, 2011 <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²³ Office of Personal Data Protection Inspector: Personal data protection-guidelines for start-ups, 8 <https://personaldata.ge/ka/recommendations> (Date of Access: 29/10/2023)

²⁴ Goshadze, K.: op.cit. 37-39.

²⁵ Office of Personal Data Protection Inspector, Recommendations Regarding Personal Data Protection in Labor Relations, 4-5, <https://personaldata.ge/cdn/2018/12/Labour-Rec.pdf> (Date of Access: 29/10/2023)

The employee, being a data subject, has various rights to defend their legal positions. According to the current edition of the law, first and main right is to have an excess to their personal information. The employee has a right to be informed what kind of information is processed, what is the purpose of this processing, what are the legal grounds for it, how and where this information was collected from, whether it is available for the third parties, what is the goal and legal ground for such disclosure.²⁶ The employee can request from the employer to “correct, update, add, block, delete, or destroy data if the data are incomplete, inaccurate, not updated, or were illegally collected and processed.”²⁷

The employee can request to retrieve and withdraw their consent on the personal data processing without any explanation whenever she/he decides it. This request will be fulfilled if there is no other legal ground for data processing besides the employee’s consent.²⁸ The employee has a right to apply to the Personal Data Protection Service, Court or, in case the data processor is a public institution, to the same or senior administrative organization if she/he considers that their rights were violated.²⁹

3. Video Monitoring at the workplace

The video surveillance is really a challenging issue in Georgia. In the Personal Data Protection Service report it is mentioned that the private companies cannot

justify why it is necessary to conduct video monitoring at the workplace in most cases and why it is impossible to achieve the reasonable legitimate goals by the other means.

In addition, there were some cases when the employees had no proper knowledge about the video surveillance and were not informed regarding their legal rights in writing. There are discussed the particular cases in the report, when the Personal Data Protection Service checked the legality of the video surveillance in the workplaces of both, public and private companies based on the citizens’ application/notification.

According to one of these cases, the company’s main job activity was to process the high-risk contained heavy metal. In order to protect property and maintain the

²⁶ Law of Georgia on Personal Data Protection, article 21, 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²⁷ Law of Georgia on Personal Data Protection, article 22, 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²⁸ Law of Georgia on Personal Data Protection, article 25, 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31> (Date of Access: 29/10/2023)

²⁹ Law of Georgia on Personal Data Protection, article 26, 2011, <https://matsne.gov.ge/ka/document/view/1561437?publication=31>

safe working environment, the video cameras were installed inside and outside of company's territory. Workplaces, meeting rooms and kitchen were under the video surveillance as well. It should be emphasized that the employees were informed on the video surveillance at the workplace and they also had an information about their rights, but beside this fact, the company could not justify the necessity of video surveillance in the mentioned areas. The company listed several risk factors to justify the video surveillance, referring to the prevention of possible conflict between the employees, the avoidance of theft, withdrawal of some information from the facility. Nevertheless, those risk factors were not sufficient for the Personal Data Protection Service, which did not share the company's arguments and mentioned that all aforementioned reasons were the part of the working environment. Using the video surveillance in order to check the quality of work and employees' compliance with internal organizational standard and bylaw does not meet the requirements of law and is not considered as legitimate purpose in order to conduct the video monitoring.³⁰

The workplace is one of the most vulnerable areas for the employees for various reasons. It is an area, where the employees not only are fulfilling their working obligations, but also it is a place where the co-workers build up their personal relations and do non-working activities as well, which are not related to working process, e.g. speaking on cellphone about personal issues, having friendly communication to third parties or co-workers. Using video monitoring is very common in public or private institutions, the employers want to check quality of work and to control fulfillment of internal bylaw, which very frequently is not in accordance with requirements of law. Even though, the employer must remember that right of personal life means a possibility to build up relationships with other people, even in the working environment. Definition of the personal life implies the working relations and communications as well, which helps people to get to know each other and make an acquaintance with different society, therefore, the employees have right of their personal life even in the workplace.

For that instance, the video monitoring must be conducted in exceptional cases and for the very specific purposes: for security of person, for property protection, for secret information protection, for minors' rights protection, for examination and testing. For example, if aggressive attack occurs in the bank facilities, the video monitoring is important for the protection of the bank and the cashier, also it helps the security service to have immediate and instant reaction.

The video surveillance is not justifiable when the employer checks the communication standards between the employees, presence at work, compliance with the terms and conditions of internal bylaws, employees' appearance and quality

³⁰ Personal Data Protection Service: 2022 activity report of the Personal Data Protection Service of Georgia, 2023, 65-66, <https://personaldata.ge/ka/library/post/9002> (Date of Access: 29/10/2023)

of service.³¹ In order to achieve the legal goal, video surveillance is not the only option, to monitor the particular territory or someone's behaviour. This form of personal data collection is considered as a severe intrusion into somebody's personal life, so it is crucial for the employer to consider potential risks and after that prove the real necessity of using video cameras as tools for collection of personal information. To be more specific, the most discussable issues are the real needs of using video surveillance and its purposes, the extent of invasion into the employee's personal life and the existence of other optional ways to achieve the same legitimate goals. The video surveillance system must be used only for the goals specified by the law.

Therefore, it is pivotal to use proportionality principle, meaning that video monitoring can be used in such kind of scenarios, when the intended purposes cannot be achieved by other means or are associated with disproportionately large efforts. The most supported idea is that the employer should schedule a meeting with their employees and give them full explanation about their rights and information regarding the issue, necessity or scale of the video monitoring.³² The employers should pay more attention to protect employees or potential employees' rights. Through the labour relations, the employer must consider to maintain golden balance between their legal interests and employee's personal life. Public and private

institutions as employers are responsible to manage the process of collecting and processing the employee's personal data without violation their dignity and honor and protect its confidentiality.³³

For safety reasons, the employer is responsible to take adequate technical and organizational steps to ensure the proper protection of personal data, which was collected through the audio-video monitoring and avoid illegal divulge and usage of personal data. The technical equipment of the video monitoring system like monitors, video files, etc., should be kept and placed in the safe room, and permission entering and excess to the video recordings will be granted only for the limited number of staff, considering their working functions and necessities. Each of them must have their personal username and password to excess the system. Moreover, it is important to register every activity, including downloading, deleting, watching of video files, taking measures for protecting the video surveillance system from hacking and have immediate response to these facts, also elaboration of the

³¹ State Inspector Service, Recommendation for the implementation of video surveillance, 2021, 28-30, <https://www.personaldata.ge/ka/press/post/7780>. (Date of Access: 29/10/2023)

³² Office of the Personal Data Protection Inspector's recommendations for conducting video surveillance, 3-4, <https://personaldata.ge/cdn/2018/12/video-surveillance-recommendation-final.pdf> (Date of Access: 29/10/2023)

³³ State Inspector Service, State Inspector's activity report 2021, 74, <https://sis.gov.ge/ka/page/angarishebi/2021> (Date of Access: 29/10/2023)

special document for informing the employees regarding the aforementioned issues.³⁴ Public or private institutions must put the video surveillance warning sign on proper place, having the image and inscription on it easily visible for people including for the employees.

In general, it is considered that the video surveillance is active in such cases, however, provides no information regarding its form and the scale, particularly, which area is under the video monitoring. The sign should be placed in every area with the video surveillance. More appropriate is the warning sign containing following information: which facility is conducting video surveillance, the specification, it is audio-video monitoring or only video monitoring, the scale of video surveillance. The warning sign should be placed near the video camera and its content maybe expressed in writing or with symbols. If the employer warns the employees with textual image, they may consider the language of the majority, who are under the video surveillance.³⁵

Besides the theoretical knowledge, it is important to mention the real case about the video monitoring. In 2021, the State Inspector Service published the collection of the decisions regarding the data processing in labour relations. It mentions that the most prevalent and popular form for the employee monitoring is considered the audio and/or video monitoring in the workplace. This is the best option to observe somebody's behavior directly, collect unique characteristics of a person. On the one hand, this form of control is flexible and easily accessible, but on another hand, it is direct and severe intervention into somebody's personal life and needs reasonable explanation and legal justification.

According to the case, the State Inspector checked the legality of the data processing, in particular, video-audio monitoring, which was conducted by the supermarket. The supermarket had its explanation that the main goal of such measures was to protect the safety of the customers, the employees, also the property and the assets of the facility. The main objects of the protection were supermarket products, cash and cash machine. The video surveillance was carried out in the following areas of the store: the hall, the reception, the garage, the parking lot and the cashier/operator's working area. However, the State Inspector Service revealed that the video surveillance was conducted in the changing rooms of the female employees as well. It was also revealed that the employees were not informed in writing regarding the video surveillance at the workplace and they had no information about their rights either. In addition, the company carried out 24 hour audio monitoring through the video monitoring service.

³⁴ State Inspector Service, Recommendation for the implementation of video surveillance, 2021, 35-36, <https://www.personaldata.ge/ka/press/post/7780> (Date of Access: 29/10/2023)

³⁵State Inspector Service, Recommendation for the implementation of video surveillance, 2021, 27-28 <https://www.personaldata.ge/ka/press/post/7780> (Date of Access: 29/10/2023)

Considering all these facts, the State Inspector explained that when it comes to assessing the legality of video-audio monitoring, it is crucial to take several factors into account: technical means of monitoring, form, scale, intensity, compliance with the principle of proportionality and measures of safety standards.

According to the State Inspectors' assessment, the company violated the law, which was related to the video surveillance rules. In particular, law of Georgia on Personal Data Protection says that the video surveillance must be conducted only in exceptional purposes: for personal safety, for protection of property and for protection of confidential information and it is admissible only after informing all employees in writing. Moreover, there is an imperative clause and strict prohibition about the video monitoring in the changing rooms and in the hygiene places.

In the audio-monitoring part, the State Inspector explained that the store excessively processed the personal data, in other words, the company processed it more than it was necessary for achieving the legitimate and reasonable legal goal. Due to the violation of Personal Data Protection law, the company found guilty in conducting of administrative offence and was charged with the severe fines. According to the decision, the store was obliged to stop the video monitoring in the changing rooms and was asked to delete/destroy personal data, which was collected

from the video surveillance. In addition, store was obliged to process personal data in proportional way to the legitimate purpose and properly inform the employees about monitoring.³⁶

4. Biometric Data Collection

According to the definition of Georgian law about Personal Data Protection, biometric data is any physical, mental or behavioral feature, which is unique and constant for each natural person and which can be used to identify this person. These can be fingerprints, footprints, facial features, iris and retinal image.

Biometric features are considered as special category data and because of that, the law relocates the special norms in order to regulate this issue and determines the purposes, for which they can be processed. Those purposes are to protect safety of a person or property, prevent the leakage of confidential information. Processing of biometric data is applicable only in cases when these goals cannot be achieved otherwise.

In the public institutions, the employers are controlling the employee's entrance and exit from the workplace by their biometric data, which mostly are their

³⁶ Katcharava, T.: Decisions of the State Inspectorate Service - data processing in labor relations, 2021, 37-38, <https://personaldata.ge/cdn/2022/01/gadawyvetilebebis-krebuli-shromiti-urtiertobebis-parglebshi-monatsemta-damushaveba.pdf> (Date of Access: 29/10/2023)

fingerprints. In the State Inspector's recommendation is mentioned that it is unequivocally against the law, using biometric data in order to control the employees is totally inadequate, disproportional and unjustifiable measure.³⁷

According to one of the cases, the former employee applied the State Inspector Service and requested to check the legality of biometric data processing in their former employer's company. The monitoring revealed that special devices for facial recognition and fingerprints were installed at the entrance of the building and the company recorded and checked employee's entrance and exit from the building with these means.

The employer explained that in this way they prevented the usage of other employees' cards by the unauthorized persons, however, the company could not explain why collection of biometric data was the only way to achieve the goal and why the other options were associated with unjustifiably large efforts.

The state Inspector established the violation of the law and imposed the administrative fines on the company. In addition, according to the State Inspector's decision, company was obliged to stop improper application employees' biometric data and delete already collected information.³⁸

There are two the most prevalent methods in order to collect biometric data: verification and identification.

1. The identification method means identification of the authenticity of one particular biometric data with comparison to other's data within the whole system and establishing if fingerprint, voice, handwriting, etc. belongs to this one particular person.
2. In contrary, the verification method means to check the authenticity of biometric data without the database, e.g. the card designed for one person and contains only the owner's data, reads their data only, without comparing to other's information.³⁹

The important changes were implemented in Labor Code of Georgia, which affected also the regulation of the working hours. According to the law clauses, the employer is responsible to record employees' working hours either in writing or electronically and introduce the monthly document to them, except when, this is impossible due to the specifics of the work. The employer is obliged to keep the record for one year.

³⁷ Office of the Personal Data Inspector, Recommendations on Processing of Biometric Data, 1-3, <https://personaldata.ge/cdn/2018/12/Guidelines-on-Biometric-Data.pdf> (Date of Access: 29/10/2023)

³⁸ Katcharava, T.: op.cit. 51-57.

³⁹ Office of the Personal Data Inspector, Recommendations on Processing of Biometric Data, 6-7, <https://personaldata.ge/cdn/2018/12/Guidelines-on-Biometric-Data.pdf> (Date of Access: 29/10/2023)

The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs determines the form of recording the working time.⁴⁰ In the form, the employer must indicate the following information such as

the name of the organization and its identification number, full name and surname of the employee, their personal number, occupation, specialty, the monthly working days and hours, overtime period, the day-offs, maternity leave, nonworking hours and other additional proper information, which is required to fill in the form.⁴¹

The final version of the filled form must be introduced to the employee. The law imposes that the employer is responsible for controlling the employees' working hours. Furthermore, the content of the filled form should not be introduced to the employee just for formality, this should not be done for the technical reasons, but the employee should have an opportunity to correct in case of misunderstandings or mistakes.⁴²

5. GPS Monitoring

GPS is an abbreviation of the term "the global positioning system", which has a capacity to provide an exact information about the location of a person at any time and from anywhere. GPS is the part of our everyday life and often used as a navigation tool for tracking of the transportation.⁴³ Furthermore, GPS system is a quite convenient tool for surveillance of the employees and for monitoring their location. However, this can be the reason for tensed the labour relations between parties, as employer's interests are in conflict with the employee's privacy.⁴⁴

This conflict of interest was quite visible in the case, where the employer while using of GPS system, which was installed in the vehicles, controlling the employee's transportation in order to verify fulfillment of the obligations by the employee's. The monitoring was conducted both during working and non-working hours.

⁴⁰ Organic Law of Georgia, Labour Code of Georgia, article 24 (11) <https://matsne.gov.ge/ka/document/view/1155567?publication=25> (Date of Access: 29/10/2023)

⁴¹ Minister of IDPs from the occupied territories, labour, health and social affairs of Georgia February 12, 2021 Order No. 01-15/N Regarding the approval of the form of recording working time and the manner of its production, appendix 1, Article 5, Initial version (12/02/2021 - 08/11/2022), <https://matsne.gov.ge/ka/document/view/5099344?publication=0> (Date of Access: 29/10/2023)

⁴² Kardava, E.: Some aspects of registration of working hours and regulation of overtime work in Georgian and EU law, in Zaalishvili, V., (ed.) Analysis of court decisions, 2nd edn. Tbilisi: Law school of Caucasus University, 2022, 8, <http://library.court.ge/upload/92602022-08-03.pdf> (Accessed: 29.october.2023)

⁴³ Cen, J.: GPS Tracking and the Right of Privacy, *Frontiers of Law in China*, 2011/2, 334-335. <https://doi.org/10.1007/s11463-011-0132-6> (Date of Access: 29/10/2023)

⁴⁴ Rosenberg, K.: Location surveillance by GPS: balancing an employer's business interest with employee privacy,' *Washington Journal of Law, Technology & Arts*, 2010/2, 144 <https://digital.lib.washington.edu/dspace-law/handle/1773.1/479> (Date of Access: 29/10/2023)

The company's employees had to move to different places in order to sell products, so the employer controlled them for 24-hours, checked the mileage, completed routes, specific destinations, durations of stops and delays. The collected information was automatically generated in the system and was kept for a year.

It should be emphasized that the parties had a mutual agreement regarding the installation of the GPS system in the cars, with the explanation of the motions and reasons for GPS monitoring.

The State Inspector mentioned that the purpose to achieve these goals through monitoring was legitimate with the consideration of employee's consent. Besides, the collection and procession of the information did not comply with the principle of proportionality, as the company excessively processed the personal data, more than it was necessary to achieve the company's goals. In particular, the company could not prove why it was necessary to collect the above-mentioned data during non-working hours.

Moreover, the State Inspector Service considered that personal data storage period was too long, suggesting that three months was an adequate period for keeping the data.

To sum up, the company was disposed with administrative fines, also was responsible to stop recording the personal data in non-working hours. In addition, the company was responsible to collect and store the personal information in accordance with proportionality principle.⁴⁵

6. Audio Monitoring

Current version of law of Georgia on Personal Data Protection has no particular and specific regulation about the audio monitoring issue. The new law will regulate the specific terms and conditions since the following year, enacting from 2024.

As per the new regulation, audio monitoring will be processed in the following cases, when there will be a consent from the data subject. In addition, audio monitoring will be used to record the minutes and in order to protect the significant legitimate interest of the one who will be responsible for the data processing.

However, on another hand, in order to protect the rights and interests of the data subject, appropriate and specific measures should be established. This clause is not exclusive, which means that audio monitoring will be used only if it is directly determined by the Georgian legislation.

The person responsible for the processing of the audio monitoring will be obliged to provide an information to the data subject in advance and in writing regarding the goal, scope, the duration, storage conditions and destruction mechanisms of audio monitoring. Moreover, she/he will be obliged to warn the person about the audio monitoring and inform data subject about their rights. If

⁴⁵ Katcharava, T.: op.cit. 34-36.

this information is provided as a warning sign, it must contain an appropriate inscription and have visible image about the conducting of audio monitoring, also the name and contact information who will be responsible for audio monitoring.⁴⁶

In 2015, the Personal Data Inspector checked the legality of video-audio monitoring in the 173 pharmacies, which employed 1944 persons. It was established that in order to protect company's property, maintain safety, monitor the proper service, observe the fulfillment of the bylaws and control employee's visual appearance, sales process and content of communication, the employer conducted video-audio monitoring with the help of the video cameras installed inside and microphones put on the stalls of pharmacist, recording the dialogues between the pharmacist and the customer. Microphones were simultaneously connected to video cameras in order to make the one whole record.

According to employer's explanation, the employees expressed consent about surveillance in writing and had full information about their rights. It should be emphasized that if the employees refused to process the personal data, the employer had a right to make decision about their dismissal. At that point, there was no such case of refusal. No warning sign was provided at the entrance for the customers and working stuff about monitoring.

Besides other legal issues, the State Inspector paid attention on the validity of audio monitoring, emphasizing that personal data procession must be adequate and proportional to the goal for which it is conducted. The employer should fairly balance between their interests and the employees' privacy. Even if there is the employees' consent, it is not sufficient condition for the legality of audio monitoring.

The main purpose of audio monitoring was to check the service quality, but in order to achieve that goal, the employer could use less severe and interfering ways into customers and employees' personal life. This form and extent of data procession was not necessary. In order to check service quality, the employer also applied hot line, mysterious customer, and customers' written complaints.

The main legal basis for audio monitoring was consents from the employees, but it was impossible to conduct audio-video monitoring only for the employees, who gave the consent and not monitor the ones who refused it. Thus, the employees who might give refusal about the monitoring had no opportunity to work in the pharmacy, because the refusal was the precondition for termination of the employment relationship, limiting their rights without legitimate ground.

The employer also had an opportunity to collect information from customers about their health conditions, representing a special category data. Therefore, the State Inspector established that the company violated the law, as it inadequately

⁴⁶ New Law of Georgia on Personal Data Protection, article 11, 2023, <https://info.parliament.ge/file/1/BillReviewContent/335493> (Date of Access: 29/10/2023)

collected and processed personal data, severe audio monitoring, providing disproportional intrusion into person's private life. The company was obliged to destroy collected data and stop audio monitoring in the pharmacies. In addition, it was charged with administrative fines.⁴⁷

7. Internet Monitoring

In several cases, the employer has a right to control the working channels, e.g. employee's working email, but sometimes the employee also applies this platform for personal communication. Therefore, the employer is responsible to notify the employee about the surveillance and try to distinguish personal and working correspondences with one another and monitor only those related to the work. In order to manage this situation, it is preferable to create a new file for personal communications.⁴⁸

Supreme Court of Georgia discussed the case, which was related to the similar issue. According to the unequivocal facts, there was an electronic conversation between the plaintiff and his wife via their working accounts of the skype program, where plaintiff insulted their partner company with offensive words and emphasized

that he would not delete the chat, because he was interested if they could read this. During the surveillance, this conversation was monitored and the employee was dismissed from his job after revealing the content of chat.

The employer, who was defendant, mentioned that the conversation was the reason of plaintiff's dismissal, being against the moral standards and jeopardized the relationship with the employer's partner company. The employer often encouraged the employees to have friendly relationships with the partner companies.

In its judgement, the Court explained that the employee's conversation with his wife was not the part of labour relationship and in that case, his opinions were not considered as company's position, this was a personal discussion between parties, having no relation with work, hence, the company's interfere was not proportional to achieve the legitimate goal and was unjustifiable.⁴⁹

⁴⁷ May 20, 2015 Personal Data Protection Inspector's Decision N G-1/043/2015 pp.1-7, <https://personaldata.ge/cdn/2019/01/4.pdf> (Date of Access: 29/10/2023)

⁴⁸ Office of Personal Data Protection Inspector, Recommendations Regarding Personal Data Protection in Labor Relations, 8, <https://personaldata.ge/cdn/2018/12/Labour-Rec.pdf> (Date of Access: 29/10/2023)

⁴⁹ Judgement of Chamber of Civil Cases of the Supreme Court of Georgia on July 31, 2020 on case No. AS-1696-2018, <http://prg.supremecourt.ge/DetailViewCivil.aspx> (Date of Access: 29/10/2023)

8. Labour Safety

The main principle of the social state is to ensure the equity of people and the right of a dignified life, therefore the state is responsible to minimize unjustified social differences.⁵⁰ According to Georgian Constitution, Georgia is a social state, meaning that “the state shall take care of strengthening the principles of social justice, social equality and social solidarity within society.”⁵¹

Labour right is both, social and economic right. Labour freedom is connected to human’s vital interests, which are acknowledged by International Covenant on Economic, Social and Cultural Rights, European Social Charter and Constitution of Georgia.⁵² According to Constitution of Georgia “Freedom of labour shall be guaranteed. Everyone has the right to freely choose their employment. The right to safe working conditions and other labour rights shall be protected by the organic law.”⁵³

The Constitution warrants the safe and healthy working environment, with regulation of this general point by two main Organic Laws: Labour Code of Georgia and the Organic Law of Georgia on Occupational Safety. Regarding the labour safety, Labour Code gives more general rules, which are more specified in the law of Occupational Safety.⁵⁴

The employer’s main goal is to have healthy and highly qualified working staff, being a direct precondition for healthy working environment. When the employee is injured or harmed, she/he is excluded from the workforce. According to the Labour Code of Georgia, the employer is responsible to make sure that the

⁵⁰ Chapidze, G.: Labour Safety, Safety of Ladov, Tbilisi: Academic City publishing, 2020, 89. <https://dspace.nplg.gov.ge/handle/1234/321898> (Date of Access: 29/10/2023)

⁵¹ Constitution of Georgia, 1995, article 5, <https://matsne.gov.ge/ka/document/view/30346?publication=36> (Date of Access: 29/10/2023)

⁵² Pirtskhalashvili, A., Kardava, E., Turava, P., (2023), ‘Fundamental human rights as the basis of the positive obligations of the state’, Pirtskhalashvili, A., Tsetskhladze A., (eds.) Handbook of Social Law, Tbilisi: Georgian National University SEU, 99-100, <https://library.fes.de/pdf-files/bueros/georgien/20749.pdf> (Date of Access: 29/10/2023)

⁵³ Constitution of Georgia, 1995, article 26, <https://matsne.gov.ge/ka/document/view/30346?publication=36> (Date of Access: 29/10/2023)

⁵⁴ Shvelidze, Z., Kereselidze, D., Zaalishvili, V., Khazhomia, T., Amiranashvili, G., Chachava, S., Kikabidze, G., Gaipamashvili, M., Dzimistashvili, U., Takashvili, S., Kharashvili, G., Gasitashvili, E., Kardava, E., Sturua, N., Bakakuri, N., Meskhishvili, K., Sulkhanishvili, E., Liparteliani, R., Surmava, T., Zhorzholiani, L., Kochiashvili, N., Abutidze, N., Kerdzaia, T., Khabeishvili, T., Kandashvili, I.: Comments on the Labour Code of Georgia, Kereselidze, D., Chachava, S., Zaalishvili, V., Shvelidze, Z., Meskhishvili, K., (eds.) Tbilisi, New Vision University Publishing, 2023, 498 https://drive.google.com/file/d/1AM6kSEwUqp7rwDXCxlUhgQ5YcUyA_ft5/view (Date of Access: 29/10/2023)

employees are in safe and healthy working environment with respectful manner for their life and health.

Therefore, there are special clauses that the employer is responsible to inform the employees with accurate, true and comprehensive information about all factors, which can affect their quality of life, health and safety at the workplace within reasonable period of time. On another hand, the employee has a right not to perform work, assignment or instruction, if those tasks are against the law, the

labour safety standards or endangers their or other person's life, health, property or environmental safety. In that case, the employee must immediately inform the employer about one of these factors and explain why she/he refuses to fulfil obligations.

Furthermore, the employer must implement prevention system on-site, in order to prevent risks that are related to the working environment and inform the employees about these measures, provide special protective equipment and instruct how to use these tools and items. While keeping up with technological progress, the employer can provide more safe equipment than were previous ones in order to protect the employee's safety and health.

Moreover, the employer is the responsible one to take all measures in order to localize and eliminate the effects of industrial accident in proper time, provide the first aid and manage evacuation of hazardous occurrence. If the employee is injured while performing the work, the employer is the one, being responsible about full compensation part, including the medical care costs.

Besides, there is a special clause, regulating special treatment for the pregnant women. In particular, the employer must prevent any kind of work from pregnant employee, dangerous for the physical or mental well-being and health of the mother-to-be and her fetus. The Georgian legislation also regulates what kind of jobs are considered harmful and hazardous.⁵⁵

Labour safety is all about to protect employees' life and health, which is guaranteed by the Georgian Constitution and other international treaties. The labour right implies that the employer is responsible to maintain healthy and safe working environment. Due to that reason, in order to protect the employee's rights, elaboration of comprehensive law about the labour safety was crucial.

Georgia has undertaken an obligation to get closer to European Union standards and attempt to harmonize its legislation with European Union. Therefore, labour

⁵⁵ Organic Law of Georgia, Labour Code of Georgia, article 45 [online]. Available at: <https://matsne.gov.ge/ka/document/view/1155567?publication=25> (Date of Access: 29/10/2023) [საქართველოს ორგანული კანონი, საქართველოს შრომის კოდექსი, მუხლი 45 [ონლაინ]. ხელმისაწვდომია: <https://matsne.gov.ge/ka/document/view/1155567?publication=25> (ზოლოს წაწახი: 29/10/2023)]

safety reform is one of the important elements.⁵⁶ European Union and European Atomic Energy Community and their member states signed an association agreement with Georgia on June 27, 2014. Georgian Parliament ratified the document on July 17, 2014, the document enacted on July 1, 2016.

This document draws attention to employment and social policy issues and Georgia undertakes responsibility to implement labour legislation and policies in accordance with internationally recognized standards regarding the protection of labour relations and to make systematic and continuous efforts to achieve a high level of protection of labour relations. According to this agreement, Georgia is responsible to get close its legislation to European Union in various aspects, e.g. in terms of protection of employee's rights, in equal treatment, and in promotion of safe and healthy workplace.⁵⁷

Therefore, in February 2019 Georgia established a new law on occupational safety, which covers all economic activity since September 1, 2019.⁵⁸ According to this law occupational safety means: "a system of protection of the lives, health and functional capacities of employees and other persons present in a working area from the negative aspects of work, which creates healthy and safe conditions for activities and involves legal, social and economic, organisational and technical, sanitary and hygienic, medical and preventive, rehabilitation and other measures."⁵⁹

Therefore, the employer has various obligations, which are very comprehensive. The employer must step up with the legal rules regarding the occupational safety; ensure that the employees' safety and health is protected from different hazardous physical, chemical and biological factors in the working area. In addition, the employer has to record accidents and cases about occupational diseases and dangerous situations at the workplace, and provide this information to the employee or their representative, if applicable.

Moreover, the employer is responsible to check the safety of technical equipment and assess physical and chemical factors, e.g. temperature, noise,

⁵⁶Explanatory Note on the Bill of Georgia About "occupational safety", 1-2. <https://info.parliament.ge/file/1/BillReviewContent/151185> (Date of Access: 29/10/2023)

⁵⁷ Human rights education and monitoring center: What obligations does the Association Agreement with the European Union impose on the protection of labor rights of Georgia?, 2016, 1-5. <https://socialjustice.org.ge/ka/products/mimokhila-ra-valdebulebebs-akirsebs-evrokavshirtan-asotsirebis-shetankhmeba-sakartvelos-shromiti-uflebebis-datsvis-mimartulebit> (Date of Access: 29/10/2023)

⁵⁸ The report of 2020 year of Labour condition inspection department, 5. https://moh.gov.ge/uploads/files/2019/Failebi/LCID_Report_2020_GEO.pdf (Date of Access: 29/10/2023)

⁵⁹ Law of Georgia on Occupational Safety, 2019, article 3, <https://matsne.gov.ge/ka/document/view/4486188?publication=2> (Date of Access: 29/10/2023)

radiation etc. on the regular basis. Besides, the employer is responsible to provide train the employees and distribute necessary and relevant information regarding the occupational risks, explain work procedures, instructions, guidelines, how to react in emergencies, what are the evacuation measures, etc. This information should be provided when employer considers it necessary but also before the hiring the employee, before performing any work or before transferring the workforce from one workplace to another.

The employer is not entitled to employ underaged person, pregnant or nursing women, when the work involves risks and is dangerous for health and their security. In case of occupational accident occurred at the workplace, the employer is responsible to provide financial support to maintain healthy, safe and hygiene working environment at their own expenses. If employer has an occupational safety specialist, it does not mean that the employer is relieved from their duties.⁶⁰

Despite all this, employer must consider to take relevant steps in order to prevent hazardous situations, that's why she/he must try to minimize or eliminate the risk of damage to health on permanent basis, prevent existing risks, provide relevant equipment for employees, take steps to eliminate any hazardous situations, give instructions to employees, periodically provide medical examinations for them and prohibit access of any employee under the alcoholic, drug or psychotropic influence at the workplace.⁶¹

In order to fulfil all these aforementioned obligations, the employer is obliged to have occupational safety specialist at the workplace. If the employer has 20 or less employees, she/he can fulfil occupational safety specialist's obligation by themselves, in case the employer completed an accredited program. However, if the employer has 20-100 employees, the employer must have at least one occupational safety specialist on-site. If the amount of employees are 100 or more, the employer must have at least two occupational safety specialists.⁶²

In the period of 2006-2020, there was no supervisory mechanisms for labour relationships and the civil procedure was the only mechanism to restore violated right. Thereafter, in 2018-2019, labour safety law implemented the mechanism for supervision of labour conditions. In 2020, the special clauses for the State Inspector's supervision functions in labour relations were implemented in the Labour Code of Georgia. This mandate also covered supervision over fulfilling labour rights. Moreover, Labour Inspector has a right to take administrative penalty measures in case the violation of law occurs.

⁶⁰ Law of Georgia on Occupational Safety, 2019, article 5, <https://matsne.gov.ge/ka/document/view/4486188?publication=2> (Date of Access: 29/10/2023)

⁶¹ Law of Georgia on Occupational Safety, 2019, article 6, <https://matsne.gov.ge/ka/document/view/4486188?publication=2> (Date of Access: 29/10/2023)

⁶² Law of Georgia on Occupational Safety, 2019, article 7, <https://matsne.gov.ge/ka/document/view/4486188?publication=2> (Date of Access: 29/10/2023)

Hence, since September 29, 2020, the Georgian labour law system was changed and the state supervision can be used in private contractual labour relationships as well.⁶³ The labour inspection, which was responsible for compliance with safety rules at workplace, was abolished in 2006. Later in 2015, the Labour Conditions Inspection Department was established, but Department could not enter the company for inspection without notifying the employer and in case of discovery of a violation, it did not have the right to impose a sanction.⁶⁴

Nowadays, Labour Inspection Service is a public legal entity, which is under the legacy of Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia.⁶⁵ The main goals of labour inspection are giving

consultations and information regarding the labour terms and norms in case of such requirement, raising public awareness about labour law. Moreover, caring out the informational campaigns, receiving and reviewing complaints related to possible violations of labour norms; inspective working on enhancing the labour legislation and holding discussions on these issues. The Labour Inspection Service shall exercise these powers in such a way to have the significant impact on fulfilling labour standards.⁶⁶

9. Conclusion

Finally, on one hand, goal of this article was to discuss the labour safety standards in accordance with the Georgian legislation, and on another hand, overview the personal data protection principles in the frame of the labour relationship. When it comes to employee's personal data protection in Georgia, there are two main laws, which must be simultaneously applied - the Labour Code of Georgia and the law of Georgia on Personal Data Protection. The topicality of this issue was increased since 2023 when Georgian parliament adopted the new bill regarding the personal data protection, the most norms will enact since next year.

⁶³ Shvelidze, Z., Kereselidze, D., Zaalishvili, V., Khazhomia, T., Amiranashvili, G., Chachava, S., Kikabidze, G., Gaiparashvili, M., Dzimistarishvili, U., Takashvili, S., Kharaishevili, G., Gasitashvili, E., Kardava, E., Sturua, N., Bakakuri, N., Meskhishvili, K., Sulkhanishvili, E., Liparteliani, R., Surmava, T., Zhorzholiani, L., Kochiashvili, N., Abutidze, N., Kerdzaia, T., Khabeishvili, T., Kandashvili, I., (2023) Comments on the Labour Code of Georgia, Kereselidze, D., Chachava, S., Zaalishvili, V., Shvelidze, Z., Meskhishvili, K., (eds.) Tbilisi : New Vision University Publishing, 829-830 https://drive.google.com/file/d/1AM6kSEEWUqp7rwDXCzUhgQ5YcUyA_ft5/view (Date of Access: 29/10/2023)

⁶⁴ Chapidze, G.: op.cit 8.

⁶⁵ Law of Georgia on the Labour Inspection Service, 2020, article 2, <https://matsne.gov.ge/ka/document/view/5003057?publication=3> (Date of Access: 29/10/2023)

⁶⁶ Law of Georgia on the Labour Inspection Service, 2020, article 5 <https://matsne.gov.ge/ka/document/view/5003057?publication=3> (Date of Access: 29/10/2023)

Furthermore, Article discussed that beyond the theoretical knowledge it is interesting how the terms and clauses of the law actually work in the practice, therefore the most important cases, which occurred in few years ago was discussed in the article.

To sum up, both, the employers and the employees must fulfil the obligations that are required by the law and maintain the balance within their labour relationship without infringe personal data protection law and respect/protect the right of privacy and person's dignity. Employers should monitor employees conduct without violating employee's fundamental right and obey the requirements of national legislation and consider international regulations. Such standard will contribute to the efficiency and reliability of the safe working environment.

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MILICA ILIĆ*

Employer's Liability for Damage Caused by the Employee to a Third Party under Polish Law

Abstract: This study provides an overview of Polish law's rules regarding the employer's liability for damage caused by an employee to a third party. Labour law (Article 120 Section 1 of the Labour Code) regulates this issue. However, the Civil Code must also be applied because labour law regulations are not the legal basis for the injured party's claim.

Those are Articles 416-421 of the Civil Code, which prescribe the liability of the legal person for damage caused by its organs and the liability of the State Treasury. Article 430 holds superiors liable for damages caused by their subordinates to a third party. Articles 433-436 contain regulations of the employer's strict liability.

Keywords: the employer's liability, Article 120 of the Labour Code, Civil Code, another employee as a third party

1. General remarks

An employer's liability for any damage caused by an employee to a third party while performing work duties is regulated by Article 120 Section 1 of the Act of 26 June 1974. of the Labour Code¹ under Polish law.² Based on the linguistic interpretation of this article, the claim is to be addressed against the employer in

* Milica Ilić, PhD student at the Ferenc Deák Doctoral School of the Faculty of Law of the University of Miskolc, Intern at the Central European Academy, supervisor Attila Dudás, PhD full professor, University of Novi Sad Faculty of Law, Department of Civil Law.

¹ „If damage is caused to a third person by an employee while carrying out his work-related duties, the liability to make good that damage lies with the employer only“: Article 120, Section 1 of the Act of 26 June 1974. of the Labour Code. Dz. U. z 2023 r. poz. 1465, z 2024 r. poz. 878, 1222, 1871, 1965. The political, economic, and social changes in Poland, which began in 1989 with the "Solidarity Revolution," required significant reform of the Polish labour law which originated from the communist system. The sequel of reforms was from 2004 when Poland became a member of the European Union. SEWERYNSKI, M: Toward a New Codification of Polish Labor Law. *Comparative Labor Law & Policy Journal*, 26(1) 2004b, p. 55.

² MORAS-OLAŚ, K.: Guilt of the employee and the liability for the damage inflicted on a third party – some remarks with regard to the Polish labour code regulations, *Roczniki Administracji i Prawa: teoria i praktyka*, 2016/XVI(2), pp. 351-352. , : [oai:www.sbc.org.pl/295103](https://oai.www.sbc.org.pl/295103) (date of download: 29/09/2023). Similarly, DÖRRE-KOLASA, D. in BARAN, K. et al.: *Liability for damage caused to a third party*, in (eds) *Outline of Polish Labour Sistem*. Warsaw: Wolters Kluwer SA 2016, p. 337; JASION, M.: Risk of compensation in the light of harm to a third party by an employee. *Scientific Journal of Bielsko-Biala School of Finance and Law*, 4(2017), p. 102. , : <https://www.cceol.com/search/article-detailPid=598683> (date of download: 28/09/2023).

civil proceedings³ while against the employee it is not possible.⁴ Also, the third party is not entitled to claim compensation from the insurance company because the employer is directly liable for the activities of their employees.⁵

Such a legal solution leads to the conclusion that Labour law protects an employee as a weaker party in a working relationship⁶ based on the aforementioned linguistic interpretation. That is a fact, but it was necessary to add functional interpretation during the interpreting process for a broader understanding of this subject matter.⁷ This analysis resulted in the third party's claim's legal basis not specified in this provision of labour law.⁸ The regulation of torts in the Civil Code governs this matter,⁹ and Article 300 of the Labour Code, prescribes that „In matters not provided for in the labour law, the provisions of the Civil Code shall apply to an employment relationship unless those provisions are contrary to the requirements of labour law. In such cases, the employer must compensate the third party for the damages if such compensation is justified in civil law under tort law.¹⁰

Hence, both case law and doctrine agree on this point: Article 120 of the Act of the Labour Code is insufficient to establish the basis of the employer's liability towards a third party.¹¹ Therefore, it is necessary to refer to the provisions of the Civil Code¹² regarding torts¹³, specifically Articles 416, 417-421, 430, and 474, in connection with Article 471.¹⁴ Those legal provisions are related to the liability of

³ DÖRRE-KOLASA, D. in BARAN, K. et al.: 2016, p. 337.

⁴ MORAS-OLAS, K.: 2016, p. 353.

⁵ MUSZALSKI, W. – WALCZAK, K.: Kodeks Pracy. Komentarz (Labour Code. Commentary), Wydawnictwo C.H. Beck, (13) *Warsaw*, 2021, Article 120., p. 2., : <https://www.księgarnia.beck.pl/22146-kodeks-pracy-komentarz-wojciech-muszalski-dagge> (date of download: 15/11/2023).

⁶ JASON, M.: 2017, p. 102.

⁷ WOLAK, G.: Odpowiedzialność pracownika za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych (Employee's liability for damage to a third party while performing employee duties) *Praca i Zabezpieczenie Społeczne*, Warszawa, 2015, p. 21.

⁸ DÖRRE-KOLASA, D. in BARAN, K. et al.: 2016, p. 337.

⁹ See, e.g. „Judgment of the Polish Supreme Court (SN) of 25 March 1987, II CR 48/87, LEX no. 8817“. Cited in DÖRRE-KOLASA, D. in BARAN, K. et al.: 2016, p. 337.

¹⁰ MUSZALSKI W. - WALCZAK K, 2021, Article 120.

¹¹ BADOWIEC, R.: Odpowiedzialność za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych – uwagi na tle art. 120 k.p.’ [Liability for damage caused to a third party while performing employee duties - comments in the context of Art. 120 kp, "Młody Jurysta". *Journal of Students and Doctoral Students of the Faculty of Law and Administration of Cardinal Stefan Wyszyński University*, Warsaw, 2017, p. 10., : <https://czasopisma.uksw.edu.pl/index.php/mj/article/view/1278> (date of download: 17/02/2024). Similarly, PERDEUS, W. in BARAN KRZYSZTOF, W.: Kodeks Pracy. Komentarz (Labour Code. Commentary), Vol. 2. Articles 94-304(5), 6th ed. *WKP*, 2022, Art. 120., : <https://3A%2F%2Fsip.lex.pl%2F> (date of download: 22/10/2023); Similarly, MORAS-OLAS, K.: 2016, p. 353.

¹² The Act of April 23, 1964, Civil Code, Dz. U. z 2024 r. poz. 1061, 1237.

¹³ „Decision of Supreme Court dated March 25, 1987, case no. II CR 48/87, LEX no. 8817.“ Cited in MORAS-OLAS, K.: 2016, p. 353.

¹⁴ MORAS-OLAS, K. 2016, p. 353.

the legal persons for its organs (Article 416 of the Civil Code), the State Treasury, state legal persons, and local government units' liability for damages caused by „an act or omission in the exercise of public authority“¹⁵ (Article 417), as well as the Civil Code's Article 430, which prescribes the liability of superiors for damages caused by subordinates. The strict liability provisions in Articles 433–436 of the Civil Code may also serve as the base for the employer's liability.¹⁶ There is also the possibility of the employer's liability based on Article 474 of the Civil Code (contractual vicarious liability) when he/she engages someone to help him/her or to substitute him/her in some job.¹⁷ In doctrine, this liability is strict because the employer does not need to be at fault.¹⁸ By statute, strict liability is prescribed as aforementioned in Articles 433–436, specifically Article 435 Section 1, which imposes strict liability for injuries caused by natural forces like steam, gas, electricity, or fuel in the operation of a legal person. This liability extends to the manufacturing or using high explosives such as mines under Article 435 Section 2. However, the employer can escape liability by proving that the damage was due to force majeure or solely caused by the injured party or a third party.¹⁹

In addition, under Section 2 of Article 120 of the Labour Code, an employee who caused the damage is legally liable to the employer who compensated a third party for it in line with the statute.²⁰

So, in the first section of this article, the only one liable for such damages is the employer. At the same time, section two grants him/her rights of recourse against employees but only after his/her repairing of the damage.²¹

The employee is liable to the employer for repairing any damage caused to a third party.²² Essentially, the employee is liable for the damage as if he/she had caused it directly to the employer. There is controversy regarding this provision because it is unclear whether the employee acted unintentionally or with intent.²³ Also, the next question arises as to what legal procedures to use and to what extent the employer is liable for damage caused by his/her employee to a third party. According to some doctrine proponents, this concept has a double meaning. In their opinion, a different set of legal procedures applies if the injured party is an

¹⁵ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRAK A.: Civil Code. Commentary updated, *LEX/el.* 2023, Article 417. , : <https%3A%2F%2Fsisp.lex.pl%2F> (date of download: 02/11/2023).

¹⁶ BADOWIEC, R.: 2017, p. 10.

¹⁷ Ibid.

¹⁸ NESTEROWICZ, M. – BAGINSKA, E. in SPIER, J.: Unification of Tort Law: Liability for Damage Caused by Others. *Kluwer Law International*, 2003, p. 185. and 192.

¹⁹ SZPUNAR, A.: The Law of Tort in the Polish Civil Code. *International and Comparative Law Quarterly*, 1967, pp. 92-93. Similarly, BADOWIEC, R.: 2017, p. 10.

²⁰ Labour Code, Art. 120, Section 2.

²¹ MORAS-OLAS, K.: 2016, p. 353, Similarly JASION, M.: 2017, pp. 102-103.

²² JASION, M.: 2017, p. 103.

²³ Ibid.

employee with whom the employer had a relationship of obligation before the injury occurred, and a different set of procedures is applicable if there is no such relationship.²⁴ The former pertains to obligations arising from a contractual liability (*ex contractu*), while the latter refers to liabilities arising from a wrongful act or omission (*ex delicto*) that causes damage to another person or their property. These distinctions lead to the conclusion that the employer's liability for financial compensation may vary when the injured party is also affiliated with the company as an employee.²⁵ In this given circumstance, liability is determined by a compensation risk emphasised in doctrine because the employer is liable for the erroneous selection of a specific employee for a task (*culpa in eligendo*).²⁶ In case law, the majority opinion (the prevailing opinion) is the employer's strict liability (taking into account the risks associated with the business activity) but sometimes it can be fault-based. Still, sometimes, to establish the employer's liability for the damage caused to another employee, the employer must be at fault for the accident which is difficult to prove in evidentiary proceedings.²⁷

2. The effect of an employee's intentional and unintentional fault on the extent of his/her liability for damage

Literature and judicature do not have a consensus on whether Article 120 of the Labour Code applies to intentional or unintentional acts of the employee.²⁸

According to the literature, labour law (Article 120) will not apply to an employee who intentionally caused the damage, and this situation is regulated under the Civil Code related to tort law.²⁹ If the employee intentionally caused the damage, he/she will be held directly liable. Based on the judicature's view, the employee will be liable under the Labor Code for unintentional and intentional faults as well because the answer lies in Article 122 of the Labour Code which prescribes that when damage is caused with the intent of an employee, the employee is liable for the full amount of the damage.³⁰

An example of this consideration is the Resolution of October 11, 1977 (IV PZP 5/77) established by the Supreme Court.³¹ From this point of view, the judicature created a unique category of tort known as a "labour tort."³² This new form of tort,

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ DÖRRE-NOWAK, D. in OLIPHANT, K. - WAGNER, G.: Employers' Liability and Workers' Compensation. Tort and Insurance Law, *Walter de Gruyter GmbH, Berlin/Boston*, 2012, p. 389.

²⁸ BADOWIEC, R.: 2017, p. 6.

²⁹ Ibid, p. 7.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

also called „labour law tort“ means that the employment relationship is an „opportunity“ for an employee to cause the damage intentionally.³³

However, when the injured party is another employee to whom the employee caused the damage intentionally, according to the Supreme Court of 2.02.2011, II PK 189/10's judgment, Article 120 of the Labour Code is not applied.³⁴ In this case, the employee is liable to the injured party for repairing the damage on general principles.³⁵ The employee's liability does not exclude the employer's liability for the damage caused by the employee, which is regulated in the Civil Code under vicarious liability or liability for other acts.³⁶ Furthermore, if the employer paid the injured employee for the damage caused, he/she can make a recourse claim against the employee under Article 441, section 3 of the Civil Code in connection with Article 300 of the Labour Code.³⁷ This recourse claim is not restricted by Article 120, section 2 of the Labour Code.³⁸

The limitation period for the employer's recourse claim is counted from the moment when the damage is paid, not when the employee caused it, and the employee is obliged to pay the employer the total damages.³⁹

If an employee unintentionally causes damage to a third party, the employer must compensate the third party for the total amount of the damage.⁴⁰ However, the employer can only obtain an amount not exceeding three months' salary from the employee.⁴¹ Regarding the situation when the employee unintentionally causes damage to both the employer and third parties through a single action in the course of performing his/her duties, the total amount of compensation payable to the employer under Articles 114 and 120 Section 2 of the Labour Code cannot exceed three months' worth of the employee's salary as well.⁴² So, the sum depends on the severity of the employee's fault.⁴³

Additionally, if the damage is caused to a third party due to the employer's act, which contributed to the infringement by his/her employee, then the employer who

³³ Ibid.

³⁴ PERDEUS, W. in BARAN KRZYSZTOF, W.: 2022, Art. 120.

³⁵ Ibid.

³⁶ Ibid; Vicarious liability is a type of liability where an employer is held liable for the damages caused by their employee to a third party. This doctrine has been controversial in the common law system and is commonly known as "liability for the acts of others" in civil law. The term "vicarious liability" was coined in the 1880s by Frederick Pollock, an English lawyer. GILKER, P.: Vicarious liability or liability for the acts of others in tort: comparative perspective, *Journal of European Tort Law*, 2011, p. 31.

³⁷ PERDEUS, W. in BARAN KRZYSZTOF, W.: 2022, Art. 120.

³⁸ Ibid.

³⁹ DÖRRE-KOLASA, D. in BARAN, K. et al., 2016, p. 338.

⁴⁰ Ibid, p. 337.

⁴¹ Ibid.

⁴² Ibid, pp. 337-338.

⁴³ Ibid., p. 337.

repaired the damage can make a recourse claim to that employee under Article 441 Section 2 of the Civil Code.⁴⁴

Also, according to the case law, seeking compensation directly from the employee when he/she intentionally damages a third party is possible.⁴⁵ The same applies to the employee's unintentional fault when the employer cannot compensate for the damage due to insolvency (bankruptcy).⁴⁶

3. Employer's liability terms

For the employer to be liable for the activities of an employee, the following conditions must be met: Firstly, the person for whom the employer is liable must be an actual employee as defined by Art. 2 of the Labour Code.⁴⁷ Article 2 of the Labour Code⁴⁸ prescribes that „an employee is an individual employed based on a contract of employment⁴⁹, appointment⁵⁰, election⁵¹, nomination⁵² or co-operative contract of employment⁵³. Therefore, as per Art. 120 of the Labour Code, the

⁴⁴ PERDEUS, W. in BARAN KRZYSZTOF, W.: 2022, Art. 120.

⁴⁵ „See the justification of the resolution of seven judges of the Supreme Court of June 12, 1976, III CZP 5/76, OSNCP 1977/4/61 and the judgments of the Supreme Court of August 28, 1980, IV PR 252/80, OSNCP 981/4/65 and February 2, 2011, II PK 189/10, unpublished, Skoczynski, 1998, Bieniek, 1978, Piethreekowski, 1975, Marek, 1977⁴⁶, cited in WOLAK, G.: 2015, p. 23.

⁴⁶ WOLAK, G.: 2015, p. 26.

⁴⁷ MORAS-OLAS, K.: 2016, p. 352.

⁴⁸ Labour Code, Art. 2.

⁴⁹ The Polish Labor Code recognises different types of employment contracts based on their length and specific features. As a result, a fundamental distinction is made between contracts concluded on indefinite and definite periods. SEWERYNSKI, M.: Varieties in Employment Status and Related Issues in Polish Labour Law. *Comparative Labor Law Journal*, 1997, p. 526.

⁵⁰ Following World War II, the government appointed directors of state-owned enterprises and managers of government institutions. In 1981, an act regarding state-owned companies' employees' right to self-government led to directors being appointed by employees' councils after an open competition. Appointments were criticised for creating complicated employment relationships that depended on the institution that appointed them. The use of appointments has since decreased due to privatisation, and the new Labor Code of 1996 still recognises appointments as a basis for employment. *Ibid.*, pp. 531-532.

⁵¹ In Poland, employees in leadership positions in various institutions are subject to special employment provisions. These elected officials have an employment relationship with the organisations that elected them. This form of employment is becoming more significant as more officials are democratically elected. *Ibid.*, p. 531.

⁵² In Poland, "nomination" is a common form of non-contractual employment. Most governmental civil servants, administrative employees, and local government officials are employed through nomination. Although they are subject to the regulatory provisions of special laws, they are regarded as labor-law employment. Acts regarding governmental administrative employees and civil servants treat nominated employees differently than traditional contract employees. Many critics think their status should be governed by administrative law, with labour law provisions being secondary considerations. *Ibid.*, p. 530.

⁵³ Co-operative employment contracts and vocational training contracts are treated differently in the Polish Labour Code due to their unique legal nature. Co-operative employment contracts are for cooperative members who are obligated to work for the enterprise and have a dual legal relationship with it. Vocational training contracts are designed for youths between 15 and 18 years old who need training

employer will not be liable for people who work for him/her based on non-employment relationships.⁵⁴

Secondly, for the employer to be held liable, the employee's activities must result in damage while performing his/her work duties.⁵⁵

(In doctrine and case law, experts had difficulties explaining the link between a performing activity and the act that causes damage.⁵⁶ The most common view is that the damage „must be caused by an activity intended to achieve some goal set by the principal“.⁵⁷ Since this issue cannot be resolved uniformly, it „must be addressed case-by-case“).⁵⁸

In addition to the second condition, to apply Article 120 of the Labor Code, the employee's fault must exist, which is cumulative set together with the damage caused by an employee during his/her occupational duties.⁵⁹ So, if it is not that situation that the damage does not emerge during the performance of the employee's duties and it occurs „only at the opportunity („by the way“) of performing these duties („judgment of a panel of 7 judges of the Supreme Court of June 19, 1975, V PRN 2/75, OSNCP 1976/4/70 and the judgment of the Supreme Court of Justice of the Republic of Poland May 5, 1998, I CCU 110/97, unpublished)“⁶⁰ then the Article 120 Section 1 shall not apply.⁶¹ So, if an employee causes damage to another person on the employer's premises during his/her working hours, but the damage is caused by activities beyond the scope of his/her duties or the employer's activities, the employer will not be held liable.⁶²

Also, there must be a clear causal relationship between the damage and an employee's work performance, per Article 120 of the Labor Code. When evaluating whether such a relationship exists, one must consider all pertinent circumstances, scientific principles, and practical experience. An employee's material liability stems from two types of labour obligation breaches: non-fulfilment or inappropriate fulfilment of said obligations. This implies that in such instances, an employee hasn't fulfilled specific activities or hasn't optimally served them.⁶³

for a particular vocation or profession. Both contracts receive special treatment in different aspects of their employment relationship but are subject to standard provisions of the Labour Code in other respects. However, cooperative employment contracts are rare today, and vocational training contracts are not as common as under the socialist system. *Ibid.*, pp. 528-530.

⁵⁴ Patulski, 2006, p. 52, cited in MORAS-OLAS, K. 2016, p. 352.

⁵⁵ MORAS-OLAS, K.: 2016, p. 352.

⁵⁶ MACHNIKOWSKI, P.: Compensation for Accidents in Poland. *Otago Law Review*, 2019, p. 165.

⁵⁷ Rembielinski, p. 18, p. 138, Szpunar, p. 19, p. 476, cited in MACHNIKOWSKI, P. 2019, p. 165.

⁵⁸ MACHNIKOWSKI, P.: 2019, p. 165.

⁵⁹ BADOWIEC, R.: 2017, p. 14.

⁶⁰ WOLAK, G.: 2015, pp. 22-23.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Badowiec, 2017, p. 6.

Regarding the type of damages caused to a third party, including but not limited to loss of property, physical injury, and mental anguish (material and non-material damage).⁶⁴

4. Liability of a legal person for damage caused by an organ

In the Polish legal system, the liability of a legal person for damage caused by its organ is prescribed in Article 416. of the Civil Code.⁶⁵

In this provision⁶⁶, the legislator chose the doctrinal organ theory („the concept of a legal person under Polish law is founded on the so-called theory of organs, as expressed in art 38 of the Civile Code,„)⁶⁷ based on which the legal person is liable for compensating for any damages caused by the fault of its organs.⁶⁸ The organ is considered as a natural person who has the authority to act as an organ of a legal person.⁶⁹ Therefore, the activities of the persons who perform the functions of such an organ are considered the activities of the legal person itself. As a result, the legal person will be held liable for any damages caused by the organ, regardless of their nature⁷⁰ if some conditions are met: the appointment of the natural person to perform a function of an organ, acting within the scope of his/her designated authority, and refraining from exceeding the limits of the organ's powers.⁷¹ When an organ comprises multiple people, there may be confusion about who is liable for any damages caused. However, based on the literature interpretation, a legal person can be held liable if any member (natural person) of an organ causes damage by fault.⁷²

⁶⁴ Ibid, p. 8.

⁶⁵ Article 416. of the Civil Code.

⁶⁶ Article 416 prescribes: „A legal person shall be obliged to redress the damage caused by its organs and for which these organs were at fault.“

⁶⁷ MACHNIKOWSKI, P.: 2019, p. 161.

⁶⁸ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 116.

⁶⁹ MACHNIKOWSKI, P.: 2019, p. 161.

⁷⁰ „See e.g. J. Kuzmicka-Sulikowska, Principles of liability..., pp. 42-43 and the literature cited there; see also M. Safjan, Tort liability..., pp. 188-189, P. Machnikowski [in] System Prawa Prywatnego, vol. 6, ed. A. Olejniczak, 2009, pp. 372-373.“ Cited in JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 116.

⁷¹ MACHNIKOWSKI, P.: 2019, p. 161.

⁷² „See the judgment of the Supreme Court of 5.12.2007, I CSK 304/07, LEX No. 365045“; „see also the judgment of the Supreme Court of 5.11.2010, I CSK 12/10, LEX No. 622195, in which it was explained that "basing the liability of a legal entity on Article 416 of the Civil Code does not mean recognising that the damage was caused by the culpable behaviour of all members of its body." Cited in JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 116.

It is enough that only one natural person who is a hub of an organ causes damage to establish a legal person's liability, and as well it is necessary the damage was a direct result of the activities carried out by the organ in question.⁷³

Regarding the issue of attributing fault to a legal person, especially in medical trials, can be challenging. However, according to the literature and case law, one way to address this is to look at anonymous or organisational faults. This means that instead of identifying the person liable for the wrongdoing within the organisation, the focus is on proving that the legal person had an improper work organisation or other irregularities that led to the damage.⁷⁴

In that case, Polish legal scholars, such as Safjan, concluded that liability can sometimes lead to objectification. Liability is justified based on the general notion of unlawfulness rather than solely on the fault of the party liable for the damage. This approach disregards any personal characteristics of the perpetrator, as their identity remains unknown.⁷⁵

5. Superior's liability for the damage caused by a subordinate

Under Article 430⁷⁶, superiors (masters) are liable for damage caused by their subordinates (servants). Their liability is strict in doctrine, based on the principle of risk.⁷⁷

„The category of master embraces both natural and legal persons, but of course the majority of cases concern corporations, partnerships and associations. A servant means a person who acts on behalf of his master and is his subordinate. The subordination (meaning working under someone's leadership and having a duty to abide the master's instructions) is interpreted broadly, and includes organisational dependence and a duty to follow all, even general, orders and instructions. The

⁷³ „See e.g. the judgment of the Supreme Court of 5.12.2007, I CSK 304/07, LEX No. 365045; see also the judgment of the Supreme Court of 5.11.2010, I CSK 12/10, LEX No. 622195, in which it was explained that "basing the liability of a legal entity on Article 416 of the Civil Code does not mean recognising that the damage was caused by the culpable behaviour of all members of its body." Cited in JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 116.

⁷⁴ „See e.g. J. Kuźmicka-Sulikowska, Principles of Liability..., pp. 45-47; J. Dąbrowa, Tort Liability for Own and Another's Fault, SC 1970, vol. XVI, pp. 42-44; K. Bączyk Rozwadowska, Liability of a Medical Facility for organisational Fault in Doctrine and Judicial Decisions, PiM 2012/3-4, pp. 24-51“. Cited in JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 416.

⁷⁵ MACKIEWICZ, M.: The Condition of Fault in Private Enforcement of Competition Law- A Comparative Analysis of U.S. v. Polish and European Approach. *Yearbook of Antitrust and Regulatory Studies*, 2020, p. 78.

⁷⁶ Article 430 of the Civil Code prescribes: „A person who on his own account entrusts the exercise of an act to a person who at the exercise of that act is subject to his supervision and who is obliged to abide by his guidelines, shall be liable for damage inflicted by that person's own fault at the exercise of the act entrusted to him.“

⁷⁷ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 430.

degree of subordination is not significant. The master-servant relationship covers both persons performing simple tasks (e.g. a manual worker, clerk, nurse), as well as persons who are largely independent (e.g. engineer, architect, physician)⁷⁸.

The fault of a superior in selecting (*culpa in eligendo*) and supervising (*culpa in vigilando*) a subordinate is not of legal relevance. Still, the subordinate's fault is legally relevant. It is one of the conditions for establishing the superior's liability besides an adequate causal link between a subordinate's actions and damage caused, and the unlawful behaviour of the subordinate.⁷⁹ As well the conduct of the subordinate must be in the course of the performance of the duties and on account of the superior.⁸⁰

In literature and case law, the main challenge is distinguishing when the subordinate's activities caused the damage - in the performance of an action or only on the occasion of the performance of an action.⁸¹

The decisive factor should be whether the activity in which the subordinate led to the infliction of damage to a third party was within the scope of the entrusted activity or whether another activity caused the damage (for instance, the bank that employs an employee will be liable if the employee transfers money owed to the bank's customers to his/her account; however, under Art. 430, the bank will not be liable if the employee assisted a third party in preparing a loan application after working hours and did so in a way that caused damage to the applicant.)⁸²

6. State liability for damage caused by civil servants in performing their duties

In contemporary democracies, individuals can seek compensation for any damage arising from the activities of state officials.⁸³ One famous Polish writer, Ernest Till, wrote: "There can be no true liberty and democracy without liability of the State for the torts committed by its agents in the fulfilment of public duties".⁸⁴

⁷⁸ NESTEROWICZ, M. – BAGINSKA, E.: 2003, 190.

⁷⁹ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 430.

⁸⁰ BAGINSKA, E – TULIBACKA, M.: Tort Law in Poland. *Kluwer Law International B.V., Alphen aan den Rijn*, 2022, 89.

⁸¹ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Art. 430.

⁸² Ibid.

⁸³ WAGNER, W. J.: Recent Developments in State Tort Liability in Poland. *American Journal of Comparative Law. Spring* 1972, p. 247.

⁸⁴ "E. TILL, Polskie prawo zobowiazani. Czesc ogolna. Projekt wstedpny z motywami [Polish law of obligations. General part. Preliminary bill with motives] (1923), p. 111-112". Cited in BAGINSKA, E.: State Liability in a Comparative Perspective. *Boletim da Faculdade de Direito da Universidade de Coimbra*, 2005, p. 851.

In Poland, the principle of state liability was proclaimed by the Constitution of 1921.⁸⁵ Before that period, several legal systems prescribed different legal regimes for state tort liability.⁸⁶

The October 1956, when the workers' movement successfully overthrew the Stalinist government, marked a significant turning point in Polish history.⁸⁷

Only some weeks after, the State Liability Act was enacted on 15 November 1956 which regulated the state liability.⁸⁸ In 1964, this Act was included in the Polish Civil Code, and the state liability was recognised under the provisions of civil law before regular courts.⁸⁹ So, based on doctrine and case law, the state liability includes three periods. Firstly, the pre-constitutional period until 17.10.1997 secondly the period from 17.10.1997. to 31.08.2004. and last the law in force from 01.09.2004.⁹⁰

Firstly, from a historical perspective, the state was held liable for torts defined in Title VI of the Third Book of the Civil Code (Obligations).⁹¹ This part of the Civil Code starts with Article 415, which prescribes that anyone who, due to their fault, causes damage to another is obligated to compensate for it. Article 416 further regulates the liability of a legal person obliged to pay for any damages caused by its organs in cases where the fault lies with such organs. This article is important in establishing the next article, 417, which prescribed that „the State Treasury is liable for damages occasioned by a servant of the state in carrying out a delegated function.“⁹²

Professor Adam Szpunar used the term „agent“ for interpreting Article 417 of the Civil Code which prescribed that the State was liable for any damage caused by

⁸⁵ „Art. 12 provided: [E] very citizen has the right to damages for the harm caused to him by a state authority, civil or military, because of an official act which is against the law or the duties of service. The State and the responsible organ are jointly liable for the harm caused; the commencement of an action against the state or public servants does not require the government's consent. In the same way, local government bodies and other autonomous organizations are liable. Special laws will determine the bringing into force of this principle.“ „English text based on the translation by Wyrwa, Governmental Tort Liability (Law in Eastern Europe no. 17, ed. Barry) 233 (1970).“ Cited in WAGNER W. J.: 1972, pp. 247-248.

⁸⁶ After Poland's independence in 1918, different legal systems were applied. Russian law in the East, Austrian law in the South, Prussian law in the West, and Central Poland have a distinct legal system that follows the French Civil Code. State liability varied across these areas: Russian law allowed state immunity, and Prussian law was the opposite. „See e.g. Jodłowski, "La responsabilité des dommages causés par l'activité des organes du pouvoir et de l'administration" (Responsibility for Damage caused by Activities of the Organs of Government and the Administration), in Société, de Législation Comparée, *Journées Juridiques I* (1965) 87, 90.“ Cited in WAGNER, W. J.: 1972, p. 247.

⁸⁷ WAGNER, W. J.: 1972, p. 248.

⁸⁸ Ibid, pp. 248-249; Similarly, SZPUNAR, A.: 1967, p. 91.

⁸⁹ WAGNER, W. J.: 1972, p. 249.

⁹⁰ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

⁹¹ WAGNER, W. J.: 1972, p. 250.

⁹² Art. 417, Sec. 1, 2. Cited in WAGNER, W. J.: 1972, p. 250.

its agent in exercising the function for which he was employed.⁹³ Professor Wagner wrote the same, but instead of the term „agent“, he used the term „servant“ and gave the definition based on article 417. that states' servants referred to all employees working for the institutions of State power, administration or economy and acting under their orders. It also included persons appointed through the electoral process, judges and public prosecutors, and soldiers in the armed forces.⁹⁴ Professor Adam emphasised that „the classification of thousands of State agents into agents and servants is a very complicated matter“.⁹⁵ Nonetheless, in practice, it does not matter what term is used because if the plaintiff could show that the agent was at fault, the State was liable for fixing any damage.⁹⁶

Understanding Article 417 in light of the two previous articles was important at that time.⁹⁷ Namely, as stated, liability had to be based on fault, so the State Treasury's liability for damages arising from events that occurred before 17.10.1997. was based on the fault of the servant who was influenced to cause the damage.⁹⁸

The suit filed based on the theory of risk, which means strict liability, has been rejected in these cases.⁹⁹ There was an example when a soldier who suffered epilepsy after serving his military service filed a suit against the state after his discharge and argued that his illness was caused by military training. However, the Supreme Court rejected the suit as there was no evidence that the plaintiff claimed the soldier's superiors were at fault. His training was not different from that given to every other soldier. The plaintiff's only option was to apply for social security benefits regardless of the cause of his condition.¹⁰⁰

However, in the second period from 17.10.1997. to 01.09.2004. the functionary's fault was not the condition for establishing the liability of the State Treasury.¹⁰¹ The State Treasury may be held liable for any damage resulting from the illegal conduct of a state functionary¹⁰² while carrying out a task assigned to him/her. This implies that liability for damages is contingent solely on confirming illegal action, not fault,

⁹³ SZPUNAR, A.: 1967, p. 91.

⁹⁴ WAGNER, W. J.: p. 251.

⁹⁵ SZPUNAR, A.: 1967, p. 91.

⁹⁶ Ibid.

⁹⁷ WAGNER, W. J.: p. 251.

⁹⁸ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

⁹⁹ WAGNER, W. J.: 1972, p. 251.

¹⁰⁰ „S.Ct. ruling of 19 Jan. 1968, Przegląd Ustawodawstwa Gospodarczego (Review of Economic Legislation) [hereinafter cited as PUG] 1968, 364.“ Cited in *ibid*.

¹⁰¹ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

¹⁰² „According to the *Practical Dictionary of the Contemporary Polish Language*, a functionary is a person who plays a specific role in public administration (Zgółkowska, 1997). What is more, in the opinion of Bielska-Brodziak et al. (2011a), a conceptual range of the term 'public official' coincides with a commonly used word, 'clerk', understood as a person who works at a specific public office or holds a specific public function.“ Cited in Chaba D.: Public officials' liability: a case study on Poland. *International Review of Administrative Sciences*, 2020, p. 171.

based on the interpretation of Article 77 of the Constitution of the Republic of Poland of 1997.¹⁰³

Lastly, in the version in force of Article 417 of the Civil Code, which has been in effect since September 1st 2004¹⁰⁴ (the third period of the development of this institute), the liability lies with the institution, which is not bound by the fault of the functionaries working for it. This liability is associated with the exercise of public authority¹⁰⁵ and it is not obligatory to establish the identity of the natural person who performed the function and caused the damage. Rather, it is adequate to affirm that the damage was undoubtedly caused by an unknown person executing a specific task.¹⁰⁶

7. Conclusion

This paper showed different interpretations of the statutes (Labour Code and Civil Code) that regulate the institute of the employer's liability for damage caused by an employee to a third party at work or in work-related situations under Polish law. Based on verbatim interpretation Article 120 Section 1 of the Labour Code regulates only the employer's liability to compensate for any damages incurred by an employee while fulfilling his/her work duties but in a way that the claim is not to be addressed against the employee before the court. Furthermore, when the functional interpretation is added in the analysing process in some cases such as when an employee causes damage only at the opportunity of performing these duties article 120 does not apply and the employer is not liable for damage caused on the premises of the workplace. However, if the employee's intentional fault causes the damage, the injured party can claim the compensation directly from him/her. According to the literature, Civil Law applies to the employee who caused the damage intentionally, while based on case law, the employee is liable under Labour law for both unintentional and intentional fault.

However, the Civil Code's provisions on torts determine the basis for the injured party's claim. Therefore, two legal statutes regulate this institute: the Labour and Civil Code.

Civil Code in Article 416 regulates the liability of a legal person for damage caused by its organ. In doctrine, the conduct of the natural person fulfilling the duties of such an organ is attributed to the legal person itself. When it comes to

¹⁰³ „See in more detail the justification of the resolution of the Supreme Court (7) of 26.04.2006, III CZP 125/05, OSNC 2006/12, item 194; E. Bagińska, Glosa to the resolution of the Supreme Court (7) of 26.04.2006, III CZP 125/05, GSP-Prz.Orz. 2007/3, s. 47-56.“ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

¹⁰⁴ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

¹⁰⁵ BAGIŃSKA, E. 2005, p. 856.

¹⁰⁶ JANTOWSKI, L. in BALWICKA-SZCZYRBA M. - SYLWESTRZAK A.: 2023, Article 417.

Article 430 of the Civil Code, in doctrine, superiors are strictly liable for damage caused by their subordinates, based on the principle of risk. However, in case law, when the injured party was another employee employed at the same employer, there were situations of the employer's fault-based liability. Still, it was difficult to prove in evidentiary proceedings. Regarding the employer's strict liability prescribed by statute, the regulations pertaining to this liability can be found in Articles 433-436 of the Civil Code, especially under Article 435 Section 1, where strict liability is established for injuries resulting from the operation of legal person propelled by natural forces, such as steam, gas, electricity, or fuel. Manufacturing or using high explosives, like mines, also falls under the same liability as per Article 435 Section 2. The employer can avoid liability by providing evidence that the damage was due to force majeure or solely caused by the injured party or a third party.

Strict liability is also related to the State for exercise of public authority (Article 417).

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ALIZ MÓRICZ*

Dogmatic issues of security measures in judicial enforcement

Abstract: The security measure available in judicial enforcement proceedings serves a dual purpose: on the one hand, it provides adequate security for the judgment creditor against the judgment debtor if it can be proven, that the judgment debtor would withdraw his assets from enforcement; and on the other hand, it serves to ensure the effective conducting of enforcement proceedings. In order to get a clear picture of the nature of the security measure, its current rules, and its place in the system of enforcement law, I believe it is appropriate and justified to examine the issues of demarcation. Within this framework, I would like to compare the security measure with other similar legal institutions, such as the provisional measure available in civil proceedings, the registration of legal action as part of the real estate registration procedure, or the legal institution of sequestration in criminal proceedings. Furthermore, I consider it important to distinguish between impoundment and seizure of a specific thing, as detailed in the Judicial Enforcement Act, and the two subtypes of security measures.

Keywords: security measures, judicial enforcement, provisional measures, registration of legal action, sequestration

1. Introduction

The judicial enforcement – as a non-contentious proceeding – is initiated at the request of the judgment creditor, based on the application for enforcement, the court issues the enforcement order and orders the judicial enforcement procedure to be carried out. However, there are cases when an enforcement order cannot yet be issued, but there are reasonable grounds to assume that the debtor would withdraw the assets at his disposal in order to thwart the effectiveness of the enforcement. In this case, it becomes necessary for the court (notary) to secure the claim so that the debtor can fulfill his obligation with the help of the coercion of the state – this is what the legal institution of the security measure is intended to serve.

Konrád Imling summarizes the purpose of regulating the security measure as follows: “...the security of justice requires that the party seeking justice must be given the opportunity and means by law to obtain, in certain cases, a preliminary guarantee that his claim to

be fulfilled will be enforced by means of coercive enforcement".¹ In other words, a dual purpose is defined: on the one hand, the legal institution provides an appropriate guarantee for the judgment creditor against the debtor if he can make it probable that the debtor would withdraw the assets serving as the basis for his claim from enforcement, and on the other hand, it serves to ensure the successful conduct of the enforcement procedure.

In my research, I paid particular attention to clarify the dogmatic issues related to the legal institution. I sought to distinguish security measures from other similar measures using transparent, clear, and detailed criteria: primarily from provisional measures, registration of a court action, impoundment, and coercive measures available in criminal proceedings. I believe that it is particularly necessary to distinguish between the two types of security measures as well, the securing of a financial claim and the seizure of a specific thing. In addition, when presenting the results of my research, I also place great emphasis on judicial practice, since case law not only affects the text of the law laid down by the legislator, but also the practice of enforcement, shaping it and filling it with additional content, thereby helping to conduct the procedures as efficiently, uniformly and effectively as possible.

2. Provisional measures

The security measure and the provisional measure are legal institutions with a long history, stemming from a common root, which have played a decisive role in the civil procedural law of Hungary since the second half of the 19th century (and, following the efforts to gain independence, in the judicial enforcement as well). While the basic rules governing the security measure were ultimately laid down in judicial enforcement, the provisional measure can be encountered in civil proceedings. However, these two legal institutions are closely intertwined due to their similar purpose and content, and the difficulty in distinguishing them stems precisely from this similarity.

2.1. Proper definitions of security and provisional measures

In my opinion, regarding the provisional measure, it can be stated that although many legal scholars² have attempted to define the concept of the measure, they have interpreted it quite narrowly. They have sought to provide a definition by extracting

* dr. Aliz Móricz, PhD student, lawyer specialized in law judicial enforcement. University of Miskolc Faculty of Law, Institute of European and International Law, Department of Civil Procedure Law. Supervisor: Dr. Adrienn Turkovicsné Nagy PhD., associate professor, director of institute.

¹ IMLING, K.: A végrehajtási törvény (1881. évi LX. törvénycikk) magyarázata. Franklin Társulat, Budapest, 1884. 409.

² See: WOPERA, Zs.: Az ideiglenes intézkedés elmélete és gyakorlata a polgári eljárásjogban – PhD értekezés. Miskolci Egyetem Állam-és Jogtudományi Kar, 2001. 11-13.

one conceptual element – mainly keeping in mind the purpose³ and function of the legal institution – although this has not been done by neglecting other essential content elements. Moreover, neither the ministerial statement of reasons to Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure) nor the related commentaries provide an accurate definition – although in my opinion this is absolutely necessary and justified. Based on all this, the definition of the provisional measure created by Zsuzsa Wopera seems to be the most precise definition: „a provisional measure is a non-substantive, immediate measure of the court which secures legal protection, which purpose is to prevent the applicant’s situation from becoming significantly more difficult due to a change in the current situation, or the exercise of his rights from failing, or the measure can eliminate any harm the applicant may directly be exposed to.”⁴

A similar situation can be observed in relation to security measures, as the commentaries on *Act LIII of 1994 on judicial enforcement* (hereinafter: Judicial Enforcement Act) take a different view of security measures and define the essence of this legal institution from a different perspective, keeping in mind its primary purpose. Ilona B. Korek defines security measures as a barrier to the success of subsequent enforcement.⁵ This definition although meets the requirements of the Constitutional Court,⁶ however, does not include the most important elements defining the legal instrument and the conditions for its ordering. György Schadl approaches the definition in terms of the legal policy purpose of the security measure, according to which the purpose of the legal institution is to ensure the subsequent enforceability of the claim by preventing the judgment debtor from withdrawing the assets serving as collateral for enforcement.⁷ As far as I am concerned, I believe that the definitions provided by Tamás Lukács, Viktor Rák, and Kristóf Szécsényi-Nagy come closest to the requirement of completeness. The

³ According to Lajos Wallacher, the purpose of provisional measures is to satisfy the applicant's claim for legal protection, while Péter Puskás believes that the purpose of provisional measures is to settle the situation of the parties on a temporary basis, with provisional legal effect, but without delay. See more: WALLACHER, L.: Az ideiglenes intézkedés. In: WOPERA, Zs. (ed.): *Nagykommentár a polgári perendtartásról szóló 2016. évi CXXX. törvényhez.* (Online) Wolters Kluwer, Budapest, 2024., PUSKÁS, P.: Az ideiglenes intézkedés. In: PETRIK, F. (ed.): *Polgári eljárásjog I-II. – Kommentár a gyakorlat számára.* ORAC, Budapest, 2021. 210.

⁴ WOPERA, Zs.: Az ideiglenes intézkedés per jogi intézményének elméleti megközelítési lehetőségei. *Jogtudományi Közlöny*, 2003/5. 229.

⁵ B. KOREK, I.: Biztosítási intézkedés végrehajtása. In: BALOGH, O. – B. KOREK, I. – CSÁSZTI, F. – JUHÁSZ, E. (eds.): *A bírósági végrehajtás.* HVG-Örc, Budapest, 2009. 456.

⁶ See: Decision no. 46/1991. (IX. 10.) of the Constitutional Court, which requires a preliminary procedure providing guarantees as a prerequisite for enforcement.

⁷ SCHADL, Gy.: Biztosítási intézkedés végrehajtása. In: LUKÁCS, T. – MARTONOVICS, B. – SCHADL, Gy. (eds.): *Nagykommentár a bírósági végrehajtásról szóló 1994. évi LIII. törvényhez.* (Online) Wolters Kluwer, Budapest, 2025.

legal scholars take a substantive view of the legal institution when they state that a security measure is nothing more than a special enforcement procedure that prevents the withdrawal of the judgment debtor's assets, thereby ensuring that the judgment creditor can subsequently seek satisfaction from those.⁸

I believe that the legal scholars mentioned above are on the right track in defining security measures, and their definitions provide an ideal starting point for further research, even though they are still somewhat incomplete. In my opinion, a precise, thorough definition covering all essential elements, but still encompassing the previous definitions, is necessary to fully define the legal institution. In view of all this, I would define the concept of insurance measures as follows: *the security measure is a special, preliminary, coercive measure ordered by the court (notary) at the request of the judgment creditor, which can be used without the general conditions of enforcement, and which is intended to ensure the satisfaction of the claim and the success of the subsequent enforcement (for satisfaction) by protecting and prioritizing the interests of the judgment creditor in such a way that, by restricting the assets at the judgment debtor's disposal, it creates the opportunity to secure the endangered claim and thus to fulfill it at an appropriate time, thereby preventing the debtor from engaging in collateral-withdrawing behavior.* It should be noted that this definition is intended to summarise the content of a security measure in a classical sense and is not applicable in cases where security measure may be granted in the course of proceedings or possibly before them.⁹

2.2. Content characteristics

The rules governing security measures are set out in the Judicial Enforcement Act, while provisional measures are declared by the provisions of the Code of Civil Procedure. Consequently, protective measures can be used in enforcement (ergo non-contentious) proceedings, while provisional measures are applied in civil proceedings. Both measures are ordered by the court (or, in the case of security measures, by a notary) upon request: security measures may be requested by the judgment creditor, while provisional measures are requested by a party against the opposing one.¹⁰ It is important to note that, unlike the Act III of 1952 on the Code of Civil Procedure (hereinafter: Code of 1952) which was previously in force, the current Code of Civil Procedure already allows the presentation of a provisional measure before lodging the statement of claim and before initiating judicial proceedings¹¹ – for this reason, the Code refers to the parties as the applicant and the respondent.

⁸ LUKÁCS, T. – RÁK, V. – SZÉCSÉNYI-NAGY K.: Biztosítási intézkedés végrehajtása. In: UDVARY, S. – GELENCÉR, D. (eds.): A bírósági végrehajtásról szóló törvény és a kapcsolódó jogszabályok kommentárja. (Online) HVG-Orac, Budapest, 2021.

⁹ See: Judicial Enforcement Act Sections 187-188.

¹⁰ BDT2017. 3744.

¹¹ See: Code of Civil Procedure Section 108.

Pursuant to Section 185 of the Judicial Enforcement Act, a security measure may be ordered, if the general conditions of enforcement¹² are missing: ergo the writ of execution is not final, not subject to preliminary enforceability or the deadline has not expired yet, but there is a risk that the debtor will fail to satisfy the claim at a later date. It follows that if an enforceable order has already been issued, we cannot speak of a security measure. On the other hand, the ordering of a provisional measure can be based on four reasons, pursuant to Section 103, Subsection 1 of the Code of Civil Procedure: the court may order provisional measures upon request a) for the purpose of blocking any alteration of the existing state, if subsequent restitution would not be possible, b) in order to prevent failure of the applicant's subsequent exercise of rights, c) in order to eliminate any harm the applicant may directly be exposed to, and d) in other cases of exceptional circumstances.

According to the distinction between the two legal institutions, the purpose pursued by the applicant (judgment creditor) is of paramount importance. The security measure ensures that, in the event of enforcement at a later date, the basis for satisfying the claim would be available and that the debtor does not withdraw it from enforcement through his mischievous behavior, so that the subsequent enforcement could be successful. However, this does not mean that the claim is satisfied in advance, but only that a temporary, pending legal situation is created which secures that the claim can be satisfied at an appropriate time.¹³ In contrast, provisional measures provide immediate legal protection to the party in order to prevent legal infringements that cannot be remedied later due to the passage of time¹⁴ – given that civil proceedings are time-consuming, while the protection of the rights of the obligee sometimes cannot be delayed. In its order imposing provisional measures, the court obliges the defendant to comply with the claims set out in the statement of claim or in the application for provisional measures; this legal institution is therefore nothing more than a binding decision by the court.¹⁵ Based on the above, it can be concluded that both measures serve a common purpose: to eliminate a legal disadvantage that would arise at a later date and to temporarily settle the situation between the parties.

Regarding the effect of orders imposing measures by a court (notary), it can be stated that preliminary enforceability appears in relation to both legal institutions. Pursuant to Section 190, Subsection 3 of the Judicial Enforcement Act, the ruling

¹² According to Section 13, Subsection 1 of the Judicial Enforcement Act, the enforcement order can be issued if the writ of execution contains an obligation (ruling against the debtor), is final, definitive or is subject to preliminary enforceability and the deadline of performance has expired.

¹³ BH2002. 441.

¹⁴ BH1993. 699.

¹⁵ BH2003. 110., BH1993. 699.

for the implementation of security measures may be appealed, but the appeal has no suspensive effect. In relation to a provisional measure, if the time limit for fulfilment expires without result, the order is preliminary enforceable.¹⁶ Consequently, since the obligor failure to voluntarily fulfil the obligation entails enforcement for satisfaction in civil proceedings, the provisional measure has more serious legal consequences than the security measure,¹⁷ which is considered a quasi enforcement for protection, and within the framework of which enforcement for satisfaction may possibly take place at a later date (if the performing of a security measure is unsuccessful). At the same time, I consider it important to highlight that the legal institution of preliminary enforceability was not always associated with provisional measures. This is because Section 6 of the Government Decree 105/1952. (XII. 28.) provided that if the court does not repeal its order on the subject of the provisional measure later, it has the same effect as a final decision. Consequently, the last section of the cited legal text can only be interpreted with the meaning that the order on the provisional measure that remained in force thus became a final decision resulting in substantive legal force.¹⁸

2.3. Security measures and provisional measures in legal practice

The difficulty of distinguishing between security and provisional measures is also reflected in the fact that, although judicial practice has made numerous attempts to do so, it has not been able to define the distinguishing criteria that could provide guidance for both theoretical and practical lawyers, thus giving rise to numerous problems in the practical application of the legal institutions.

The focus of Supreme Court's Decision No. 2001. 23 is the ordering of the seizure of an immovable property owned by the judgment debtor as a security measure. The legal institution was ordered by the court of first instance because, based on the available documents, it was established that enforcement proceedings were pending against the judgment debtor in another case, in the course of which an enforcement right was registered on his property. This circumstance makes it likely that the satisfaction of the judgment creditor's claim at a later date is at risk. The debtor lodged an appeal against the order of the court, requesting the order to be amended and the order imposing a security measure to be rejected on the grounds that both the claim of the judgment creditor and the procedural requirements for the order of first instance were lacking. Furthermore, the debtor referred to the fact that the court of first instance should have taken into account

¹⁶ PESTOVICS, I.: *Bírósági végrehajtás*. Novissima, Budapest, 2005. 228.

¹⁷ WOPERA, Zs.: *Hatékony jogvédelem a magyar és az Európai Unió polgári eljárásjogában – Az ideiglenes intézkedés*. Bíbor, Miskolc, 2007. 99.

¹⁸ WOPERA, Zs. (2003): i.m. 231.

the provisions of Section 156 of the Code of 1952, which set out the rules governing provisional measures. The Supreme Court upheld the decision of the court of first instance and emphasized that the rules governing provisional measures cannot be confused with the legal institution of security measures regulated by the Judicial Enforcement Act. However, apart from this single sentence, it provided no guidance on the distinction between security and provisional measures.

The content of Decision no. 1993. 699 also concerns the distinction between the two legal institutions. The plaintiff, who had a directly enforceable suretyship, brought an action against the defendant for payment of the amount he had paid and its interest thereon. In his submissions, the plaintiff's legal representative requested that provisional and security measures could be taken to secure the claim in question, arguing that the previous collection attempts had been unsuccessful and the uncertain situation of the business owned by the defendant, which he considered to jeopardise the subsequent satisfaction of his claim. The court of first instance rejected the plaintiff's request for provisional measures on the grounds that it was not applicable under the relevant provisions of the Code of 1952 and the Judicial Enforcement Act. The plaintiff appealed against the order of the court of first instance, requesting the order to be changed and provisional measures to be ordered.

The Supreme Court found that although the conditions for provisional measures were not met, security measures could be ordered. However, the defendant did not identify the assets on which the measures were based, and the court of first instance did not examine whether the conditions for security measures were met. Thus, although the Supreme Court repealed the order and instructed the court of first instance to issue a new decision, it did not provide an answer as to the criteria for distinguishing between a security and provisional measures. This decision also clearly reflects that concerns regarding the demarcation are not limited to judges alone. During the relevant legal dispute, the plaintiff's legal representative also submitted a request for security and provisional measures, which clearly illustrates the uncertainty of legal representatives, as even the plaintiff's legal representative was unable to distinguish between the two legal institutions.

Summarizing and taking into account these aspects, I believe that security measures and provisional measures are protective, temporary legal institutions that are similar in content, yet different in nature. Provisional measures provide assistance to the applicant in civil proceedings by ensuring immediate legal protection, while security measures protect the judgment creditor and create the possibility of successful enforcement at a later date.

Although some European countries regulate security and provisional measures in a unified system¹⁹ due to their similarities and related content, in my opinion it is still necessary to regulate the two legal institutions in separate systems. This is because the security measure does not have a broader or narrower meaning than the provisional measure, but is considered a qualitatively different instrument.²⁰

In my opinion, it is important to have a legal institution that the obligees can also use during the judicial enforcement phase of the proceedings, which protects them against the debtor withdrawing their available assets and thereby thwarts the satisfaction of the claim and the effective conduct of the enforcement proceedings. The purpose of the provisional measure is not to ensure the subsequent satisfaction of the claim, and although it may serve the effective enforcement of a final judgment made at a later date, this is not the primary objective of the measure²¹ – the latter task is to be performed by the security measure.

3. Registration of legal action

3.1. The nature of registration of legal action and security measures

Certain similarities can also be found when examining the legal institutions of security measures and registration of legal action. Although the nature of security, the pending legal situation, and preliminary enforceability are common features in this respect, however the purpose, function, statutory conditions, and consequences of the two legal institutions under review are different.

However, before making a substantive distinction between the legal institutions, it is important to note a significant change that has had a major impact on the current regulation of registration of legal action, one of the oldest institutions of modern civil law. Given that the legal institution of registration of legal action was incorporated into the applicable law on Real Estate Registration, its application was governed for many decades by the provisions of Act CXLI of 1997. However, on January 15, 2025, *Act C of 2021* on Real Estate Registration (hereinafter: Real Estate Registration Act.) came into force, replacing the previous Act and bringing significant changes to the real estate registration procedure, particularly in the area of electronic administration. The reforms also affected the legal institution in question, with the most striking change being the name of the legal institution itself, as the new Real Estate Registration Act refers to registration of legal action rather

¹⁹ See: WOPERA, Zs.: Európai körkép egyes államok polgári eljárásjogának ideiglenes intézkedéseiről. *Jogtudományi Közlöny*, 2001/5. 213-221.

²⁰ VÖLCSEY, B.: Az ideiglenes intézkedés. In: VARGA, I. (ed.): *A polgári perrendtartás és a kapcsolódó jogszabályok kommentárja*, I/III. HVG-Orac, Budapest, 2018. 453.

²¹ PUSKÁS, P.: i.m. 210.

than notice of legal action, unlike the previous procedure.²² It is important to note that when analyzing court practice, it is necessary to use the previous name.

As regards the purpose of registration of legal action, this is a legal institution whereby the registration of the fact that a legal action was brought is entered in the real estate register. Its substantive legal effect is that the fact that a legal action was brought becomes effective in rem, meaning that any subsequent acquirer of rights must be aware that proceedings are underway which may result in a decision affecting their registered rights, and consequently he cannot rely on the good faith of his acquisition (declaratory effect). In addition, the final and binding effect of the decision affects all subsequent right holders, regardless of whether they participated in the procedure or not (procedural effect).²³ Pursuant to these provisions, rights and facts may be entered in the real estate register even after the fact of the bringing of a legal action was registered, but only with an effect depending on the outcome of the pending procedure.

The legislative amendment did not change the substantive rules governing the registration of legal action. Pursuant to Section 68, Subsection 1 of the Real Estate Registration Act, the court shall, ex officio, at the same time as serving the statement of claim to the defendant, issue a preliminary enforceable order a) for cancellation or correction, b) concerning the ownership of a real estate property, c) for the termination of joint ownership pertaining to a real estate property, d) concerning property rights in marital community, e) for the enforcement of the right to satisfaction existing relating to claims secured by mortgage or to independent liens, including converted independent liens, f) for correction concerning the boundaries and size of a real estate property, and g) for correction concerning the cultivation line and quality class of a real estate property, and register the fact to the real estate register that a legal action was brought. It should be noted that, unlike previous regulations, the Act now allows the registration of legal action even in proceedings concerning the cultivation line and quality class of real estate property. The law exhaustively defines the types of cases in which the fact of bringing a legal action can be registered on the real estate property. Consequently, the legal institution may only be applied in proceedings concerning the ownership of real estate or a right existing on real estate, thus the Act excludes implicitly the registration of a legal action in cases not listed in Section 68. It has to be highlighted, that if a civil action is brought under the regulations of the Code of Criminal Procedure, the court shall ex officio adopt the ruling, if the procedure is concerning the cancellation or

²² For a comprehensive analysis of the rules governing registration of legal action, see more: DÁLNOKI, R.: A megújuló ingatlan-nyilvántartási rendszer szabályozási koncepciója és az ahhoz kapcsolódó jogalkotás I. Ingatlanjog, 2021/2. 10-16.

²³ KAZAY, L.: A perfeljegyzés néhány kérdéséről. *Gazdaság és Jog*, 2002/9. 15.

correction, or the ownership of a real estate property. In addition, the court hearing the administrative action opened for the review of a decision not affecting real estate registration shall bring a preliminary enforceable order in an action concerning a right registered or a fact recorded in the real estate register, or any data contained in the register to order that the opening of administrative action relative to the real estate property be recorded in the real estate register.

The main difference between registration of legal action and security measures is that while registration of legal action takes place *ex officio*, security measures cannot be ordered this way. Due to the special nature of this legal institution, which severely restricts property rights, it can only be ordered at the request of the judgment creditor. The decision to apply a security measure does not fall within the discretion of the court (or notary) ordering enforcement, but depends on the decision of the judgment creditor, provided that it sufficiently substantiates that the satisfaction of its claim at a later date is at risk. Another important difference is that while the Real Estate Registration Act provides an exhaustive list of the types of cases subject to registration, the Judicial Enforcement Act does not contain such a restriction. Although the Enforcement Act specifies the cases in which security measures may be ordered (if the general conditions for enforcement are not met and the judgment creditor makes it likely that the subsequent satisfaction of the claim is at risk), it does not limit this to certain types of enforcement proceedings. Obviously, this statement does not apply to the implementation of certain specific acts (such as the surrender of a child²⁴ or the evacuation of a residential suite due to unlawful tenancy²⁵), in which cases there can be no question of a security measure in the absence of its subject matter (a financial claim or a specific thing). Furthermore, while registration of legal action may also take place in civil, criminal or administrative proceedings, the legal institution of the security measure may be considered in enforcement proceedings, in proceedings pending before an arbitration tribunal, in an action for matrimonial property, in copyright and industrial property rights, consumer protection proceedings as defined in Section 187 Subsection 1b of the Judicial Enforcement Act, or in other legal proceedings, where public documents or private documents with full probative force attached in proof of the inception, volume and expiration of the claim.²⁶ It is also important to mention the result of ordering the two legal institutions as a significant difference. The result of ordering the recording of legal action is that, after the ongoing procedure has been entered in the real estate register, rights can only be acquired and registered with an effect depending on the outcome of the registered procedure. In contrast, if the court (notary) orders a security measure, the result is the securing of the claim in question, to be satisfied at a later date, by means of securing a financial claim or seizing a specific thing.

²⁴ See: Judicial Enforcement Act Sections 180-180/A.

²⁵ See: Judicial Enforcement Act Sections 183-184

²⁶ See: BH1999. 314.

Preliminary enforceability applies to both legal institutions. This is because the order imposing the registration of the fact that a legal action was brought in the real estate register is preliminary enforceable, and an appeal may be lodged against the order imposing the security measure, but the appeal does not have suspensive effect on the enforcement of the order. While the registration of legal action is carried out by the real estate authority, the performing of the order imposing the security measure is carried out by an independent court bailiff. The legal institution of registration of legal action creates a pending legal situation by entering the fact of the ongoing procedure in the real estate register until the procedure is done, while in the case of a security measure, the temporary situation is created by securing the claim or property (movable or immovable) in accordance with the law prior to the enforcement proceedings.

3.2. Delimitation by the court

The distinction between registration of legal action and security measures – beyond the obvious legal provisions, as applied to specific cases – was also addressed by the Supreme Court in its Decision no. 2002. 102.

Based on the facts of the case, the court of first instance ordered the securisation of more than 45 million forints in financial claims and 100.000.- forints in recorded enforcement fees, and also ruled that the defendants were liable for the secured financial claims with their share of the estate property, and that the second defendant is also liable with the proceeds of the estate and the share of the joint property belonging to the deceased testator, and is obliged to tolerate the enforcement of the property. The plaintiff and the second defendant appealed against the order. The plaintiff's appeal sought an order to note the fact that the legal action in question had been registered in the real estate register, to the property sheet, on the grounds that the estate distribution order with provisional effect could become fully effective, regardless of the outcome of the procedure after the appeals challenging it had been decided, and therefore he had good reason to fear that the defendants would sell the properties he had identified, thereby jeopardising the subsequent satisfaction of his claim. The second defendant, on the other hand, requested that the plaintiff's application for a security measure be rejected, arguing that the condition for ordering a security measure is that the obligee prove the existence, amount, and expiration date of the claim with a private document of full probative value, which has also been signed by the obligated party. In his view, the conditions for ordering the security measure are not met.

The Supreme Court upheld the decision of the court of first instance and ruled that the legal institution of notice of legal action does not serve to ensure the enforcement of the creditor's claim, but solely to ensure that the ownership rights

established in the final court judgment in the registered procedure, and any other rights registered in the real estate register are effective against all right holders, and that claims secured by an enforcement right registered on the real estate in question can be enforced against all right holders who acquired their rights to the real estate in question prior to the final court judgment but after the notice of the legal action. In the event of a risk of subsequent satisfaction of claims not affecting the ownership of the property or not secured by a mortgage registered on the property, ensuring coverage for enforcement shall be provided not by notice of legal action, but by means of a security measure (securing a financial claim or seizing specific movable or immovable property) in accordance with Sections 185-203 of the Judicial Enforcement Act.

Overall, I believe that the registration of legal action and the security measure are different legal institutions, and the purpose and legal effect of their application are also different. However, there is no legal obstacle to the court ordering the seizure of an immovable property as a security measure in addition to the registration of legal action ordered for the property, if the general and special conditions specified in the law are met.

4. Seizure of a specific thing and impoundment

Within the enforcement system, I also consider it necessary to make an important distinction between seizure of a specific thing as a security measure and impoundment. The starting point for this distinction is provided by Section 194, Subsection 2 of the Judicial Enforcement Act, which states that the seizure of movable property can also be carried out by impoundment.

As a general rule, unless otherwise provided by law, seized movable property shall be left in the custody of the judgment debtor.²⁷ In doing so, the judgment debtor may use the movable property which has been seized – with the exception of consumables –, but only in accordance with its intended purpose and without endangering its conditions. If, during the on-site proceedings, the judgment creditor or the bailiff finds it probable that the debtor will not safeguard the seized movable property, it cannot remain in the debtor's possession, and measures stricter than custody become necessary. In this case, the movable property must be removed from the debtor and placed under impoundment: this may even be done on the debtor's property if there is a suitable place (a separate room) or a secure storage unit there. It is important to note that by designating such a place, the bailiff also restricts the debtor's use of the property, as the debtor cannot open or use that room, but in this case, the law expressly allows it. The designation of the place or storage space must be clearly stated in the report, and then the bailiff locks it and affixed his seal on it. However, the bailiff may not lock a room whose closure would

²⁷ Judicial Enforcement Act Section 104, Subsection 1

make the debtor's daily life difficult – in this case, the only option is to transport the movable property. It is also worth noting, that opening the storage place, the room and/or tempering with or removal of the seal is deemed a criminal offense. If the judgment debtor has refused custody, is absent for an extended period, the judgment creditor requested it and such request is found substantiated by the bailiff in view of the circumstances of the case, or it is deemed necessary to ensure success of the procedure and if the judgment creditor has granted consent therefor, the bailiff places the seized property in the care of an official receiver. In this case, the costs and fee of an official receiver is established by the bailiff.

The purpose of the seizure of a specific thing is to ensure that the property to which the obligee has a claim remains intact and can be transferred to the obligee during the enforcement of the claim – ergo, the two legal institutions are very similar in terms of their purpose. The only difference is that while the seizure of a specific thing is only possible within the framework of security measures, impoundment can be applied both during enforcement and security measures. In the case of seizure made with impoundment, impoundment is nothing more than a quasi-qualified seizure, as it has more serious legal consequences for the debtor. With regard to seizure of a specific thing, it should be noted that, as a security measure, it can only be ordered at the request of the judgment creditor, based on a court (notary) order, while impoundment is a special measure carried out by the bailiff.

5. Securisation of a financial claim and seizure of a specific thing

In view of all the circumstances of the legal dispute between the parties and the nature of the claim, two types of security measures may be considered in the enforcement proceedings, prior to enforcement: the securisation of a financial claim and the seizure of a specific thing.

A financial claim may be secured if the debtor fails to pay the amount specified in the decision of the court containing an obligation. In this case, the bailiff delivers the ruling ordering the securisation of a financial claim to the judgment debtor in person, and advises the judgment debtor to pay the amount to be secured without delay to the bailiff. If it happens, the procedure is done, but if the judgment debtor fails to pay the amount determined in the ruling, the bailiff seizes the assets of the judgment debtor by recording them in the seizure report. The bailiff can freeze withdrawals from the judgment debtor's account as well. In this case, the bailiff shall advise the payment service provider where the judgment debtor has money deposited to freeze any and all withdrawals from the judgment debtor's account(s) to an extent sufficient to cover the amount to be secured and the costs of the procedure, and to include any future deposits if the current balance is insufficient to cover the said amounts (it is called the bailiff's intervention for the freezing of

assets). According to Section 191, Subsection 2 of the Judicial Enforcement Act, the enforcement notice must also include the provision that, if the debtor's payment account does not have sufficient funds, the payment service provider is obliged to monitor the debtor's financial movements until the blocked amount reaches the amount specified in the notice. As a result, the debtor's funds will be blocked by the bailiff, and he will lose his right to dispose of them. However, it is important to mention that the amount collected in this way must be managed in the bailiff's deposit account and cannot be allocated to the judgment creditor. According to Subsection 3, the payment service provider must inform the bailiff within eight days of receipt of the advise as to the amount frozen in compliance with the bailiff's request, following which the assets of the judgment debtor may be seized only to an extent to cover the remaining portion of the claim. If the bailiff seizes the debtor's immovable property in order to secure a financial claim, he must immediately contact the real estate authority to register the right of enforcement in the real estate registry. Furthermore, the debtor's wages may be attached as well, if the judgment debtor has no other assets to be subjected to enforcement and used as collateral for the amount to be secured.

The seizure of a specific thing (movable or immovable property) may be ordered if the claim is for an individually specified asset.²⁸ In the case of a seizure of movable property – taking into account the general rules of the enforcement of movable property – the bailiff must deliver the writ of sequestration of movable property to the judgment debtor in person and shall seize the property with inspecting the movable property in question and recording it in the seizure record.²⁹ If the seizure is ordered in relation to immovable property, the bailiff's action includes an immediate request to the real estate authority to register the seizure in the real estate register. Further rules governing the procedure are set out in Section 138 of the Judicial Enforcement Act, which declares that the real estate authority is obliged to register the seizure on the immovable property owned by the debtor, and to send the resolution on the registration to the bailiff, the parties, and those who have rights registered in the real estate register regarding the immovable property. Upon receipt of the real estate authority resolution on the registration of seizure, the bailiff turns over the immovable property to an official receiver if the judgment debtor is unable to operate the immovable property due to an extended absence or to some other reason, or the judgment creditor requested an official receiver to be appointed, and this was found substantiated by the bailiff in view of the circumstances of the case. The current Judicial Enforcement Act does not define the scope of people who can be appointed as official receivers, however determines that the bailiff primarily appoints a person or agency recommended by the competent district office. According to Section 198, the official receiver shall manage the immovable property

²⁸ PESTOVICS, I.: i.m. 239.

²⁹ Judicial Enforcement Act Section 194, Subsection 1

with due diligence, give account on the financial aspects of the immovable property to the bailiff, and pay the net income of the immovable property to bailiff's deposit account.

With regard to the two types of security measures, securisation of a financial claim and seizure of a specific thing, the fundamental difference is that while the securisation of a financial claim is done to ensure the financial coverage, the seizure of a specific thing may be ordered when the claim to be secured relates to a specifically identified item, whether movable or immovable. In my view, the demarcation problems arising from the distinction between these two measures stem from the fact that, in the course of securing a financial claim, the legislator allows the bailiff to seize the debtor's assets if the debtor has failed to comply with the bailiff's request to pay the amount covered by the security measure. This makes it easy to seize real estate property owned by the debtor, which may also be subject to the seizure of a specific thing. In this case, however, the aim is not to protect the amount of the claim, and thus the seizure of a specific thing cannot serve to secure a financial claim. Furthermore, it is important to emphasize that while the right of enforcement is registered in the real estate registry to secure a monetary claim, in the opposite case, the bailiff only takes steps to register the seizure in the real estate registry. Taking these important criteria into account, the Supreme Court has repeatedly ruled on the distinction between the two measures and has overturned the first-instance decision to secure a financial claim but ordering a seizure.

In its decision published under number 2001. 127, the Supreme Court ordered the seizure of a real estate property owned by the second plaintiff to secure the litigation costs of 500.000.- forints at the request of the defendant. The plaintiffs appealed against the order imposing the seizure, arguing that the legal conditions for ordering the security measure were not met, as the second defendant had not proven that the subsequent satisfaction of his claim would be at risk. In contrast, the second defendant requested the first-instance order to be upheld: in his comments on the appeal, he argued that, based on the plaintiffs' statements at the hearing, it could be established that, due to the plaintiffs' financial situation, the claim for litigation costs could only be satisfied from the property in question.

The Supreme Court found the plaintiffs' appeal to be well-founded and drew the parties' attention to the fact that the second defendant's claim for litigation costs was a financial claim, and therefore it was possible to secure satisfaction of the claim in accordance with the rules on securing financial claims. Section 191, Subsection 1 of the Judicial Enforcement Act, was highlighted, according to which the bailiff shall deliver the order securing the financial claim to the debtor on the spot and, if the debtor fails to fulfill his obligation, shall seize the debtor's assets – thus, it is also possible to seize real estate property within this framework, provided that this is justified in accordance with Section 7 of the Act. At the same time, the court may

not order a seizure to secure a financial claim, as a seizure may only be ordered if the subject matter of the claim to be enforced is a specifically identified item.

The Supreme Court reached a similar conclusion in its decision No. 2003. 463, which was also based on an order imposing seizure. The plaintiff requested the ordering of a seizure as a security measure on two properties belonging to the estate pursuant to Section 185a and Section 186, Subsection 1 of the Judicial Enforcement Act as, according to the defendant advertising the properties in question for sale, and as a result, the satisfaction of his large claim – exceeding 28 million forints – was at risk. However, the court of first instance only ordered the seizure of one of the properties. In its reasoning, the Supreme Court stated that if the defendant sold both properties, the satisfaction of the claim would indeed be at risk, but it would be unfair to the defendant to seize both properties, as one of the properties alone would be sufficient to cover the amount awarded to the plaintiff.

The defendant appealed against the order, seeking its partial amendment and the complete rejection of the application. In his appeal, the defendant argued that the conditions for ordering the seizure were not met, as the plaintiff had not demonstrated the likelihood of subsequent satisfaction of its claim, and in the event of an order to pay an amount, provided that the conditions for the security measure were otherwise met, the securisation of the financial claim could be considered, rather than the seizure of a real estate. In its response, the plaintiff requested that the judgment to be upheld.

The Supreme Court found the appeal to be well-founded. It pointed out that the non-final judgment of the court of first instance did indeed contain a financial impose, and therefore, pursuant to Section 186, Subsection 1a of the Judicial Enforcement Act. However, in the absence of a judgment concerning the real estate, even if the prerequisites were met, their seizure could not be ordered. In response to the plaintiff's comment, the Supreme Court also emphasized that his request was unfounded, as he specifically requested the seizure of the real estate involved in the procedure, but this was not possible.

After analyzing the case law presented, I believe that the Supreme Court ruled correctly in both cases regarding the seizure ordered incorrectly by the court of first instance. The legal practice is of particular importance in establishing the necessary criteria for demarcation, highlighting the subject matter of the claim to be secured, which must be given great emphasis when ordering security measures. After all, the mere fact that real estate was seized to secure a financial claim does not justify the application of the rules on seizure – it is always necessary to bear in mind what the claim itself is primarily aimed at.

6. Seizure of a specific thing and sequestration

Act XC of 2017 on the Code of Criminal Procedure (hereinafter: Code of Criminal Procedure) regulates coercive measures in Part Eight, specifying their

scope in detail. Coercive measures include all measures that the authorities participating in criminal proceedings apply in the cases and manner specified in the Code of Criminal Procedure for procedural purposes in order to ensure the success of the criminal proceedings, given that without them, criminal proceedings cannot be conducted effectively in many cases. The authorities participating in criminal proceedings can only ensure the presence of the defendant, the successful conduct of evidence, the prevention of further criminal offences, and the execution of the penalty by applying coercive measures.³⁰

Section 272 of the Code of Criminal Procedure separates two large groups of coercive measures: in order to ensure the success of the criminal proceedings, coercive measure involving restraint of personal freedom and coercive measure involving property may be applied. Coercive measure involving restraint of personal freedom are detention; restraining order; criminal surveillance; pre-trial detention; and involuntary preliminary treatment in a mental institution.³¹ While coercive measure involving property are search; body search; seizure; rendering electronic data inaccessible temporarily; suspension of hosting services; and sequestration.

Sequestration in criminal proceedings is an insurance-type legal institution. Its purpose is none other than to ensure the enforcement of criminal decisions – specifically, the confiscation of property and the enforcement of civil claims – and the successful conduct of criminal proceedings,³² which is achieved by restricting the right of disposal of assets and properties – so that they cannot be alienated or encumbered.³³ It may be ordered if there are reasonable grounds to believe that the defendant would dispose all, or part of his assets, or certain assets, remove them from the criminal proceedings and thereby thwarting the enforcement of the confiscation of assets and the satisfaction of civil claims.

³⁰ CZINE, Á.: A kényszerintézkedések alkalmazásának általános szabályai. In: BELEGI, J. (ed.): Büntetőeljárás jog I-II. – Kommentár a gyakorlat számára. (Online) HVG-Örc, Budapest, 2022.

³¹ It is important to note, that restraining order, criminal surveillance, pre-trial detention and involuntary preliminary treatment in a mental institution as coercive measure involving restraint of personal freedom may be only used with a judicial authorization.

³² MADAI, S. – PÁPAI-TARR, Á.: Kommentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez. In: Opten Jogtár. Budapest.

³³ Sequestration in criminal proceedings includes criminal seizure, which was known by the former Code of Criminal Procedure and was regulated by the Judicial Enforcement Act. According to Section 202, Subsection 1 of the Judicial Enforcement Act – which ceased to have effect – if, in respect of a criminal case, the court, the public prosecutor or the investigating authority has ordered all assets or certain property of the defendant to be seized, the execution thereof had to fall within the competence of the bailiff. For more information on criminal seizure and its practice, see more: BODONYI, I. – HACK, P. – HERKE, Cs. – IGNÁ CZ, Gy. – KADLÓT, E. – MOHÁCSI, B.: Kommentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez. (Online) ComLex, Budapest, 2015., GYOVAI, M.: Árverés az ingatlan-nyilvántartásba bejegyzett bűnügyi zárlat esetén. In: GYOVAI, M. – WOPERA, Zs. (eds.): Kézikönyv a bírósági végrehajtás foganatosításához. (Online) Wolters Kluwer, Budapest, 2016.

Both seizure in judicial enforcement and sequestration in criminal proceedings have their own distinctive characteristics, yet in some respects they display eerily similar features. In order to comprehensively and fully distinguish between these two legal institutions, I believe it is necessary to establish and present a set of criteria that reflects in detail the essential differences between seizure and sequestration, while also highlighting the significant similarities between them. Based on the above, relying on the applicable legal provisions and my own research, I have created a summary system of criteria which may be suitable for illustrating the specific characteristics of sequestration and seizure of a specific thing, while also providing answers to dogmatic questions concerning the demarcation of the legal institutions and helping to clarify them.

Governing law, applicable legal area. The provisions of the Judicial Enforcement Act apply to the seizure of a specific thing, while in the case of sequestration, the rules of the Code of Criminal Procedure provide us with guidance. Consequently, we can encounter the former legal institution in judicial enforcement proceedings as a non-contentious procedure, while the latter can be used during criminal proceedings.

The nature of the legal institution. In the case of the seizure of a specific thing, it can be clearly stated that it is a security measure involving an enforcement coercive act. In contrast, sequestration in criminal proceedings is a coercive measure involving property, specifically defined by the Code of Criminal Procedure. On the other hand, it should be emphasized that following previous amendments to the law and the entry into force of the Code of Criminal Procedure, in order to ensure the effectiveness of sequestration, a security measure ordered in advance has been incorporated into the current regulations. Although the legal literature I have reviewed clearly defines the legal institution with the concept of “coercive measure”, in my opinion, even if it is not explicitly mentioned, sequestration applied in criminal proceedings also qualifies as a quasi-security measure.

Target to achieve. The purpose of the seizure of a specific thing is to ensure that the basis for satisfying the claim is available during any subsequent enforcement, and it helps for the subsequent enforcement of the claim to be successful. In addition, sequestration is a measure which serves as a guarantee for the confiscation of property or the satisfying of a civil claim – so, it has a dual objective: on one hand, it serves the interests of the aggrieved party, and on the other hand, it enforces pecuniary sanctions.

Conditions of the ordering. The seizure of a specific thing may be ordered at the request of the judgment creditor, if an enforceable order cannot yet be issued for the enforcement of the claim, but but the judgment creditor has substantiated that any delay in the enforcement of such claim is in jeopardy. It follows, that if an enforceable order has already been issued, the seizure of a specific thing may no longer be ordered. The ordering of sequestration in criminal proceedings has two discretionary and one mandatory case. Sequestration may be ordered if proceedings are conducted because of a criminal offense where confiscation of property may be

ordered, or if its purpose is to secure a civil claim, and there is reason to believe that enforcing the confiscation of property or satisfying the civil claim may be at risk, because the defendant may thwart assets at his disposal, part of the assets, rights or obligations of pecuniary value. But, if a real estate property is to be confiscated, sequestration must be ordered.³⁴

Authorities and people entitled to order. Since there is no enforcement yet in relation to the security measure regulated by the Judicial Enforcement Act, the court ordering the enforcement may decide on the order of seizure of a specific thing only and exclusively. In contrast, the court, the investigating authority and the public prosecutor are also authorized to order sequestration, subject to the conditions specified in the Code of Criminal Procedure.³⁵

The subject of the legal institution. In judicial enforcement, we can talk about seizure in relation to movable and immovable property. Based on the rules of the Act V of 2013 on the Civil Code, a thing is any tangible object that can be taken into possession and that can be the subject of ownership. Land is considered immovable property, as well as everything that is in a constituent relationship with land – movable property is everything else that cannot be classified as immovable property. While, on the other hand, the Code of Criminal Procedure defines the subject of sequestration in detail: it may be ordered regarding an object, scriptural money or electronic money, financial instruments defined in the Act on Investment Firms, any other right of pecuniary value, any other proprietary claim. Furthermore, sequestration ordered to secure the confiscation of property may cover assets that may not be subject to confiscation, provided that the purpose of sequestration is to safeguard such assets and the separation of assets gained from committing a criminal offense would be time consuming.³⁶

Performing. In the case of seizure of a specific thing, the bailiff personally hands the debtor the court order on the seizure, then inspects the movable or immovable property, and takes possession of it by drawing up a seizure report on the enforcement act. After that, he contacts the real estate authority to record the fact of the seizure in the real estate registry – thereby completing the effect of the seizure. On the other hand, sequestration must be carried out by entering it into a public registry – the nature of the public registry depends on the property under sequestration: for example, in the case of an immovable property, the entry is also made in the real estate registry, similar to the seizure laid down in the Judicial

³⁴ BH2006. 349.

³⁵ Code of Criminal Procedure Section 327, Subsection 1

³⁶ Code of Criminal Procedure Section 324, Subsection 2

Enforcement Act, but in the case of a sequestered vehicle, the fact of sequestration must be indicated in the vehicle registry.³⁷

Termination. The seizure of the specific thing as a security measure shall terminate if a satisfaction enforcement order is subsequently issued, or if the court decides to terminate it. While, sequestration shall be lifted if the grounds therefor no longer exist, the criminal proceedings have been terminated or the time limit for the investigation expired, the proceedings were completed without the confiscation of property, or the civil claim was dismissed, the court ruled on the merits concerning the existence of the right enforced by civil claim and the amount of the claim, it was ordered to secure a civil claim, and the court orders the enforcement of the civil claim by other lawful means, or the aggrieved party abandons his or her civil claim or the private party withdrew his or her civil claim, furthermore, if during civil proceedings initiated by the aggrieved or a private party for the release of the sequestered property, the court ordered the release of the sequestered property to the aggrieved or private party.³⁸ It is important to highlight that sequestration in criminal proceedings also terminates with the redemption of the originally sequestered property³⁹ – while seizure of a specific thing ordered in judicial enforcement proceedings, redemption is not possible.

Examining the main aspects of the demarcation of the legal institutions under analysis, it can be stated that although they are applied in two completely different procedures and the range of participants in the procedure is also different, there are more similarities between the seizure of a specific thing and the sequestration in criminal proceedings than it seems at first glance. Both legal institutions carry an insurance nature in that they serve the later effectiveness and success of the enforcement or criminal proceedings as a coercive measure, by ordering a seizure or sequestration in relation with moveable or immovable property, rights or obligations of pecuniary value, ensuring the interests of the judgment creditor and the aggrieved party, or ensuring the conduct of the confiscation of property. Both the seizure of a specific thing and the sequestration in criminal proceedings take effect upon entry in the register, which may even be the same, depending on the purpose for which the seizure or sequestration is carried out. The most important difference is perhaps that while the seizure under the rules of the Judicial Enforcement Act can be used before the enforcement procedure, the sequestration regulated in the Code of Criminal Procedure can be used during the criminal proceeding that has already been initiated. In my opinion, although the purpose of these legal institutions cannot be completely identical due to their specific nature, their role in judicial enforcement and criminal procedure is absolutely necessary and indispensable due to their similar characteristics and goals.

³⁷ Code of Criminal Procedure Section 328, Subsections 1-2

³⁸ Code of Criminal Procedure Sections 330-332

³⁹ Code of Criminal Procedure Section 329

7. Conclusion

Summarizing the findings of my research, I believe that in order to properly analyze and examine the legal institution of security measures, it is essential to distinguish it from other similar institutions, given that in certain specific cases, the assessment of legal cases and the application of the appropriate legal institution can be challenging not only for theorists but also for practicing lawyers.

In my opinion, the distinction between provisional measures and security measures is a cornerstone of dogmatic research: after all, it is the legal institution available in civil procedural law that perhaps bears the most similarity to the security measures applicable in judicial enforcement. This is best illustrated by the fact that in legal disputes brought before the Supreme Court, the application of these two institutions is often confused, making it difficult to distinguish between them in many cases. Both security and provisional measures bring about a positive change in the situation of the parties: on one hand, provisional measure prevents the occurrence of a legal harm that cannot be remedied later due to the passage of time, while on the other hand, it plays an essential role in securing the satisfaction of the endangered claim prior to enforcement and the effective and efficient conduct of the enforcement proceedings. Although they are different types of instruments, their function is the same: to provide preliminary protection for the interests of the applicant and the judgment creditor.

The registration of legal action is an important part of the real estate registration procedure, as the fact that the procedure has been initiated is registered in the real estate register. As a result, on one hand, the existing rights on the property are protected, since after the registration of legal action, it is no longer possible to acquire rights in good faith over the property that is the subject of the proceeding, and on the other hand, rights and facts can only be acquired and registered in the real estate registry with effect depending on the outcome of the procedure. In contrast, the security measure is aimed at securing the claim itself, the satisfaction of which at a later date may be thwarted by the debtor. Considering the ordering, purpose, function, and result of the legal institutions, only slight similarities can be found, but their connection cannot be ruled out in cases where the court orders the seizure of an immovable property affected by the registration of legal action.

With regard to impoundment applicable under the Judicial Enforcement Act and seizure of a specific thing as a type of security measure, it is important to note that although the seizure of movable property may also be effected by impoundment under certain conditions specified by law, seizure and impoundment are two separate legal institutions. While one falls within the scope of security measures ordered by a court (notary), the other constitutes a special act of the bailiff,

in cases where the debtor is unlikely to preserve the movable property left in his possession.

The types of security measures, securisation of a financial claim and seizure of a specific thing, ensure the protection of the obligee's rights in various cases, in the event of a claim against an asset or specific property. However, they can easily intertwine if, within the framework of securisation of a financial claim, the bailiff orders the seizure of the debtor's immovable property. In this case, too, judicial practice provides an excellent reference point and reasoning regarding the relevant differences between the two security measures, thus serving as a guideline for any legal disputes that may arise in the future, as detailed in the cases above.

The legal institution of sequestration, which can be used in criminal proceedings, is considered an insurance-type, coercive measure involving property, which serves as a quasi-security measure in cases where the possibility arises that the defendant would alienate the property at his disposal, part of his property, or certain assets, or withdraw them from the criminal proceedings. Given that sequestration also involves a restriction of the right of disposal of assets, just like the seizure of a specific thing that can be used as a security measure, the similarity between the two legal institutions is much more than it would seem at first glance.

With regard to the dogmatic issues of security measures, I compared legal institutions originating from and applied in several areas of law (civil procedural law, criminal procedural law, administrative law) with the measures available in enforcement proceedings. Overall, my research has shown that security measures do not qualify as a specific legal institution of enforcement law, as very similar institutions can be found in other areas of law. In my opinion, this is mainly due to the fact that the current legal system – especially in enforcement and contentious proceedings – prioritizes the protection of the interests of the entitled parties as a fundamental right over excessive state coercion.

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NGUYEN THUY ANH*

Impact of labor market on the life of emigration workers and youth: The case of Hungary

Abstract: In modern economies, labor migration plays a key part in the labor market and is closely related to the globalization movement. The European Union's freedom of movement is one of its most significant benefits. The EU labor market now allows Eastern European countries' citizens to participate in it without any restrictions. Freedom of movement and commuting helps reduce labor market imbalances, and commuting will play an increasingly important role in the future. Since 2015, there was number of Hungarians have been choosing not only to work and live in the but also to study in the other countries in EU. The European Union's (EU) expansion has impacted the growth of employment and these types of labor flows. The EU strategy includes labor market incentives at the European level, including migration and mobility. This article attempts to answer the question of how the lives of Hungarian migrant workers are affected by labor market integration. The primary focus of this article's writers is on the significance and relevance of Hungarian labor migration, as well as the factors that contribute to it. The topic of labor migration is relevant and worth discussing because the number of Hungarians working abroad is rising annually while the total amount of employed Hungarians has been steadily decreasing in Hungary. Based on secondary empirical research conducted in Hungary as well as on press publications, this article discusses cross-border workers in Hungary and other types of emigrant workers.

Keywords: migrant labor, cross-border, student, mobility, Hungary

1. Introduction

The historical evolution of Hungary and its current socioeconomic state have a significant impact on the pattern of migration within that nation states emigration waves occur during or immediately after large crises or changes in the society of the origin country. There is only one exception in the case of Hungary: the transformation of the political system in 1989. The author Károly Fazekas¹ show that the most popular target country is Austria, Germany, Netherland and the United Kingdom. Hungarians are usually speaking English and German so they are easily moved to those countries to work. Such differences are also present not only in middle-age mobility but also among youth. It is estimated that 0% of emigrators

* Nguyen Thuy Anh, Ph.D. Student, University of Debrecen, Faculty of Law, Diplomatic Academy of Vietnam, Lecturer Faculty of Law. ORCID: 0009-0009-6591-5651

¹ BLASKÓ ZS. - FAZEKAS K., The Hungarian Labour Market 2016 (Budapest: institute of economics, Centre for Economic and Regional Studies, Hungarian Academy of Sciences, 2016), <https://core.ac.uk/download/pdf/219481726.pdf#page=75>.

who left return to Hungary within a few years. That raising another concern related to estimating migration flow. One of that I suppose that is about the seasonal workers (temporary migrant workers) because they are often not required to register with the public authorities². I examine that the type of settlement and the region lives in, political affiliation and dissatisfaction with earnings significantly influence the willingness to emigrate. Therefore, the author hypothesizes that Hungarian migrants are divided into two groups: permanent migrant workers (cross-border migration) and temporary migrants (seasonal migration)³. I focus on analyzing their level of satisfaction as well as the negative effects of life in the country where they live and work. In the first part of own research, I analyzed the development of cross-border commuters from Hungary in the Centrope (Austria- Slovakia- Czech Republic) based on secondary datas. The research question in this part is: How do detrimental labor market experiences affect East–West cross-border commuters' life and seasonal work satisfaction. The main objective of this study is to lyse the characteristics of the Hungarian labour separation. In the second part, there will be highlighted the satisfaction of student mobility aboard. The main purpose was to study immigration workers' behavior and identify the main reasons for spatial mobility in the western region of examined countries.

2. Literature review

There are some documents literature which have examined the reaction of migrant workers like “Impacts of negative labor market experiences on the life satisfaction of European East–West mobile workers: Cross-border commuters from the Czech Republic, Slovakia and Hungary in Austria” by Raimund Haindorfer. The study shows that migrant workers in the Centrope (especially those in Austria) often have lower wages than local workers in Austria. The study assumes that workers who commute between border regions have higher qualifications than are required for the jobs in Austria. According to another study, migrant workers between Hungary and Slovakia exhibit high levels of job satisfaction in their respective regions. This result shows that Slovakia is attractive for Hungarian workers in terms of working conditions, salaries and other social benefits. On the contrary, Slovak workers come to Hungary in search of higher salaries and more variety of jobs. (Olah and Gyorgy Halasi 2017) found that local residents' attitudes towards a group of highly skilled immigrants in Hungary are favorable because they believe that this group of knowledge workers contributes to the country's economic

² LEE S. - MCCANN D., “Chapter 3: Negotiating Working Time in Fragmented Labour Markets: Realizing the Promise of ‘Regulated Flexibility,’” In: *The Role of Collective Bargaining in the Global Economy*, 2011, 336-40, <https://www.elgaronline.com/edcollchap-0a/book/9781849809832/book-part-9781849809832-9.xml>.

³ GALGOCZI B. - LESCHKE J. - WATT A., “Intra-EU Labour Migration: Flows, Effects and Policy Responses”. ETUI Working Paper 2009.03 (update Spring, 2011), 2013.

growth. Immigration restrictions lead to a lack of unity in Hungary, which makes Hungarians feel threatened and puts them at risk. ⁴, he pointed out that there are two fundamental reasons that will determine the future of Europe: population aging and labor shortages. The study argues that it is necessary to attract workers from third countries not only to meet labor demand, but also to enhance the value of international integration. Based on current studies, the authors summarize data from various sources to evaluate the learning mobility of young people in exchange programs, exchange students, and independent study abroad. In summary, I can say that commuting is chosen by employees who cannot or do not want to find work in their place of residence for quantitative or structural reasons. Domestic commuting to reach jobs in other areas is typically conducted within national boundaries, but after Eastern European countries joined the EU, workers from that region were permitted access to their homes. The removal of geographical barriers to the free movement of workers made commuting possible, especially for those living along the borders.

3. The scale and direction of emigration in Hungary

Hungarians with good or perfect training and qualifications can start working in their home country. Previously, a job with a suitable income would be considered stable for them at least until retirement. Nowadays this is not entirely true anymore. On the one hand, workers have needs and desires for new experiences and have increasingly high hopes for their work. On the other hand, they cannot always find suitable jobs. So what does appropriate employment mean? Those jobs confirm the employee's qualifications and experience, and last but not least, the employee is paid a decent salary. Financial and economic factors are generally acknowledged as the main motivating factors behind Hungarian emigration. This is especially true for educated migrants because of their salary potential abroad, especially in Western and Northern Europe. There are two types of Hungarian migrants: cross-border commuters and long-term labor migrants.

⁴ BITE P. - KONCZOS-SZOMBATHELYI M. - VASA L., "The Concept of Labour Migration from the Perspective of Central and Eastern Europe," *Economics & Sociology*, 2020/13(1), 197-216., <https://doi.org/10.14254/2071-789X.2020/13-1/13>.

Table 1: Number of emigrants from Hungary having Hungarian citizenship, 2018-2022

IT	Swap axis of the table	TIME	2018 ₺	2019 ₺	2020 ₺	2021 ₺	2022 ₺
GEO ₺							
Belgium			372.1	384.8	384.3	485.9 (h)	435.6
Czechia			63.8	69.6	76.6	88.3 (h)	84.5
Denmark			74.4	78.1	88.8	83.3 (h)	83.1
Germany			2 552.3	2 623.5	2 483.1 (h)	2 451.2 (h)	2 788.8
Estonia			6.6	5.8	5.3	5.3 (h)	4.3
Ireland			218.6	224.5	217.3	226.2 (h)	251.7
Greece			32.8	31.8	38.7	23.6 (h)	16.5
Spain			797.5	872.2	882.8	749.8 (bd)	796.8 (d)
France			619.2	688.7	564.7	578.0 (bd)	684.8 (d)
Croatia			2.9 (u)	3.8 (u)	1.6 (u)	1 (bu)	2.8 (u)
Italy			784.8	798.1	748.1	697.3 (h)	784.2
Cyprus			48.9	47.1	49.3	46.2 (h)	49.3
Malta			16.3	28.9	23.1	29.4 (h)	38.9
Netherlands			283.5	222.5	228.2	284.2 (h)	384.7
Austria			389.3	413.4	434.6	439.4 (h)	478.8
Poland			14.8 (u)	12.3 (u)	12.4 (u)	12.3 (bu)	1 (u)
Portugal			29.2	29.6	28.4	22.5 (h)	24.4
Slovakia			3.7 (u)	4.2	3.8 (u)	1 (bu)	8.1 (u)
Finland			36.8	38.5	37.7	53.0 (h)	59.3
Sweden			134.3 (h)	141.7	148.8	149.9 (h)	149.8
Norway			288.9	218.2	288.6	286.5 (h)	217.8
Switzerland			844.8	863.1	871.4	866.9 (h)	898.7
United Kingdom			2 236.6	2 294.7	1	1	1

The data that support the findings of this study are openly available in Eurostat at https://ec.europa.eu/eurostat/databrowser/view/migr_emi1ctz/default/table?lang=en

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Base on the statistic in Table 1 from ⁶ shows the overall of Hungary emigrants over European countries. The rising number of moving to South-West countries while those have a decrease trend of migrant in Eastern region. The number of migrants is concentrated mainly in Germany, Switzerland, Italy, United Kingdom and Austria, where cross-border workers often choose to work in Austria for the reasons of convenient travel and a better salary than working in Hungary. Higher education and more qualified workers are attracted to the more recent magnet countries for labor emigration, primarily the United Kingdom and several other EU countries. The offered occupations are not as qualified, but in these nations, overqualified of migrant labor is not unusual. Whereas labor emigrants working in Austria, the United Kingdom, or other EU nations are more closely linked to their home country, those working in Germany are more likely to work there for a longer duration and settle in their new country. They visit their relatives at home on a regular basis and return there more often. Besides, Hungary is a country with many educational policies and programs, as well as scholarships for international students. These programs have attracted many students to study and stay at work. However, there are still a number of students who, after graduating, choose to work in another country in the EU, not Hungary. Migration and mobility (including internal or international migration, emigration or immigration, commuting, changing jobs,

⁵ “Emigration Statistics | Eurostat,” accessed June 14, 2024, https://ec.europa.eu/eurostat/databrowser/view/migr_emi1ctz/default/table?lang=en.

⁶ Ibid.

applying for asylum, return migration, moving to another home/settlement, leaving velvet family, etc.) are often consulted and prepared according to previous plans⁷. In the community, people often exist in migration networks and this network is extremely necessary. The role of networks in the migration process is clearly pointed out by⁸ "... prospective migrants learn about opportunities, are provided with convenient transportation, and have initial accommodation and jobs. arranged through basic social relationships with previous migrants". Therefore, the number of migrant is raising by a year because they often work aboard gather a group to follow these previous migrants. In some cases, some high-qualified migrant workers looking for a job by himself.

Beside the amount of migrant people, there are a number of Hungarian cross-border commuters who work in Central European Region (Centroe) include Czech, Slovak and Austria as well. Since 2011, the last barriers to free movement were removed for the workforce and all citizens of these states have had the right to work in Austria and in any other EU member states⁹. The social benefits may be one of the main reasons for commuting. According to the EC Regulation 883/2004, an individual is subject to the legislation of the country where he actually works as an employed or a self-employed person, independently of where he lives, so the country of work is responsible for his social benefits. I suppose a hypothesis on the difference in adaptation in the labor market of short-term and long-term migrant workers. When seasonal workers migrate after working and they tend to stay long term, their ambitions will expand to the same economic positions as natives. As temporary migrants become more permanently attached to their place of work, it becomes more difficult to separate their work status from their social role. Their attitudes toward work changed, leading them into competition and conflict with the native people. Unlike temporary migrant workers, cross-border workers often consider their work to be permanent in the country of origin from the beginning. The negative effects of adverse labor market experiences exist from the outset. They often tend to compare their jobs with those of workers in their hometown and find that their jobs have higher and better salaries. More and more migrant workers are seeking to carry out their plans or fulfill their objectives in other countries. They can have the chance to fulfill their aspirations and become who they want to be in a new country. They may even feel at home in a foreign nation if they are able to integrate.

The findings also demonstrate that education is the main driver of occupational mobility, while marital and family status are important influences on economic

⁷ KOLTAI J. - SIK E. - SIMONOVITS B.: Network capital and migration potential. *International Journal of Sociology*, 2020/50(2), 122-141.

⁸ MACDONALD J. S. - MACDONALD L. D., "Chain Migration Ethnic Neighborhood Formation and Social Networks," *The Milbank Memorial Fund Quarterly*, 1964/42(1), 82-97., <https://doi.org/10.2307/3348581>.

⁹ VERWIEBE P. A. et al., "Modeling Energy Demand—A Systematic Literature Review," *Energies*, 2021/14(23), 7859., <https://doi.org/10.3390/en14237859>.

activity mobility. In this part, the case example of East–West cross-border commuting in Centrope will be described¹⁰. The case description will be followed by a review of preliminary research on labor market experiences of Eastern European mobile workers in the EU, including Centrope. The characteristics of East–West migrant labor are marginalization and abuse. Many immigrants from the East and West will accept employment in low-paying labor markets that Western European citizens will no longer accept, which frequently puts them at a financial disadvantage. Frequently, they take secondary labor positions instead of primary labor occupations. In Central Europe, migrant laborers frequently receive lower wages than Austrian natives. Studies show that employees moving across border regions are viewed as having more qualifications than they do when applying for positions in Austria. On the other hand, they continue to face frequent wage discrimination.

4. The cross-border commuters in the Central European Region

There are several definitions of the term “cross-border commuter”. According to ETUC (2015) terminology, cross-border commuters are workers (including self-employed workers) who pursue their profession in one Member State and geographically reside in another (neighbouring) Member State. The second criterion is that cross-border commuters return to their place of residence abroad at least once a week. Unlike temporary migrant workers, cross-border commuter often consider their work to be permanent in the country of origin. The negative effects of adverse labor market experiences on their life satisfaction persist. They often compare their jobs with those of workers in their hometown and find that their jobs have higher and better salaries. Hungarian cross-borderers often prefer to move to Eastern countries (such as Austria, Czech Republic or Slovakia) than others. The field of Centre European Region (Centrope) is popular example.

One of the most reasons is transportation convenient. The cross-border region offers relatively easy commutes because of the short travel distances and well-established rail and highway systems. For example, commuting time between the two most populated cities in Central Europe, Budapest and Bratislava, the capitals of Hungary and Slovakia, is approximately two hours. Austria's average national economic living standards are almost twice as high as those of Hungary. Slovakia and the Czech Republic do slightly better than Hungary when compared to Austria.

¹¹ mentioned that the coronavirus crisis has caused a reorganization of labour

¹⁰ GAAL P. et al., “The 2020 Reform of the Employment Status of Hungarian Health Workers: Will It Eliminate Informal Payments and Separate the Public and Private Sectors from Each Other?,” *Health Policy*, 2021/125(7), 833-840., <https://doi.org/10.1016/j.healthpol.2021.04.014>.

¹¹ KARÁCSONY P. et al., “Analysis Of Cross-Border Commuters’ Spatial Mobility Between Western Regions Of Hungary And Slovakia,” *Geographia Technica*, 2021/16(1), 128-140., https://doi.org/10.21163/GT_2021.161.11.

markets and severely affected cross-border travel, with the virus imposing restrictions that have hindered free geographical movement across borders and endangering daily travel. Strict control measures also cannot avoid the movement of workers. Whereas previously passengers travelled under more moderate conditions, they now also have to meet stricter requirements (e.g. having to experience continuous challenging and only being able to enter other countries without a valid negative test result). Follow the survey of ¹² research, he indicated that the primary reason for cross-border commuters from the Czech Republic, Slovakia, and Hungary to Austria is the country's supposedly higher salaries. Around 96% of the commuter interviewees in a prior study released stated that this was a major reason for wanting to work in Austria. The views regarding jobs appear to be less important than those regarding salaries: Only 46 percent of those surveyed considered advancements in professional credentials to be significant reasons for commuting, while 76 percent mentioned improved working conditions in this nation ¹³.

The concept of dual labor market theory – that migrants view their engagement in the labor market of the receiving country as transitory and therefore accept poor labor market conditions ¹⁴. It is intentional to keep workers' social roles and self-perceptions apart from their work. The example of Latin American immigrants taking tasks that they would not accept in their native country—men scrubbing floors, for example—illustrates this division. As temporary migrants become increasingly firmly tied to their workplaces, it becomes more difficult to separate their employment status from their social roles and self-perceptions. They are more demanding in terms of salary at work and more competitive with locals.

Eastern Europeans make up a sizable portion of the workforce in the West, according to the dual labor market hypothesis. The secondary segment differs from the primary segment in that it has a greater concentration of low-paying occupations, high levels of instability, bad working conditions, and low social status. Jobs in the secondary segment are frequently avoided by Indigenous people. Temporary migrants can be especially useful in filling workforce shortages at the lowest levels of the labor hierarchy. They accept bad labor market conditions in the secondary labor market category because they see their work in the host country as transient ¹⁵.

¹² HAINDORFER R., "Impacts of Negative Labor Market Experiences on the Life Satisfaction of European East–West Mobile Workers: Cross-Border Commuters from the Czech Republic, Slovakia and Hungary in Austria," *Journal of Industrial Relations*, 2020/62(2), 256-277, <https://doi.org/10.1177/0022185619897087>.

¹³ *Ibid.*, 115.

¹⁴ PIORE M. J. - SCHRANK A., "Toward Managed Flexibility: The Revival of Labour Inspection in the Latin World," *International Labour Review*, 2008/147(1), 1-23., <https://doi.org/10.1111/j.1564-913X.2008.00021.x>.

¹⁵ PARNREITER C., "Theorien und Forschungsansätze zu Migration", 2000.

Base on explain of ¹⁶, of working people's life satisfaction in Austria includes variables of various negative labor market experiences (e.g., experiences of ethnic discrimination), as well as economic living conditions. Cross-border workers exhibit varying degrees of life satisfaction in different economic and non-economic areas. In terms of material and human needs, the data demonstrates that higher monthly income has a substantially greater positive influence on life satisfaction for migrants than for non-residents in the host country ¹⁷. Furthermore, humor in life is somewhat impacted by the president's health. Medical risks will have an immediate impact on their productivity and safety at work. Life satisfaction is also impacted by commuting time, particularly for those who work abroad for an extended period of time. Finally, there is the factor of proficiency in foreign languages (especially German) for workers in this country.

In terms of social requirements, migrants who identify as "European" will be happier than those who prioritize explicitly identifying their national background ¹⁸. Furthermore, persons who exclusively had work partnerships and those who did not have children reported considerably better levels of life satisfaction ¹⁹. In addition, workers' life happiness is not positively impacted by more subjectively measured work-family balance. There is no discernible difference between working people who have more or less interaction with Austrian friends and those who work in Austria. Life happiness improved significantly when they perceived a favorable working environment in the organization, however life satisfaction declined significantly when they encountered difficulties in the company related to their racism.

In terms of the impact on personal development needs, the literature indicates that none of the analyzed variables have a substantial impact on working people's life satisfaction. Working individuals experience varying levels of life satisfaction despite negative indicators of overcapacity and irregular employment ²⁰. These limitations are not really noticeable in the Austrian workplace. Additionally, employees' life satisfaction is not much impacted by their ability to implement their own ideas at work. Working individuals in the Czech Republic have much lower life

¹⁶ FRITSCH NS. - RIEDERER B. - SEEWANN L., "Living Alone in the City: Differentials in Subjective Well-Being Among Single Households 1995–2018," *Applied Research in Quality of Life*, 2023/18(4), 2065-2087., <https://doi.org/10.1007/s11482-023-10177-w>.

¹⁷ LECHNER C. - FRANKENBERGER K. - FLOYD S. W., "Task Contingencies in the Curvilinear Relationships Between Intergroup Networks and Initiative Performance," *The Academy of Management Journal*, 2010/53(4), 865-889.

¹⁸ ZOTT C. - AMIT R., "Business Model Design: An Activity System Perspective," *Long Range Planning, Business Models*, 2010/43(2), 216-226., <https://doi.org/10.1016/j.lrp.2009.07.004>.

¹⁹ FRITSCH - RIEDERER - SEEWANN, "Living Alone in the City".

²⁰ DUMONT JC. - MARTIN J. P. - SPIELVOGEL G., "Women on the Move: The Neglected Gender Dimension of the Brain Drain," *SSRN Electronic Journal*, 2007., <https://doi.org/10.2139/ssrn.1001216>.

satisfaction than Hungarians in terms of socio-demographic and labor market variables ²¹.

5. The emigration of qualified-labor and youth mobility from Hungary

5.1. High-skilled labor emigration

Within the scope of research on temporary or short-term migrants, the author focuses on qualified migrants and youth migrants. Skilled migration is highly widespread in the health care profession, particularly in nursing and care for the elderly. This is one of the most common job which Hungarians prefer to work in another country. According to the Office of Health Authorisation and Administrative Procedures and prior studies, about 10,000 health care professionals departed Hungary between 2009 and 2014 ²². Surveys from ²³ indicate that about 40% of resident physicians in Hungary intend to immigrate. Every year, the number of doctors who relocate overseas matches the number of graduates. According to ²⁴ over the last three decades, employee habits have changed significantly, with many workers being forced to leave their homes and work in another region or even another country ²⁵. For these reasons, the commuting from eastern European countries to western Europe has become widespread. After the European Union integration, in a legal way by economically, socially, culturally and environmentally for both the individual and society.

Gender and family status also play a role in migratory attitudes; according to numerous research, many male doctors consider leaving their home country, and single people are more likely to emigrate than professionals in a partnership ²⁶. Mobility decision is affected by excess workload. In the suburbs, the lack of medical personnel leads to increasing workloads for those who remain, thereby increasing

²¹ BLANCHFLOWER D. G. - OSWALD A. J., "Is Well-Being U-Shaped over the Life Cycle?," *Social Science & Medicine*, 2008/66(8), 1733-1749., <https://doi.org/10.1016/j.socscimed.2008.01.030>.

²² ÖSTERLE A. - BALÁZS P. - DELGADO J., "Travelling for Teeth: Characteristics and Perspectives of Dental Care Tourism in Hungary," *British Dental Journal*, 2009/206(8), 425-428., <https://doi.org/10.1038/sj.bdj.2009.308>.

²³ GYÓRFFY ZS. - DWEIK D. - GIRASEK E., "Willingness to Migrate—a Potential Effect of Burnout? A Survey of Hungarian Physicians," *Human Resources for Health*, 2018/16(1), 36., <https://doi.org/10.1186/s12960-018-0303-y>.

²⁴ FIALOVÁ K. - SCHNEIDER O., "Labor Market Institutions and Their Effect on Labor Market Performance in the New EU Member Countries," *Eastern European Economics*, 2009/47(3), 57-83.

²⁵ CARIGNANI S. S. et al., "Introduction to Special Issue on Inequalities and Youth Mobilities in Europe from Comparative Perspectives," *Migration Letters*, 2018/16(1), 1-14., <https://doi.org/10.33182/ml.v16i1.641>.

²⁶ DABASI-HALÁSZ ZS. et al., "International Youth Mobility in Eastern and Western Europe – the Case of the Erasmus+ Programme," *Migration Letters*, 2018/16(1), 61-72., <https://doi.org/10.33182/ml.v16i1.626>.

their dissatisfaction with working conditions. Work-life balance is important to maintain productivity and job satisfaction. They prefer to stay longer in places where provide high standard of living and education. Personal or professional support (e.g., family-friendly practices), intervention educational interventions (e.g., capacity building, internships), legal interventions (e.g., changes to work-related regulations), and financial measures (salary increases, incentives to attract talent) are all used by European countries to retain or (re)attract the health workforce ²⁷. The increased demand for and scarcity of medical personnel makes it simpler for nurses and doctors from developing countries to find work in wealthy countries. In addition, many nations implemented austerity measures as a result of the global economic crisis of 2008–2009, which decreased financing for the healthcare industry and worsened working conditions. and pay ²⁸.

The Hungarian government has adopted many efforts aimed at limiting migration, but the effects have been minimal. I summarized the most essential measures implemented include: (i) mobility limitations, (ii) improved working conditions, (iii) wage increases, and (iv) various subsidies and incentives. As part of the effort to improve working conditions, new equipment was acquired and several facilities remodeled. The salary issue is regarded one of the major concerns in the Hungarian healthcare system ²⁹. The Hungarian government has responded to this issue by raising medical staff compensation; however, wages in Hungary remain below those in Germany, Switzerland, Austria, the United Kingdom, or other Western European nations. Finally, for the purpose to stop future migration and keep young doctors in these regions, grants have been handed out to entice doctors to work in rural regions or to keep medical residents in these locations.

As a result of research from (Dorn & Zweimüller, 2021), there is 77,7% people choosing work abroad because of better life quality. The satisfaction of worker was recored by the balance of wealthy and work attitude. Doctors and physical therapists in Hungary feel exhausted and have no motivation to continue working. However, this does not mean that they will want to migrate to another country to work. The disparity between the incomes of domestic and international professionals is understandable, but the magnitude is surprising. After completing the questionnaire, newly graduated physiotherapists got a total of 327,350 HUF (935 EUR) in category F, based on the modified medical professional compensation scale begin May 11, 2018. 38.4% of their colleagues working overseas earn between HUF 700,000 (EUR 2,000) and HUF 1,050,000 (EUR 3,000) net each month, while 23.2% make even more. Among physiotherapists working in Hungary, the intention

²⁷ CONNELL J. - ALDRICH R., "Migration: Holding on to Home?," In: *The Ends of Empire* (Palgrave Macmillan, Singapore, 2020), 291-320., https://doi.org/10.1007/978-981-15-5905-1_6.

²⁸ DORN D. - ZWEIMÜLLER J., "Migration and Labor Market Integration in Europe," *Journal of Economic Perspectives*, 2021/35(2), 49-76., <https://doi.org/10.1257/jep.35.2.49>.

²⁹ GAAL P. et al., "The 2020 Reform of the Employment Status of Hungarian Health Workers."

to work abroad was present in 43.7%³⁰. 33.6% of medical students prepare to go abroad immediately after graduating from medical faculties in Hungary³¹. The foreign employment of doctors abroad has been a long-standing problem in Hungary. Foreign employment of the health science professionals, physiotherapists, nurses, ambulance officers, dieticians, radiographers, etc., however, is a relatively recent phenomenon. Retaining health professionals and modernizing their careers at home is a significant health policy challenge^{32 33}.

5.2. Youth mobility: Under-graduation students and higher education students

International student mobility is becoming a crucial aspect of higher education globally. The international student market is changing to prioritize the public's advantages. Hungary is one of the most post-countries which have a large of people prefer go aboard for study and work in EU. Youth intra-European mobility and student mobility in particular are among the most vibrant European movements, with clear positive impacts at individual and social level. The author shows the satisfaction of younger mobility, based on the secondary documents of Erasmus+ program. The Erasmus+ programme acts as the leading funding instrument for such a mobility type, providing a homogeneous frame for equal access to funding for youth all over Europe. Among sending countries, however, Poland, Romania, Croatia and Hungary are ranked first of post- countries³⁴. Based on prior research³⁵, I found that expectations, happiness with the experience, as well as the key hurdles and motivating elements in all modes of transportation for Hungarian students. Almost Hungarian go aboard because of business. The European Mobility Program provides the longest stays to nations whose travel is mostly for work (Hungary and Romania) because of its mandated extension.

³⁰ PÓNUSZ R. et al., "[Motivations for foreign employment and carrier change among Hungarian physiotherapists]," *Orvosi hetilap*, 2016/157(9), 342-349., <https://doi.org/10.1556/650.2016.30376>.

³¹ VIZSY M. et al., "CAUSES OF MIGRATION AND WORKING CONDITIONS ABROAD AMONG PHYIOTHERAPISTS," *Studia Universitatis Babeş-Bolyai Educatio Artis Gymnasticae*, 2021/66(2), 5-17., [https://doi.org/10.24193/subbeag.66\(2\).12](https://doi.org/10.24193/subbeag.66(2).12).

³² BONCZ I. et al., "Financing of Health Care Services in Hungary," *The European Journal of Health Economics*, Formerly: HEPAC 5, 2004/3, 252-258., <https://doi.org/10.1007/s10198-004-0228-3>.

³³ SEBESTYÉN A. et al., "Wintertime Surgery Increases the Risk of Conversion to Hip Arthroplasty after Internal Fixation of Femoral Neck Fracture," *Osteoporosis International*, 2015/26(3), 1109-1117., <https://doi.org/10.1007/s00198-014-2966-0>.

³⁴ NEUBECKER N., "Two New Datasets on South-North Migration by Occupational Category," *International Journal of Manpower*, 2014/35(6), 834-872., <https://doi.org/10.1108/IJM-10-2013-0231>.

³⁵ DABASI-HALÁSZ ZS. et al., "International Youth Mobility in Eastern and Western Europe – the Case of the Erasmus+ Programme," *Migration Letters*, 2018/16(1), 61-72., <https://doi.org/10.33182/ml.v16i1.626>.

Overall program satisfaction was quite high: according to statistic³⁶ 71% of Romanian youth and 72% of Hungarian youth assessed their experience as very good, exceeding all Western nations with the exception of Spain. For young Hungarians, European mobility programs are an essential source of funding for stays abroad as Erasmus+ students. A large proportion of respondents in Hungary evaluated their Erasmus+ experience as excellent. When they moved abroad, they encountered various challenges, such as a lack of language skills and a lack of help or information. In contrast to their colleagues in Western Europe, young people from Romania and Hungary were less likely to decide to relocate abroad or to a different area of their own nation when questioned about their future plans. The decision to study abroad is mostly a personal one, but it is impacted by recommendations from parents and friends. Furthermore, most respondents in Hungary stated that European mobility programs were the most essential source of funding. Intra-European youth mobility, particularly student mobility, is one of Europe's most active movements, with obvious benefits at both the individual and social levels. Eastern European youth prefer to relocate for job, followed by study-related moves funded by Erasmus+, whereas Western European youth prefer to move for studies first. Hungarian young are less mobile internationally than the rest of Europe's youth. They frequently relocate to their preferred nations, which include the UK, Germany, France, and Spain. Since the 1990s, Eastern European higher education institutions (HEI) have attempted to expand their networks through student mobility.

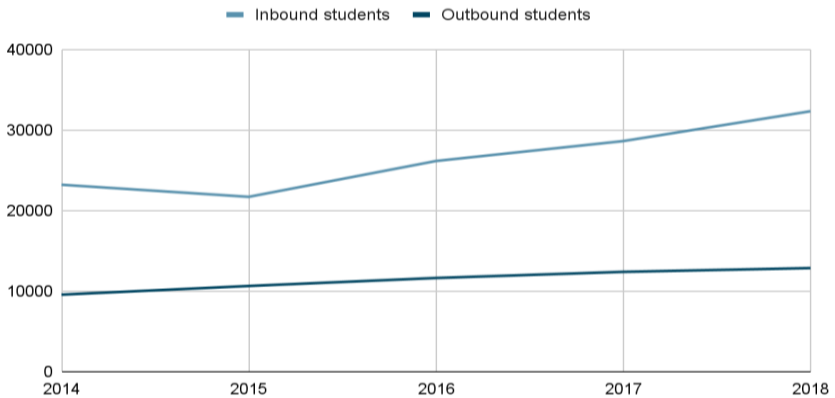
The increasing number of higher education alternatives both domestically and internationally contributes to competitiveness in the global student market. National governments are increasing funding for higher education to boost its quantity and quality, aiming to enhance education's global reputation. One of the most significant aspects of evaluating internationalization is the mobility and exchange of foreign students³⁷. European nations are looking to attract foreign students and send their own students to study abroad due to the benefits of globalization for both institutions and governments. Hungary has one of the lowest levels of general mobility of the population compared to western European countries³⁸. Table 2 shows the number of inbound and outbound students in Hungary from 2014 to 2018.

³⁶ Ibid.

³⁷ TERNAI K. - SZABÓ I., "Semantic Application for the Internationalization Audit of Higher Education Institutions," In: Electronic Government and the Information Systems Perspective (International Conference on Electronic Government and the Information Systems Perspective, Springer, Cham, 2016), 194-205., https://doi.org/10.1007/978-3-319-44159-7_14.

³⁸ HINSCH M. - BIJAK J., "Principles and State of the Art of Agent-Based Migration Modelling," In: Towards Bayesian Model-Based Demography (Springer, Cham, 2022), 33-49., https://doi.org/10.1007/978-3-030-83039-7_3.

Table 2: The Inbound and Outbound students of Hungary



Source: <http://data.uis.unesco.org/>

Based on the statistic of the first document³⁹, author focus on the Hungarian inbound and outbound students from 2014 to 2018. Overall, the number of inbound students was higher than outbound students and both of mobility trend increased lightly. Hungary enrolled an increasing data of foreign students and sent out a building number of domestic students in 2015, despite a brief decline in inbound participation. The volume of inbound students took a bounce from around 20,000 in 2015 people to 31,000 in 2018. From 2013, with the establishment of the Stipendium Hungaricum Scholarship (TPF), an increasing number of international students outside Europe come to study in Hungary (Tompos 2019). The Erasmus program promoted short-term Hungarian student outbound mobility within Europe.

Western and Southern Europe were the most common study abroad destinations. Students choose their host institution based on factors such as nation, city, area, and closeness to Hungary. Some individuals had been attracted to the host institution's reputation or an active exchange program with their own university. The student evaluated their satisfy in connection with their home and host institution on 6-level Likert scales (Keresztes 2014). The satisfaction of the students had been expressed regarding the quality of the programe, technical equipment, university life, administration and an overall impression on both universities. Participants were most pleased with the host university's technological equipment

³⁹ WANG W. W. - FAN C. C., "Migrant Workers' Integration in Urban China: Experiences in Employment, Social Adaptation, and Self-Identity," Eurasian Geography and Economics, 2012/53(6), 731-749., <https://www.tandfonline.com/doi/abs/10.2747/1539-7216.53.6.731>.

and least satisfied with management at their own institution. The average scores for the Likert scales represent differences in satisfaction with the home and the host universities. Students have cultivated the host institutions in every aspect on average. The greatest difference in satisfaction relates to technical equipment and administration.

6. Conclusion

To sum up the features of Hungary, ⁴⁰ stated that the level of internationalisation is in the middle of the Central European Countries. In recent years, Hungary has had many policies to attract international workers and students, while at the same time retaining domestic workers (especially high-knowledge workers). There are several possible reasons for commuting across borders. One of the main reasons for commuting is social benefits. According to EC Regulation 883/2004, individuals, regardless of their place of residence, are subject to the law of the country in which they actually work as an employee or self-employed. The country of work is therefore responsible for their social benefits. Therefore almost migrant workers have their own desire and finding jobs by themselves without forcing. The previous literatures had shown that the workers' life satisfaction is relatively high (compared to non-migrants in their origin country). However, the proportion is significantly lower than other large groups in Austria ^{41 42 43}. In general, the negative experiences do not have much impact on the life satisfaction of cross-border workers. The majority of migrant workers are in the group of medical professionals, doctors, and physical therapists. Almost all are satisfied with the salary and standard of living in the destination countries. Life satisfaction was thought to be more affected by negative experiences in the labour market than temporary migrants, who were viewed as innocent economic breadwinners. Indeed, those travelling across the East-West border (Czech Republic, Slovakia, Hungary, Austria) consider this for the long term, as they have advantages such as a relatively stable East-West welfare gap and relatively distant geography. The same goes for short connections between Central European countries. Moreover, the expansion and development of exchange programs (Erasmus) and contract scholarships (TPF)

⁴⁰ KOZMA T. - POLÓNYI I., "National Strategies of Internationalisation: The Case of Hungary," In: *Reconfiguring National, Institutional and Human Strategies for the 21st Century* (Springer, Cham, 2022), 197-228., https://doi.org/10.1007/978-3-031-05106-7_10.

⁴¹ BARTRAM S. M. - BROWN G. W. - CONRAD J., "The Effects of Derivatives on Firm Risk and Value," *Journal of Financial and Quantitative Analysis*, 2011/46(4), 967-999., <https://doi.org/10.1017/S0022109011000275>.

⁴² SAFI M., "Immigrants' Life Satisfaction in Europe: Between Assimilation and Discrimination," *European Sociological Review*, 2010/26(2), 159-176., <https://doi.org/10.1093/esr/jcp013>.

⁴³ VERWIEBE R. et al., "Finding Your Way into Employment against All Odds? Successful Job Search of Refugees in Austria," *Journal of Ethnic and Migration Studies*, 2019/45(9), 1401-1418., <https://doi.org/10.1080/1369183X.2018.1552826>.

have also changed student migration in the EU market. Hungarian undergraduate students prefer to participate in exchange programs because they believe that studying abroad will promote their professional careers and future mobility. On the other hand, postgraduate students rate their satisfaction based on different factors, such as technical facilities, management, quality of the program and life in the country they live in. All students consider studying abroad to be a better way to achieve their future job and desired salary. The focus of Hungary's efforts is on regulation, specifically the implementation and transfer of EU rules as a means of promoting multi nationalization and labor market flexibility. By loosen the bond of laws and policies for guest workers and improving benefits for knowledge workers, Hungary is opening up a whole new playing field that will help it recover some of its national strength.

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RANIA JALLOULI*

Modern Criminal Law: Trends of Reform

Abstract: This study analyzes recent criminal law reforms, driven by new crime patterns, technological change, and human rights standards. It argues that outdated laws hinder deterrence and fairness, urging shifts toward rehabilitation, modernization of justice systems, stronger international cooperation, and alignment with global norms.

Keywords: Criminal Law Reform, Transnational Crime, Penal Policy and Rehabilitation, Human Rights and Criminal Justice, International Criminal Cooperation.

1. Introduction

Criminal law is one of the fundamental pillars of the legal system in any society. It is the tool used by the state to protect fundamental values, such as life, liberty, property, and public safety¹. This branch of law emerged in response to the need of human groups to establish binding rules that regulate behavior, protect public order, and define acts that constitute crimes and their prescribed penalties². With the development of human societies and the changing nature of social and economic interactions, traditional criminal texts have often become unable to meet emerging challenges. This has created an urgent need for a comprehensive review of the content of criminal law and its reformulation to keep pace with the profound transformations taking place in the contemporary world³.

Modern criminal law is no longer merely a set of rules defining crimes and penalties. Rather, it reflects an integrated system of criminal policies aimed at achieving social justice, protecting human rights, and ensuring security and stability. Today, many issues are raised regarding the ability of traditional criminal law to address emerging crimes, particularly in light of the emergence of new criminal patterns such as cybercrimes, complex financial crimes, and international terrorism crimes, which require advanced, flexible, and effective legal tools.⁴

* Rania Jallouli, Ph.D. student, University of Miskolc, Faculty of Law, Ferenc Deák Doctoral School of Law. Supervisor: Dr. Judit Jacsó associate professor and Dr. Bence Udvarhelyi assistant professor.

¹ ASHWORTH, A: Principles of Criminal Law, 6th ed. Oxford: Oxford University Press, 2007.

² DUFF, R: Punishment, Communication, and Community. Oxford: Oxford University Press, 2001.

³ GARLAND, D: The Culture of Control: Crime and Social Order in Contemporary Society. Chicago: University of Chicago Press, 2001.

⁴ ROBINSON, P: Intuitions of Justice and the Utility of Desert. Oxford: Oxford University Press, 2008.

In this context⁵, most modern legislation has adopted comprehensive reform approaches to criminal law, based on reconsidering the concepts of criminalization and punishment, adopting new alternatives to custodial sentences, and strengthening restorative justice mechanisms, while ensuring respect for the basic principles of fair trial guarantees. This reform has responded to several considerations, including enhancing the effectiveness of criminal policy, reducing the burden on penal institutions, achieving better integration of offenders into society, and reducing recidivism rates.

Accordingly, this article seeks to examine the most prominent reform trends in modern criminal law by analyzing the motivations for reform, identifying its basic features, and assessing the challenges facing it.⁶ This aims to highlight the importance of updating criminal law to keep pace with national and international developments and achieve the desired balance between the requirements of protecting society and ensuring respect for individual rights and freedoms⁷.

2. First: The Transformation of Crime Patterns and Their Technical and Organizational Development

With tremendous technological progress, the world has witnessed in recent decades, crime patterns have evolved to an unprecedented degree. Crime is no longer limited to traditional acts such as theft, murder, or simple fraud. New types have emerged, such as cybercrimes targeting information systems and personal data, major financial crimes committed across complex international networks, and transnational organized crimes such as human and drug trafficking.

Evidence has proven that traditional criminal laws, formulated in previous eras, lack the legislative or technical tools necessary to address these complex crimes. This has led to a legislative vacuum in some areas and the inability to investigate and prosecuting authorities to prosecute perpetrators efficiently. Therefore, it has become necessary to update the rules of criminal law, both in terms of criminalization and punishment, by introducing new concepts such as cybercrime, money laundering, and cyberterrorism crimes, in addition to developing mechanisms for international judicial cooperation.

With major technological transformations, crimes have evolved into new forms that transcend geography and traditional laws. For example, the United States witnessed a dramatic increase in cybercrime, prompting the enactment of the Computer Fraud and Abuse Act in 1986, later updated to prosecute online crimes.

⁵ ZENDER, I.: Criminal Justice. Oxford: Oxford University Press, 2004.

⁶ UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC): The Globalization of Crime: A Transnational Organized Crime Threat Assessment. Vienna: United Nations, 2010.

⁷ MICHAEL T.: Punishing Race: A Continuing American Dilemma. Oxford: Oxford University Press, 2011.

Similarly, European Union countries established the Budapest Convention on Cybercrime in 2001, the first international treaty to combat cybercrime by harmonizing national laws and enhancing international cooperation.

2.1. The Transformation of Crime Patterns and Their Technical and Organizational Development

Traditional criminal law, as it was established centuries or even decades ago, was primarily aimed at protecting social order by imposing severe penalties. However, reality has shown that many of these provisions no longer meet the requirements of modern criminal justice. Some legislative provisions suffer from ambiguity or excessive generality, making them difficult to apply or interpret in a manner consistent with individual rights and fundamental guarantees.⁸

In addition, the severity of punishment in some provisions has not always achieved the desired deterrence and has sometimes contributed to counterproductive outcomes, such as increased recidivism. Therefore, there have been increasing calls to review penal provisions to ensure that the punishment is commensurate with the gravity of the criminal act, the personality of the offender, and the circumstances of the crime. This represents a fundamental pillar of modern criminal thought.⁹

Practical experience has shown that some traditional texts are no longer capable of achieving effective justice. For example, before reforming its criminal code in 1992, France relied on criminal texts inherited from the nineteenth century. This created significant difficulties in their interpretation and application, leading to the issuance of a new, clearer, and more precise criminal code that considers the principle of legality of crimes and punishments in a more modern way. Similarly, the United Kingdom revised many provisions of the Crimes Act of 1861, which contained complex and contradictory provisions, and replaced them with clearer legislation more in line with modern concepts of justice.¹⁰

2.2. The Inadequacy of Traditional Criminal Provisions to Achieve Deterrence and Justice

Criminal thought has witnessed a remarkable development in the philosophy of punishment. Whereas the primary purpose of punishment was to inflict pain on the

⁸ WALL, D: *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press, 2007.

⁹ UNODC: *Global Report on Organized Crime*. United Nations Office on Drugs and Crime, 2020.

¹⁰ GRABOSKY, P: *Virtual Criminality: Old Wine in New Bottles?* *Social & Legal Studies*, 10(2), 2001/243–249.

offender and achieve general deterrence through intimidation, punishment is now viewed to achieve the offender's rehabilitation and reform. This conceptual shift is based on criminological studies that have shown that harsh penalties alone do not guarantee a reduction in crime rates and may even contribute to the entrenchment of criminal behavior, especially in overcrowded and unqualified prison environments.¹¹

Therefore, new trends have emerged calling for alternatives to traditional punishments, such as community service, electronic monitoring, behavioral reform programs, and victim compensation. These alternatives aim to achieve the purposes of punishment but through more humane and effective means, which compels legal systems to introduce legislative reforms that establish these alternatives and precisely regulate their implementation mechanisms.

The trend toward alternative punishments has been evident in numerous pieces of legislation. Norway has introduced alternative sentencing systems, such as community work programs and electronic monitoring, which have helped significantly reduce recidivism rates.

In Canada, a "restorative justice" policy has been adopted in certain cases, focusing on repairing harm between the offender and the victim rather than relying solely on traditional punishments. This has proven effective in some communities, particularly among Indigenous peoples.

2.3. Modern Trends in the Philosophy of Punishment

With the growing international interest in human rights, it has become necessary to align national criminal law with international obligations imposed by relevant agreements and treaties, such as the International Covenant on Civil and Political Rights, the Convention against Torture, and others. International bodies' reviews of country files have shown that there is a gap in many national legislations between applicable laws and the requirements for respecting individual rights, whether concerning the rights of defendants during investigation and trial, or to conditions of detention and penalties.¹²

Therefore, criminal law reform is essential to ensure the protection of fundamental rights, such as the right to a fair trial, the right to defense, the presumption of innocence, and the prohibition of cruel, inhuman, or degrading punishments. This reform aims not only to improve countries international image but also to consolidate the principles of justice and ensure the rule of law at home.

¹¹ ASHWORTH, A: *Principles of Criminal Law*. Oxford: Oxford University Press, 2007.

¹² TONRY, M: *Punishing Race: A Continuing American Dilemma*. Oxford: Oxford University Press, 2011.

Many countries have responded to international human rights criticism by reforming their criminal laws.

For example, Spain reformed its Code of Criminal Procedure in 2015 to strengthen fair trial guarantees and provide greater protection for defendants during the investigation phase, in line with European standards.

Similarly, after the end of apartheid, South Africa rewrote its criminal code to reflect respect for human rights and consider the new constitutional guarantees established in the 1996 Constitution¹³.

2.4. Developments in the Field of Human Rights and International Standards

Social and cultural changes play a pivotal role in reshaping criminal policy, as the law cannot remain static in the face of a dynamic and changing society.¹⁴

For example, some acts, such as abortion or extramarital relations, were considered crimes in traditional legal systems but are no longer considered so in many modern laws due to changing societal views of individual freedom and privacy. Moreover, the rise in public awareness of the importance of human rights and the proliferation of media and social media have made it easier to arouse public opinion on criminal justice issues. This has put pressure on legislators to implement reforms that respect new values and align with individuals' aspirations for a more just and equitable law.

Considering social changes, some countries have been forced to amend their criminal laws to keep pace with these shifts.

Canada, for example, legalized *gleichgeschlechtliche Eha* in 2005 and subsequently amended the Criminal Code to repeal provisions criminalizing same-sex relations.

In Ireland, a popular referendum led to an amendment to laws criminalizing abortion, which was later reflected in changes to the criminal provisions regulating this issue in 2018.

2.5. Social and Value Transformations Within Societies

Numerous studies and official reports have shown that penal institutions, especially prisons, have become unable to fulfill their assigned role of reform and reintegration. Unsuitable prison conditions, including overcrowding and a lack of

¹³ GARLAND, D: *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, 2001.

¹⁴ TONRY, M: *Punishing Race: A Continuing American Dilemma*. Oxford: Oxford University Press, 2011.

rehabilitation programs, as well as inmates exposure to violence or exploitation, exacerbate social problems rather than solve them.¹⁵

This reality reflects the failure of traditional criminal policy, which relies on incarceration as a basis for punishment. It strongly encourages the adoption of reforms focused on reducing the use of pretrial detention, expanding alternatives to imprisonment, and strengthening rehabilitation and social integration programs. This will achieve the goals of modern criminal policy in simultaneously protecting society and reforming offenders.

The Netherlands is a prime example in this regard. Extensive reforms to the Dutch penal system have significantly reduced the prison population, with the government even closing several prisons due to a lack of inmates. This success is attributed to the adoption of alternatives to traditional imprisonment, such as rehabilitation programs, electronic monitoring, and early release with intensive supervision. Similarly, Norway—with its advanced penal institutions, such as Halden Prison—has adopted a philosophy of reform and reintegration rather than deterrence and punishment, leading to a decline in recidivism¹⁶.

2.6. The Crisis in the Effectiveness of Traditional Penal Institutions

Criminal law reform is one of the most important challenges facing modern legal systems.¹⁷ It is no longer sufficient to limit itself to maintaining social order through traditional criminalization and punishment. Rather, it has become imperative to expand the scope of criminal law to meet the requirements of a state of law and justice and keep pace with developments in society, the economy, and technology. The most prominent reform trends can be identified through the following axes:

3. Chapter Two: Contemporary Trends in Criminal Law Reform

3.1. Restoring the Balance Between Protecting Society and Preserving Individual Rights

Respect for human rights has become a fundamental principle of modern criminal policy.¹⁸ The sole objective of criminal law is no longer to combat crime and protect public order. Rather, it is obligated to adhere to international human

¹⁵ ROBINSON, P. & DARLEY, J: *Intuitions of Justice and the Utility of Desert*. Oxford: Oxford University Press, 2007.

¹⁶ UNITED NATIONS: *International Covenant on Civil and Political Rights (ICCPR)*, 1966.

¹⁷ NOWAK, M: *U.N. Covenant on Civil and Political Rights: CCPR Commentary*. N.P. Engel Publisher, 2008.

¹⁸ LOADER, I., & SPARKS, R: *Public Criminology*. Routledge, 2010

rights standards, particularly concerning fair trial guarantees, the prevention of torture and cruel treatment, and respect for the presumption of innocence.

Comparative experiences have provided an important source of inspiration in this context, as many countries have sought to redraft their procedural and substantive texts to ensure this balance. For example, following its democratic transition, Spain implemented a comprehensive reform of its Criminal Procedure Code in 1988, strengthening defense guarantees and setting clear limits on the powers of investigating authorities to prevent arbitrary infringement of individual rights. The experience of the European Court of Human Rights also served as an impetus for amending many European national laws, introducing explicit provisions guaranteeing public hearings, prompt adjudication of cases, and the accused's right to legal assistance.

3.2. Developing Alternatives to Deprivation of Liberty

Recognizing the limited deterrent effectiveness of imprisonment and its negative effects on offenders reintegration, modern criminal policy has shifted toward expanding the adoption of alternatives to custodial sentences.¹⁹

Experience has shown that imprisonment, especially for misdemeanors and minor offenses, contributes to the development of more complex criminal behavior due to the deviant environment that characterizes many penal institutions.

In response, several countries have adopted an integrated system of alternative punishments, such as community service, electronic monitoring, progressive fines, and addiction treatment programs.

In this regard, Sweden is a pioneering model, having implemented electronic monitoring since the 1990s, leading to a reduction in recidivism rates and the costs associated with imprisonment.

France, under the 2004 and 2019 reforms of the Penal Code, expanded the use of alternative punishments, empowering judges to individualize the sentence to suit the seriousness of the act and the nature of the offender.

3.3. Updating the Content of Criminalization and Punishment to Address New Crimes

The evolution of contemporary forms of crime, particularly cybercrime, transnational economic crimes, and environmental crimes, has forced legislators to

¹⁹ GARLAND, D: *Punishment and Modern Society: A Study in Social Theory*. Clarendon Press, 1990.

move beyond traditional concepts of criminalization and introduce new acts that fall within the scope of criminal protection.²⁰

The European Union has adopted a decisive approach in this area by adopting a set of legislative directives that oblige member states to criminalize attacks against information systems, money laundering, and terrorist financing.

In Canada, clear trends have emerged toward criminalizing serious environmental damage, with the introduction of criminal penalties against companies that cause widespread environmental pollution, thus establishing the concept of "criminal liability of legal persons."

This update not only expanded the scope of crimes but also included a revision of penalties to better suit the specific nature of modern crimes, such as the use of large fines, special confiscation, or judicial dissolution of companies.

3.4. Integrating Restorative Justice into the Criminal Justice System

Many countries have adopted restorative justice mechanisms as an approach that focuses on repairing the harm caused by crime and empowering the victim to play an active role in the criminal process while encouraging the offender to take responsibility for their actions.

Restorative justice is a significant development in modern criminal philosophy, replacing the logic of repressive punishment with the logic of social restoration.

New Zealand's experience has provided an inspiring model, particularly with the adoption of "family conferences" that bring together the victim, offender, and community members in a framework of dialogue and reconciliation.

Furthermore, some US states (such as Colorado) have introduced restorative justice programs for minor crimes and even some violent crimes, leading to positive results in terms of lower recidivism rates and enhancing victims' sense of justice.²¹

3.5. Modernizing Justice Institutions and Enhancing Judicial Efficiency

Justice institutions are among the cornerstones of any modern legal system that seeks to enshrine the principles of the rule of law and protect rights and freedoms. With the development of societies and the increasing complexity of social and economic relations, there has been an urgent need to modernize the institutional structure of justice and enhance the efficiency of judicial performance. This is to ensure an effective and rapid response to the demands of modern justice and to keep pace with technological challenges and rapid social transformations.²²

²⁰ LIEBLING, A., & MARUNA, S: *The Effects of Imprisonment*. Routledge, 2013.

²¹ UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC): *Handbook on Strategies to Reduce Overcrowding in Prisons*, 2013.

²² TONRY, M: *Doing Justice, Preventing Crime*. Oxford: Oxford University Press, 2019.

4. Modernization of Justice Institutions

There are multiple motivations for modernizing justice institutions, which can be summarized as follows:²³

4.1. Justifications for Modernizing Justice Institutions

The spread of digital technology has created a new legal environment that requires courts and public prosecution offices to understand concepts such as digital evidence, electronic investigations, and online litigation. This requires equipping the technical infrastructure and strengthening institutional capacities to address these changes.

4.1.1. *Confronting Modern Technical Challenges*

Many traditional judicial systems suffer from slow procedures and a backlog of court files, which undermine the principle of a fair trial within a reasonable timeframe. Therefore, improving case management and the use of smart electronic systems has become an urgent requirement for effective judicial performance.

4.1.2. *Combating Slow Litigation and Case Backlog*

Modernizing judicial institutions and improving their services is one of the most important factors in enhancing citizens' confidence in the judiciary, as it is the primary guarantor of rights and freedoms and a major source of social justice and political stability.

4.1.3. *Enhancing Public Confidence in Justice*

International standards, particularly those issued by the United Nations and regional bodies, have imposed strict standards to ensure effective and transparent justice. This requires states to introduce structural and technical reforms to comply with these obligations.

4.2. Aspects of the Modernization of Justice Institutions

The modernization of justice institutions includes several integrated dimensions, which can be detailed as follows:²⁴

4.2.1. *Judicial Digitization (E-Justice)*

Judicial digitization is a fundamental pillar of justice modernization and includes

²³ ZEDNER, L: Criminal Justice. Oxford: Oxford University Press, 2004.

²⁴ REICHEL, P: Comparative Criminal Justice Systems: A Topical Approach. Pearson, 2018.

4.2.2. Reforming Judicial Procedures

Cases are filed, files are tracked, and documents are exchanged electronically, reducing time and cost.

4.2.3. Modernizing Institutional Structures

This occurred during the COVID-19 pandemic, when several countries, such as Singapore and Canada, successfully implemented virtual court systems.

4.2.4. Improving the Continuing Education of Judges and Prosecutors

Using artificial intelligence technologies to classify and prioritize cases and provide information support to judges.

4.2.5. Enhancing Judicial Transparency and Institutional Accountability

Simplifying procedures to ensure expedited adjudication of disputes while respecting legal safeguards.

Strengthening mediation and arbitration mechanisms as an alternative dispute resolution, thus reducing the burden on traditional courts.

4.3. Pioneering International Experiences in Justice Modernization

Reviewing the organization of courts and the distribution of jurisdictions to enhance specialization and efficiency.²⁵

Establishing specialized courts (such as economic courts and courts for modern technology cases).

5. Strengthening International Cooperation to Combat Organized Crime

Incorporating training in the field of technology, modern crimes, and international human rights standards.

Developing training programs in partnership with international universities and institutes to ensure they keep pace with scientific and legal developments²⁶.

5.1. Motivations and Rationale for Strengthening International Cooperation

Establishing independent mechanisms to monitor the performance of judicial institutions and ensure their adherence to the highest standards of efficiency and integrity. Some successful international experiences in this area can be cited:

²⁵ EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ): Evaluation of European Judicial Systems, 2022.

²⁶ EUROPOL: European Union Serious and Organized Crime Threat Assessment (SOCTA), 2021.

Singapore: One of the most prominent countries to have established a comprehensive digital judicial system, facilitating access to justice via electronic platforms and ensuring systematic virtual court hearings.

Estonia: Developed one of the most advanced digital justice systems, where citizens can file lawsuits and track the entire course of cases online, reducing pressure on courts and speeding up adjudication times.

France: The Ministry of Justice launched the "Digital Transformation Program" (Programme de Transformation Numérique), which aims to digitize courts and improve the management of judicial documents and files.

Morocco: Launched a "Remote Trials" project in 2020, introducing reforms to the judicial system to enhance judicial efficiency and bring services closer to citizens. Modernizing justice institutions and enhancing judicial efficiency is no longer a legislative luxury or a political option. Rather, it has become an imperative to enable countries to keep pace with the changes of the times and ensure the delivery of prompt and effective justice. This modernization requires a comprehensive approach that integrates digitization efforts, legislative reform, and capacity building with openness to leading international experiences. This approach strengthens the judiciary's position as a protector of rights and freedoms and a guarantor of the stability of the legal and social system.

5.1.1. The Transnational Nature of Organized Crime

With the growing phenomenon of transnational organized crime, combating this phenomenon has become one of the greatest challenges facing the national legal system.²⁷ It is no longer possible to combat organized crime through traditional means that rely solely on isolated national measures. Rather, it has become imperative to strengthen international judicial and security cooperation, including information exchange, extradition, judicial commissions, and the development of effective international and regional agreements. Globalization, which has facilitated the movement of individuals, goods, and capital across borders, has also facilitated the movement of criminal networks, making it imperative to coordinate efforts across countries to confront this common threat.

5.1.2. Variations in Legal Systems and Legislation

Organized crime networks—such as drug smuggling, human trafficking, money laundering, and cybercrime—are no longer confined to the territory of a single country but operate across complex international networks. This geographical

²⁷ UNODC: *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010.

expansion limits the effectiveness of individual national measures and necessitates coordinated, cross-border responses.

The differences in criminal systems between countries in terms of definitions, penalties, and cooperation procedures create gaps that criminal networks exploit. Therefore, unifying or at least harmonizing the basic legal rules in the field of combating organized crime is essential to enhance the effectiveness of criminal prosecution.²⁸

5.1.3. International Obligations Arising from Multilateral Agreements

Many international agreements, such as the United Nations Convention against Transnational Organized Crime (Palermo Convention of 2000), impose specific obligations on states in the areas of judicial cooperation and mutual legal assistance.²⁹

5.2. Mechanisms for International Cooperation in Combating Organized Crime

5.2.1. International Conventions and Treaties

The Palermo Convention: This constitutes the primary reference for combating transnational organized crime and establishes a legal framework for cooperation between states, including extradition, mutual legal assistance, measures against money laundering, and the promotion of joint training and research.³⁰

The United Nations Convention against Corruption (Merida Convention): This aims to combat corruption that fuels organized crime activities.

5.2.2. Mutual Legal Assistance (MLA)

This includes the exchange of information and evidence, the execution of arrest warrants or the confiscation of assets, and support for cross-border investigations. Some countries have established special units specializing in international judicial commissions.³¹

5.2.3. Extradition

This is an essential mechanism to ensure that perpetrators do not escape justice when they flee the country. It is based on bilateral or multilateral treaties. However,

²⁸ TONRY, M: *Doing Justice, Preventing Crime*. Oxford: Oxford University Press, 2019.

²⁹ LIEBLING, A., & MARUNA, S: *The Effects of Imprisonment*. Routledge, 2013.

³⁰ GARLAND, D: *Punishment and Modern Society: A Study in Social Theory*. Clarendon Press, 1990.

³¹ TONRY, M: *Doing Justice, Preventing Crime*. Oxford: Oxford University Press, 2019.

this mechanism faces legal challenges related to differing systems and non-extradition conditions for political reasons or fear of torture.³²

5.2.4. Establishing International Organizations and Specialized Cooperation Bodies

INTERPOL: The International Criminal Police Organization, which facilitates cooperation between national police agencies.

EUROPOL (European Police Agency): Coordinates efforts to combat serious and organized crime within the European Union.

UNODC: Contributes to supporting capacity building in countries and enhancing regional and international coordination.

5.2.5. Forming Joint Investigation Teams (JITs)

These teams bring together investigators and judges from more than one country to work together on specific cases. They have proven effective in dismantling drug and human trafficking networks.

5.3. Challenges Facing International Cooperation

Despite the progress made, challenges remain in strengthening international cooperation, including:³³

Disparities in political and judicial systems sometimes hinder the implementation of mutual assistance or extradition.

Concerns related to national sovereignty, as some countries are reluctant to cooperate for fear of violating their sovereignty.

Human rights issues, particularly regarding the extradition of individuals to countries where they are likely to be subjected to torture or unfair trials.

Discrepancies in the definition of crimes and their legal elements lead to difficulties in harmonizing judicial efforts.

5.4. International Experiences in Enhancing International Cooperation

5.4.1. The European Union Experience

The European Union has established advanced mechanisms such as the European Arrest Warrant, which allows for the simplified and rapid extradition of wanted people between member states.

³² ROBINSON, P., & DARLEY, J: *Intuitions of Justice and the Utility of Desert*. Oxford: Oxford University Press, 2007.

³³ GARLAND, D: *Punishment and Modern Society: A Study in Social Theory*. Clarendon Press, 1990.

5.4.2. The Latin American Experience

Several countries, such as Argentina, Brazil, and Chile, have established specialized offices for international criminal cooperation and have adopted regional information-sharing networks.

5.4.3. The G20 Initiative

Initiatives to combat money laundering and terrorist financing have been launched, in coordination with the Financial Action Task Force (FATF), to enhance financial transparency and cross-border oversight.

Enhancing international cooperation in combating organized crime is no longer an option; it has become an existential necessity for states in the modern era. Organized gangs take advantage of any weakness in cooperation or slowness in cross-border procedures. Therefore, countries must develop their legislative frameworks, implement their international agreements, and enhance mutual trust between their judicial and security institutions, with the aim of building a global judicial and security network capable of jointly confronting this escalating threat.³⁴

6. Case Studies on International Cooperation

6.1. Case Study One: Dismantling the Silk Road

The dismantling of Silk Road, a massive dark web marketplace, is a prime example of successful international cooperation in combating organized cybercrime. This criminal network posed a significant challenge to global law enforcement due to its transnational nature and reliance on anonymity technologies and cryptocurrencies.³⁵

6.1.1. Background of the Criminal Network

Silk Road was established in 2011 and offered the sale of drugs, weapons, hacking services, and other prohibited goods.

The site relied on Bitcoin to facilitate anonymous transactions and used anonymity networks such as TOR to conceal server locations and user identities.

At its peak, the site's daily transaction volume was estimated to be in millions of dollars, making it one of the most dangerous cybercrime markets³⁶.

³⁴ EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ): Evaluation of European Judicial Systems, 2022.

³⁵ EUROPOL: European Union Serious and Organized Crime Threat Assessment (SOCTA), 2021.

³⁶ NAYLOR, R: Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy. Cornell University Press, 2002.

6.1.2. Mechanisms of International Cooperation Used

US security agencies, such as the Federal Bureau of Investigation (FBI) and the Drug Enforcement Agency (DEA), cooperated with foreign agencies, particularly in Europe and Australia, to obtain information on financial transactions, technical data, and suspicious online activities.³⁷

US authorities worked in coordination with Europol and the Australian police to gather evidence about the site's operations and identify the technological infrastructure used.

The United States used Mutual Legal Assistance (MLA) agreements to expedite the acquisition of electronic evidence located outside its borders and ensure the legality of procedures, allowing the evidence to be used in court.

6.1.3. Operation Results

In October 2013, the FBI arrested Ross Ulbricht, the founder and operator of Silk Road, known by the code name "Dread Pirate Roberts," at a San Francisco public library.

The site's servers, which were hosted in Iceland, were seized thanks to the cooperation of the judicial authorities there.

Ulbricht was convicted in 2015 after a trial lasting several weeks and sentenced to life imprisonment without the possibility of parole.

The operation resulted in the seizure of more than 144,000 Bitcoins (equivalent to hundreds of millions of dollars), dealing a devastating blow to organized crime on the internet.³⁸

6.1.4. Significance of the Study in the Context of International Cooperation

Demonstrating the Effectiveness of International Cooperation: The case demonstrated that global criminal networks can only be dismantled through robust and rapid international coordination between various law enforcement and judicial agencies.

The Importance of Cross-Border Digital Evidence: It demonstrated how obtaining electronic evidence requires rapid action based on organized legal channels.³⁹

³⁷ UNODC: The Globalization of Crime: A Transnational Organized Crime Threat Assessment, 2010.

³⁸ UNITED STATES DEPARTMENT OF JUSTICE: Ross Ulbricht Sentenced in Manhattan Federal Court to Life in Prison for Operating Silk Road, 2015.

³⁹ UNODC: The Globalization of Crime: A Transnational Organized Crime Threat Assessment, 2010.

6.1.5. Lessons Learned

The need to update international agreements to keep pace with the evolution of cybercrime, develop extradition mechanisms, and ensure the mutual acceptance of digital evidence.

The Silk Road dismantling operation highlights how international cooperation is no longer merely a complementary option but rather an essential component in combating globalized organized crime. This case also clearly demonstrated that success depends on rapid exchange of information, mutual trust between countries, and careful harmonization of different legal systems.⁴⁰

6.2. Case Study Two: Operation Merlin — A Model of Advanced International Cooperation Against Drug Trafficking

Recent years have witnessed the emergence of complex drug trafficking networks linking Latin America and Europe through organized international networks using the latest concealment and transportation methods. These threats have mobilized international cooperation efforts to combat organized crime. One of the most successful examples in this regard was Operation Merlin, a joint operation carried out by several European and American countries to dismantle a cocaine trafficking network.⁴¹

6.2.1. Background of the Criminal Network

The network operated from Latin America (particularly Colombia and Ecuador) via seaports to Europe, exploiting weak controls at some border crossings and using innovative smuggling methods such as concealing drugs within legal shipments.

The network included actors within major ports such as the Port of Rotterdam (Netherlands) and the Port of Antwerp (Belgium), as well as distribution points in Spain and France⁴².

6.2.2. Mechanisms of International Cooperation in Operation

A unified "operations center" was established, comprising representatives from Europol, the Spanish National Police, Colombian authorities, and the US Drug Enforcement Administration (DEA).

⁴⁰ UNITED STATES DEPARTMENT OF JUSTICE: Ross Ulbricht Sentenced in Manhattan Federal Court to Life in Prison for Operating Silk Road, 2015.

⁴¹ EUROPOL: Press Release Operation MERLIN: Dismantling an International Cocaine Trafficking Network, 2020.

⁴² Ibid.

Joint surveillance and inspection operations were conducted at several ports based on shared intelligence.⁴³

International letters of request were used to exchange evidence and obtain search, and prosecution warrants in various jurisdictions.

Judicial agreements between the European Union and Latin American countries facilitated the expedited procedures.⁴⁴

Simultaneous operations were conducted in more than five countries to simultaneously arrest the network's leaders, preventing their escape or the smuggling of funds.

The arrests included more than 70 individuals of various nationalities.⁴⁵

In cooperation with anti-money laundering units, the network's assets were frozen and confiscated across several jurisdictions, amounting to over €100 million.

6.2.3. Operation Results

The entire network was dismantled, including financiers, brokers, and transporters.

Significant quantities of cocaine, estimated at approximately 8 tons, were seized before reaching the European market.

Millions of dollars in financial and real estate assets were seized, which were used to launder the proceeds of smuggling.⁴⁶

Customs control techniques were improved thanks to lessons learned from this operation, resulting in increased inspection efficiency at European ports.

6.2.4. The Importance of Operation as a Model of International Cooperation

Operation Merlin demonstrated how international strategic coordination⁴⁷, beyond mere information exchange, is key to successfully combating complex criminal networks.

The importance of integration between police, judicial, and financial agencies to achieve comprehensive results (arrest + asset confiscation + network dismantling) was highlighted.

⁴³ GRABOSKY, P: Virtual criminality: Old wine in new bottles? *Social & Legal Studies*, 10(2), 2001/243–249 .

⁴⁴ LIEBLING, A & „MARUNA, S: The Effects of Imprisonment. Routledge, 2013. LOADER, I & „SPARKS, R: Public Criminology. Routledge, 2010.

⁴⁵ NOWAK, M: U.N. Covenant on Civil and Political Rights: CCPR Commentary (2nd ed.). N.P. Engel Publisher, 2008

⁴⁶ UNITED NATIONS: International Covenant on Civil and Political Rights (ICCPR), 1966.

⁴⁷ REICHEL, P: Comparative Criminal Justice Systems: A Topical Approach (7th ed.). Pearson, 2018.

She emphasized that mutual trust, the speed with which judicial commissions are executed, and the extradition of criminals are crucial elements in thwarting networks before they complete their criminal operations.⁴⁸

Operation Merlin embodies a comprehensive model for enhancing international cooperation in combating transnational organized crime. It demonstrates that transformations in criminal law must include clear and effective mechanisms for international judicial and security coordination, enhancing states' ability to protect their internal security within a common global framework.⁴⁹

7. Conclusion

In conclusion, this research clearly demonstrates that reforming modern criminal law is no longer a matter of choice. Rather, it has become an imperative imposed by the rapid transformations the world is witnessing at the technological, social, and ethical levels.⁵⁰ Through our analysis, we have highlighted that crime patterns are no longer confined to traditional forms but have evolved into more complex forms, such as cybercrimes and transnational organized crime. This reveals the shortcomings of traditional criminal texts and their inability to achieve effective deterrence and ensure criminal justice in its modern sense.⁵¹

The research has demonstrated that developments in the philosophy of punishment, where the focus has shifted from repressive deterrence to reforming the offender and reintegrating them into society, require a reconsideration of the entire penal system. This shift requires moving away from custodial sentences as the sole solution and embracing modern alternatives aimed at correcting behavior rather than merely punishing it. International developments in the field of human rights have reinforced this trend, as it is no longer acceptable for national criminal laws to continue to ignore international standards that protect human dignity and guarantee a fair trial and fair criminal proceedings.⁵²

Moreover, international experiences, as reflected in the case studies in this research, have revealed the importance of strengthening international judicial and security cooperation as a fundamental pillar in combating transnationally organized crime. The operation to dismantle the Silk Road cyber network and Operation Merlin to combat drug trafficking are clear examples that modern crimes require a

⁴⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC): *The Globalization of Crime: Transnational Organized Crime Threat Assessment*. United Nations, 2010.

⁴⁹ UNITED STATES DEPARTMENT OF JUSTICE: *Ross Ulbricht Sentenced in Manhattan Federal Court to Life in Prison for Operating Silk Road*, 2015.

⁵⁰ UNITED NATIONS: *International Covenant on Civil and Political Rights (ICCPR)*, 1966.

⁵¹ GARLAND, D: *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, 2001.

⁵² EUROPOL: *Operation MERLIN: Dismantling an International Cocaine Trafficking Network* (Press release), 2020.

unified and coordinated international response based on intelligence sharing, the activation of judicial delegations, and the expediting of extradition procedures.⁵³

A review of reform trends reveals that the modern trajectory is moving toward updating criminal legislation to respond to new realities, developing justice institutions to enhance their efficiency and effectiveness, and embedding the principles of restorative justice and respecting victims' rights. These trends not only seek to achieve effective criminal protection but also aim to rebuild societal trust in the judicial system and ensure the rule of law within a framework of respect for democratic values and human rights.

Reforming modern criminal law therefore requires a comprehensive vision that goes beyond simply amending legal texts to include restructuring criminal justice institutions, developing the capacities of the judiciary and public prosecution, enhancing international cooperation, and establishing a new culture based on respect for human dignity and the search for effective and sustainable solutions to crime. This makes reform not merely a temporary response to emerging changes but rather a long-term project requiring ongoing legislative, institutional, and societal efforts.⁵⁴

In light of the above, it becomes clear that the success of any reform process in the field of criminal law depends on the ability of legislators, decision-makers, and justice institutions to adopt scientific and integrated approaches that take into account the complexities of the contemporary criminal phenomenon and draw inspiration from international best practices while preserving the specificities of each society and its security and social needs.⁵⁵

⁵³ REICHEL, P: *Comparative Criminal Justice Systems: A Topical Approach* (7th ed.) Parsons, 2018.

⁵⁴ GRABOSKY, P: Virtual criminality: Old wine in new bottles? *Social & Legal Studies*, 10(2), 2001/243–249.

⁵⁵ ROBINSON, P. H., & DARLEY, J: *Intuitions of Justice and the Utility of Desert*. Oxford: Oxford University Press, 2007.

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TOMASZ BOJANOWSKI*

Selected Aspects of Recidivism in Polish Criminal Law

Abstract: The subject of the article is a discussion of the phenomenon of recidivism in Polish criminal law. The author focuses on its dogmatic presentation. It discusses the historical evolution of this institution from the Penal Code of 1932 through the Code up to 1969 to the Code currently in force from 1997. The main axis of dogmatic considerations are the regulations of special (ordinary, and multiple) recidivism, as well as the new type of recidivism under Article 64a of the Penal Code. These considerations are extended by definitional considerations on the phenomenon of recidivism in general, legal, criminological, and penitentiary terms. The most important part of the article consists of selected data on recidivism, which are discussed by the author. On this basis, the author summarizes the considerations and draws conclusions.

Keywords: Criminal Law, Penal Code, Recidivism, Conviction, Imprisonment

1. Introduction

In the common understanding, recidivism means the return of a convicted person to a crime and gives the possibility of a harsher punishment against the perpetrator¹. At the same time, it is pointed out that this is a reaction to the ineffectiveness of the system of criminal repression. The approach to recidivism legislation depends on the approach to the criminal law system and punitive measures, i.e., whether they are intended to play a rehabilitative or repressive role.²

Reflections on recidivism should begin at the linguistic level. First of all, it is a term proper to legal language. Its origins can be found in the Latin term „*recedere*”, which means „*to fall in again*”. Semantically, the term refers to repetition, to falling back into a certain situation.³ Therefore, recidivism should be treated as a

* Tomasz Bojanowski, PhD student at the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw

¹ PLEŃSKA D.: Zagadnienia recydywy w prawie karnym. Warsaw, 1974, 23.; KOSSONOGA-ZYGMUNT J.: Recydywa jurydyczna w wybranych państwach członkowskich. Unii Europejskiej, Warsaw, 2016, 1–2.; PEIPER L.: Komentarz do kodeksu karnego: prawa o wykroczeniach, przepisów wprowadzających obie te ustawy oraz do rozporządzenia Prezydenta R. P. o niektórych przestępstwach przeciw bezpieczeństwu państwa z dnia 24 października 1934 roku (Dz. U. nr 94, poz. 851): z uwzględnieniem ustawy karnej skarbowej, ordynacji podatkowej, kodeksu karnego wojskowego, ustaw dodatkowych, orzecznictwa Sądu Najwyższego. Kraków, 1936, 169.; MAJEWSKI J.: Komentarz do Art. 64 Kodeksu Karnego, Komentarz do art. 53–116 in. Wróbel W., Zoll. A. (eds.), Kodeks karny. Część ogólna, t. 1, cz. 2, Warsaw, 2016.

² BUDYN KULIK M.: Kary i środki karne alternatywne wobec kary pozbawienia wolności. Warsaw, 2010.

³ PLEŃSKA D.: Zagadnienia recydywy w prawie karnym, Warsaw, 1974, 23.

reoffending, a repetition of a crime, that is, the repetition of a crime by the same perpetrator⁴. It is necessary to point out the thesis of L. Lernell, according to which this concept has a figurative sense, because it is impossible to return to the fact, it is impossible to repeat it.⁵

It should be pointed out that recidivism can be defined in many ways depending on the starting point adopted. In this regard, we can distinguish the following types of recidivism: criminological and penitentiary, as well as general and special (ordinary and multiple)⁶. The subject of deeper considerations in this article will be special ordinary and multiple recidivism in dogmatic terms under the Penal Code of 1997⁷. In addition, a new type of recidivism introduced in the latest amendment to the Penal Code will be discussed, directed at perpetrators who repeat to the crime of murder in connection with rape or a crime against sexual freedom punishable by imprisonment of at least 8 years⁸. An important part of the article will be selected statistical data on recidivism.

In addition, in order to properly present the picture of the phenomenon of recidivism, the concepts related to recidivism presented above will be explained. The study will also include a historical introduction on the inclusion of recidivism in the Penal Code of 1932⁹ and 1969¹⁰. On this basis, the author will derive theses summarizing the deliberations on the subject indicated by the title of the article.

This analysis was based on scientific methods characteristic of legal sciences, i.e., formal, and dogmatic, theoretical, and legal and historical-legal.

2. Historical background

Since the dawn of time, the issue of the so-called recurrent crime has been the subject of interest of law (criminal law), as well as criminology and penitentiary studies¹¹. It is worth quoting here the opinion of Gustaw Radbruch, who pointed out that describing the system of recidivism means in fact describing the system of criminal policy of the state¹².

In the context of this paper, it is necessary to focus on selected historical aspects, i.e., the regulation of recidivism in the Penal Codes. The subject of the analysis will

⁴ KOSSONOGA-ZYGMUNT J.: i.m. 2016, 1–2.

⁵ LERNELL L.: *Zarys kryminologii ogólnej*. Warsaw, 1978.

⁶ MAJEWSKI J.: i.m. 2016.

⁷ Act of 6 June 1997 – Criminal Code, Dz. U. z 2022 r. poz. 1138, z późn. zm.

⁸ Act of 7 July 2022 Amending the Criminal Code and Certain Other Acts, Dz.U. 2022, Dz.U. 2022 poz. 2600; Act of 26 January 2023 Amending the Code of Civil Procedure and Certain Other Acts, Dz.U. 2023 poz. 403.

⁹ Decree of the President of the Republic of Poland of 11 July 1932 – Criminal Code, Dz.U. 1932 nr 60 poz. 571.

¹⁰ Law of 19 April 1969 Criminal Code, Dz.U. 1969 nr 13 poz. 94.

¹¹ MOZGAWA M.: *Kodeks karny. Komentarz aktualizowany*. Warsaw, 2023.

¹² RADBRUCH G.: *Die gesetzliche Straffänderung, Rückfall oder Gewohnheitsmässigkeit* [w:] *Vergleichende Darstellung des deutschen und ausländischen Strafrechts*. t. 3, 1908.

be the legal treatment of recidivism in the Penal Code of 1932 and 1969. The author will skip to discuss the special laws on recidivism that were in force before the enactment of the 1932 Code and in the border periods before the enactment of the 1969 and 1997 Codes.

3. Penal Code 1932

In the Penal Code of 1932, one of the authors of which was the eminent Polish lawyer Juliusz Makarewicz¹³, recidivism in legal terms was regulated in Article 60 § 1 of the Penal Code. According to the wording of this provision, a recidivism occurs when the perpetrator commits a new crime for the same reasons or of the same type as the previous crime within 5 years after serving his sentence in the country or abroad, in whole or at least in a third part, or within 5 years after his release from a detention facility, the court may impose a penalty higher by half of the maximum statutory sentence, however, without exceeding the statutory limit of a given type of penalty. If the law gives the court a choice between imprisonment and detention, the sentence of imprisonment cannot be imposed.

Pursuant to Article 60 § 2 of the Penal Code, the provision of Article 60 § 1 of the Penal Code also applies to a professional perpetrator or a criminal out of habit, even if there is no case of reoffending. Moreover, if it is found that the perpetrator has reoffended three times under the conditions set out in Article 60 § 1 of the Penal Code of 1932, the court is obliged to order that the perpetrator be placed in an institution for incorrigible perpetrators after serving his sentence, in accordance with Article 84 § 1 of the Penal Code of 1932, in which the confinement lasted "if necessary, in any case at least 5 years".¹⁴

To sum up, it should be pointed out that recidivism under the conditions of the Penal Code of 1932 occurred¹⁵ when the following conditions were fulfilled:

- 1) The crimes committed were of the same kind;¹⁶
- 2) The motives of the perpetrator of the crime were identical;¹⁷
- 3) The convict had to serve at least 1/3 of the sentence;¹⁸
- 4) The reoffending took place within five years of serving the sentence.¹⁹

The consequences of a conviction under conditions of recidivism were, respectively:

¹³ MAKAREWICZ J.: Kodeks karny z komentarzem, Lwów 1938, 220.

¹⁴ MAJEWSKI J.: i.m. 2016.

¹⁵ KOSSONOGA-ZYGMUNT J.: i.m. 2016, 8–16.

¹⁶ ŚLIWIŃSKI S.: Polskie prawo karne materialne. Część ogólna. Warsaw, 1946, 481–482.

¹⁷ PŁAWSKI S.: Recydywa. Warsaw, 1966; TOBIS A.: Pobudki przestępczego działania recydywisty. Ruch Prawniczy, Ekonomiczny i Socjologiczny, 1965/2, 119–133.

¹⁸ MAKAREWICZ J.: i.m. 1938, 220.

¹⁹ PEIPER L.: i.m. 1936, 167–168.

- 1) The possibility of imposing a penalty exceeding the upper limit of danger by half, but not exceeding the statutory limit provided for a given type of sentence;
- 2) Exclusion of the possibility of conditional suspension of the execution of the sentence;
- 3) Prohibition of parole;
- 4) Placement in the establishment for the incorrigible.

4. Penal Code 1969

With the installation of the Soviet authorities in Poland in 1944, the process of far-reaching changes in substantive and formal criminal law began. These changes were in line with the Soviet criminal justice system, which was contrary to respect for fundamental human rights and freedoms. The changes in the area of recidivism were guided by the need to toughen penalties for perpetrators who repeatedly commit crimes.²⁰

From 1953 to 1970, the so-called non-code regulations were in force in this area. The following certain acts should be mentioned here:

- 1) Decree of 4 March 1953 on the Strengthening of the Protection of Social Property;²¹
- 2) Decree of 4 March 1953 on the Protection of Social Property against Petty Theft;²²
- 3) Act of 29 May 1957 on the Conditional Release of Persons Serving a Prison Sentence;²³
- 4) Act of 22 May 1958 on Aggravation of Criminal Liability for Hooliganism;²⁴
- 5) Act of 22 April 1959 on Combating Illicit Spirits;²⁵
- 6) Act of 18 June 1959 on Criminal Liability for Crimes Against Social Property.²⁶

In addition to the trial-and-error method, which was based on the introduction of further regulations, research was also carried out on the following areas: a

²⁰ MAJEWSKI J.: i.m. 2016.

²¹ Decree of 4 March 1953 on the Strengthening of the Protection of Social Property, Dz.U. 1953 nr 17 poz. 68.

²² Decree of 4 March 1953 on the Protection of Social Property against Petty Theft, Dz.U. Nr 17, poz. 69 ze zm.

²³ Act of 29 May 1957 on the Conditional Release of Persons Serving a Prison Sentence, Dz.U. z 1961 r. Nr 58, poz. 321.

²⁴ Act of 22 May 1958 on Aggravation of Criminal Liability for Hooliganism, Dz.U. Nr 34, poz. 152 ze zm.

²⁵ Act of 22 April 1959 on Combating Illicit Spirits, Dz.U. Nr 27, poz. 169 ze zm.

²⁶ Act of 18 June 1959 on Criminal Liability for Crimes Against Social Property, Dz.U. Nr 36, poz. 228 ze zm.

statistical aspect of recidivism²⁷; the phenomenon of recidivism in the army²⁸; the phenomenon of recidivism in the light of psychological research²⁹; recidivism in the penological aspect³⁰; issues of penitentiary recidivism³¹; criminological issues of recidivism³². The research was used to prepare a new regulation, i.e., the Penal Code of 1969, which was to include institutions allowing for the prevention and prevention of recurrence of crime and its severe punishment.

The legislator decided to introduce a distinction between ordinary and multiple special recidivism in Article 60 § 1 and § 2 of the Penal Code. The new Penal Code made a distinction between general, special (ordinary and multiple) recidivism.

Special ordinary recidivism occurred when an perpetrator sentenced to imprisonment for an intentional crime commits an intentional crime similar to the crime for which has already been convicted within 5 years after serving at least 6 months of the sentence, the court may impose the penalty prescribed for the crime attributed to the perpetrator up to the upper limit of the statutory risk increased by half.

On the other hand, multiple special recidivism occurs when an perpetrator previously convicted under the conditions of ordinary special recidivism, who has served a total of at least one year of imprisonment and within 5 years after serving all or part of the last sentence, commits again an intentional crime against life or health, rape, burglary or other crime against property committed with the use of violence or the threat of violence, The court imposes the custodial sentence prescribed for the crime assigned to him up to the upper limit of the statutory risk increased by half.

Importantly, the penalty imposed under the conditions of recidivism could not exceed the statutory limit of a given type of sentence. The so-called rigour of the presented solutions was to some extent inhibited by the provisions of Article 61 of the Penal Code of 1969, which in particularly justified cases allowed for the application of the above-mentioned principles in the assessment of the penalty³³.

The legislator has also provided for the application of post-penal measures to repeat perpetrators, i.e. protective supervision and stay in a social adjustment centre.

²⁷ PAWEŁA S.: Recydywa. Prawo i Życie, 1965/3; PEŁKA-SŁUGOCKA M. D.: Powrót do przestępstwa w latach 1959–1963 na podstawie statystyki Ministerstwa Sprawiedliwości. Nowe Prawo, 1965/7–8, 899–905.

²⁸ OLEJNICZAK J.: Z zagadnień recydywy w wojsku. Wojskowy Przegląd Prawniczy, 1968/2, 136–148.

²⁹ SIKORA J.: Zagadnienie recydywy w świetle badań psychologicznych. Przegląd Penitencjarny, 1963/1, 89–99.

³⁰ PŁAWSKI S.: Poszukiwanie nowych środków przymusu w walce z przestępczością. Zeszyty Naukowe Uniwersytetu Łódzkiego 1966/44, 5–11.

³¹ SZYMANOWSKI T.: Recydywa w systemie penitencjarnym PRL. Przegląd Penitencjarny, 1969/3, 3–16.

³² LERNELL L.: Zagadnienia recydywy w świetle obrad III Międzynarodowego Kongresu Kryminologów. Problemy Kryminalistyki, 1957/6–7.

³³ MAJEWSKI J.: i.m. 2016.

Along with the changes in the political system, changes in criminal law began, also in the area of recidivism, which were intended to improve the functioning of these institutions³⁴. It should be pointed out that, despite fundamental changes of a political and legal nature, the regulation on special recidivism was initially taken over almost unchanged by the current Penal Code of 1997³⁵.

5. Types of recidivism in the Penal Code of 1997

Before we move on to the dogmatic analysis of recidivism in the Polish legal system, it is necessary to briefly explain the basic definitions related to recidivism, which are used for the purposes of legal, criminological, or penitentiary analyses. The author has decided to present these definitions here so that they are as up to date as possible and contrast with the contemporary normative approach to recidivism.

Criminological recidivism is the repetition of any crime regardless of whether the perpetrator has previously been convicted. If perpetrator was convicted, it does not matter what sentence was imposed or whether and when served it. The key in this context is the repetition of the crime³⁶.

Recidivism refers to when the perpetrator is serving a prison sentence again for any crime committed. In this definition, it is irrelevant when and to what extent served his sentence³⁷.

General recidivism is the punishment of the perpetrator of a prohibited act for a crime of a given type, e.g., an intentional misdemeanour. This excludes the application of certain criminal law institutions, e.g., conditional discontinuance of proceedings (Article 66 of the Penal Code)³⁸.

The subject of a broader analysis will be the so-called special recidivism, which consists in an optional or obligatory increase of the penalty against the perpetrator of an act who has already been punished for a specific type of crime, who has committed the crime again within a given period of time and after serving a certain part of the previously imposed prison ³⁹sentence. Within the framework of special recidivism, we distinguish between ordinary and multiple special recidivism. As of 1 October 2023, a new type of recidivism has been in place, which is a kind of extension of the ordinary special recidivism, the so-called recidivism under Article 64a of the Penal Code.

³⁴ MAJEWSKI J.: i.m. 2016.

³⁵ MAJEWSKI J.: i.m. 2016.

³⁶ MAREK A.: *Prawo karne*. Warsaw, 2007, 310.

³⁷ MOZGAWA M.: i.m. 2023, 207.

³⁸ RAGLEWSKI J.: *Nauka o karze. Sądowy wymiar kary*. In: KACZMAREK T. (eds.) *System Prawa Karnego*. t. 5. Warsaw, 2015, 488–489.

³⁹ MAJEWSKI J.: i.m. 2016.

6. Special Ordinary Recidivism

Also called special perpetrator or simple recidivism. It is regulated in Article 64 § 1 of the Penal Code. Pursuant to this provision, a special basic recidivism occurs when: *„If a perpetrator sentenced to imprisonment for an intentional crime commits, within 5 years after serving at least 6 months' sentence, an intentional crime similar to the crime for which has already been convicted, the court shall impose the penalty prescribed for the crime imputed in excess of the lower limit of the statutory risk and may impose it up to the upper limit of the statutory risk increased by half.”*

The presented provision contains the following conditions for special recidivism:

- 1) committing an intentional crime;
- 2) being convicted of an intentional crime and sentenced to imprisonment;
- 3) serving at least 6 months of the sentence;
- 4) committing a similar intentional crime for which has been convicted;
- 5) committing a similar crime within 5 years of serving the sentence⁴⁰.

If the above-mentioned conditions are fulfilled, the penalty for the perpetrator must be increased. The wording of the provision does not limit the activity of the court, which may impose a fine, restriction of liberty or imprisonment (depending on the statutory threat of a given crime). However, one penalty must exceed the lower limit of the statutory risk – this is an obligatory action. At the same time, the court may impose a penalty increased by half above the upper limit of the statutory risk. This restriction of the penalty does not apply to crimes under Article 64 § 3 of the Penal Code⁴¹.

7. Special Multiple Recidivism

Also called multi-recidivism. It is regulated by Article 64 § 2 of the Penal Code. According to this provision, a special multiple recidivism occurs:

„If a perpetrator previously convicted under the conditions referred to in paragraph 1 or Article 64a, who has served a total of at least one year of imprisonment and within 5 years after serving all or part of the last sentence, commits again an intentional crime against life or health, rape, robbery, burglary or any other crime against property committed with the use of violence or the threat of violence, The court shall impose a custodial sentence prescribed for the crime imputed in an amount ranging from the lower limit of the statutory risk increased by half to the upper limit of the statutory risk increased by half.”

Special multiple recidivism is prerequisite for the following conditions:

⁴⁰ GIEZEK J.: Kodeks Karny. Część ogólna. Komentarz. Warsaw, 2021.

⁴¹ MOZGAWA M.: i.m. 2023, 207.

- 1) previous conviction of the perpetrator under the conditions of ordinary special recidivism (Article 64 § 1 or Article 64a of the Penal Code);
- 2) serving a total of at least one year of imprisonment;
- 3) repetition of an intentional crime as defined in Article 64 § 2 of the Penal Code;
- 4) committing the above-mentioned crime within 5 years of serving all or part of the last sentence.

Multiple recidivism is the commission of a third consecutive intentional crime, except that the penalty imposed for the second crime committed has already been based on the provisions on basic recidivism. It is also referred to as recidivism proper⁴². Committing a crime under conditions of special recidivism gives the court the following options:

- 1) mandatory imposition of a custodial sentence;
- 2) mandatory imposition of a custodial sentence from the lower limit of the statutory risk increased by half;
- 3) increasing the upper limit of the statutory risk by half.

As in the case of special recidivism, the restriction of the penalty does not apply to crimes applicable to Article 64 § 3 of the Penal Code.

8. Recidivism under Article 64a of the Penal Code

The new type of recidivism under Article 64a of the Penal Code applies to perpetrators who repeat the crime of murder in connection with rape or a sexual crime punishable by imprisonment of at least 8 years. Recidivism applies to this provision when:

„If, within 5 years after serving at least 6 months' imprisonment for the crime of murder in connection with rape or for a sexual crime punishable by imprisonment of at least 8 years, the perpetrator commits such crime again, the court shall impose the custodial sentence prescribed for the crime imputed in an amount from the lower limit of the statutory risk increased by half to the upper limit of the statutory risk increased by half. The increase in the statutory upper penalty does not apply to crimes.”

The latest amendment to the Penal Code introduced a special form of recidivism, which involves the perpetrator committing one of two intentional crimes: murder in connection with rape or a crime against sexual freedom and decency, punishable by imprisonment, the upper limit of which is at least 8 years. In order to apply these provisions, it is necessary that the perpetrator has been convicted of such a crime and sentenced to imprisonment. In addition, the crime must have been committed within 5 years after serving at least 6 months of the sentence for the first offense. As a consequence of fulfilling the above-mentioned

⁴² KRÓLIKOWSKI R. – ZAWŁOCKI R.: Kodeks karny - część ogólna. Tom I, Warsaw, 2021.

conditions, the penalty must be imposed by the s.a. from the lower limit of the statutory risk increased by half, and in the case of misdemeanours to the upper limit of the statutory risk increased by half.

The regulation in question entered into force on 1 October 2023, which means that its application by the procedural authorities cannot be assessed. Nevertheless, at the stage of legislative work, a number of entities expressed their criticism of it⁴³. The justification states that: *"both the practical experience mentioned above and the results of well-known criminological research lead to an unambiguous conclusion that only an obligatory increase in the lower limit of the statutory threat has the expected general and preventive impact, in particular at the level of the impact of the act, increasing in a certain, and not only probable, way the "cost" of criminal behavior that the perpetrator will have to bear committing criminal unlawfulness in conditions resulting in a modification of the limits of the statutory threat"*⁴⁴.

Opinions referring to both the regulations and the justification indicate: failure to demonstrate the need to introduce the indicated change by referring to court statistics, failure to indicate specific studies conducted in this area; or failure to demonstrate the necessity of its introduction and its usefulness in the perspective of introducing restrictions on the exercise of constitutional freedoms, including personal freedom. It has not been demonstrated that there is a need to restrict rights and freedoms pursuant to Article 31 section 3 of the Constitution of the Republic of Poland (conditions for restriction of rights and freedoms)⁴⁵. However, we will have to wait until the courts apply these provisions for a final assessment.

9. Statistics

For criminological purposes, recidivism statistics are of fundamental importance. It should be emphasized that in relation to the commission of individual crimes, statistics are kept by the Police Headquarters. Unfortunately, due to the specific nature of convictions of repeat perpetrators, the Police do not keep statistics in this area. The most important role is played by the Statistical Data of the National Criminal Register – on their basis, the Ministry of Justice prepares the Report *„Return to crime in the years 2009-2015-2”*.⁴⁶ The latest report covers the period 2009-2015, but it deals with recidivism in general, not by crime.

⁴³ Opinion of the Commissioner for Human Rights of 15.7.2022 on the bill of 7.7.2022 amending the Penal Code and certain other acts (Senate paper No. 762, Senate of the Republic of Poland of the tenth term), pp. 16–17; Opinion on the Act of 7.7.2022 amending the Penal Code and certain other acts (Senate paper No. 762, Senate of the Republic of Poland of the tenth term), pp. 39–41

⁴⁴ Explanatory memorandum to the government's bill of 7 July 2022 amending the Penal Code and certain other acts.

⁴⁵ BOGACKI P. – OLEŻAŁEK M.: Komentarz do nowelizacji z 7.7.2022 r. Warsaw, 2023, 183–188.

⁴⁶ Return to crime in the years 2009 – 2015, Warsaw 2017, <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/download,3502,12.html> (letöltés dátuma: 2023. 10. 25.)

We also have a response to a request for public information, in which it was indicated that the number of persons who completed the execution of their prison sentence in full or were released on parole within 5 years, and who have relapsed into crime since the end of their imprisonment or conditional release in the period 2015-2019 was 17,211 people. i.e., 38.8% of those who have completed their sentences.

For the purposes of this article, we will primarily use the report "Forensic Statistics. Final Judgments of Adults 2014-2018".⁴⁷ The report "The Dimension of Punishment for a Multi-Recidivist – A Statistical Picture of Court Practice" will also be helpful⁴⁸.

9.1. Recidivists compared to total convicted persons

Year	Number of convictions	Recidivist together	Article 64 § 1 – ordinary special recidivism	Article 64 § 2 – special multiple recidivism
2014	295 353	15 321	13 645	1 676
2015	260 034	14 458	12 845	1 613
2016	289 512	16 353	14 331	2 022
2017	241 436	14 325	12 560	1 765
2018	275 768	15 479	14 072	1 677

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:
Forensic Statistics. Final judgments of adults 2014–2018.

A dogmatic distinction between recidivism and a discussion of its types was necessary in order to discuss the share of recidivists in the total number of convictions. At the outset, it should be pointed out that the overall number of convictions remains at a similar level. Compared to 2014, the number of convictions in 2018 decreased by 20,000, and the lowest number was recorded in 2017.

Interestingly, there are much smaller fluctuations among repeat perpetrators. Over the past five years, their number of recidivism crimes has remained at a similar level. However, their number increased in 2018 compared to 2014. The highest number of convictions under conditions of recidivism was recorded in 2016.

When it comes to the inclusion of ordinary special recidivism, the statistics are similar. Between 2014 and 2018, there was a slight increase in the number of crimes

⁴⁷ Forensic statistics. Legally Binding Judgments of Adults, Warsaw 2020, <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/download/2779,12.html> (letöltés dátuma: 2023. 10. 25.)

⁴⁸ MARCZEWSKI M.: Wymiar kary wobec multirecydywisty – statystyczny obraz praktyki sądowej. Warsaw, 2019.

committed under Article 64 § 1 of the Penal Code. The highest was recorded in 2016. In the case of special multiple recidivism, the statistics in 2014 and 2018 are almost the same.

It is worth noting the persistence of the level of committing crimes in both conditions of recidivism at the same time, with the number of convictions decreasing. This indicates that, in general, the number of crimes committed is decreasing, but the number of repeat perpetrators is remaining. This is due to the increase in the rate of crimes committed under conditions of recidivism.

9.2. Percentage of recidivists among the total number of convicts

2014	2015	2016	2017	2018
5,2 %	5,6 %	5,6 %	6 %	5,7 %

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:

Forensic Statistics. Final judgments of adults 2014–2018.

The share of repeat perpetrator s in the total number of convicts is presented above. As you can see, the percentage of repeat perpetrators is gradually increasing. The highest rate reached 6% in 2017. The increase in the rate is conditioned by a decrease in the overall number of convictions and a relatively stable level of convictions in conditions of recidivism.

It is worth keeping an eye on this indicator in the context of the introduction of a new type of recidivism. In addition, it points to the effectiveness of the regulation on recidivism. If the percentage continues to increase in parallel with the decrease in the overall number of convictions, it will mean that the provisions on recidivism are inefficient and a legal change in this area is needed.

9.3. Territorialisation of recidivism in absolute numbers

Voivodeship	2014	2015	2016	2017	2018
All of Poland	15 321	14 458	16 353	14 325	15 749
Dolnośląskie	1 519	1 355	1 634	15 512	1 537
Kujawsko-pomorskie	955	775	931	886	935
Lubelskie	780	853	840	704	883
Lubuskie	749	683	753	605	817
Łódzkie	862	813	937	918	907
Małopolskie	1 147	1 139	1 220	994	964
Mazowieckie	1 774	1 811	2 253	2 107	2 028
opolskie	332	198	183	181	218

Podkarpackie	482	469	475	458	524
podlaskie	447	491	485	400	435
Pomorskie	805	722	843	815	858
śląskie	1 779	1 725	1 958	1 678	1 816
Świętokrzyskie	406	394	442	398	521
Warmińsko mazurskie	924	789	911	671	782
Wielkopolskie	1 377	1 296	1 453	1 151	1 541
Zachodnio- pomorskie	936	875	940	764	823
abroad	46	69	94	39	69
Unspecified	1	1	1	44	91

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:
Forensic Statistics. Final judgments of adults 2014–2018.

The territorial aspect is an interesting issue that is influenced by historical, social, and economic issues. Nevertheless, it is worth emphasizing that the population density and the number of inhabitants is of key importance here.

The highest rate of crimes committed in conditions of recidivism occurs in the largest, most populous, and richest voivodships, i.e., Mazowieckie, Śląskie, Dolnośląskie, Małopolskie and Wielkopolskie. On the other hand, the lowest rate is found in the eastern voivodships, i.e., Podlaskie, Podkarpackie and Lubelskie.

9.4. Territorialisation of recidivism in percentage terms

Voivodeship	2014	2015	2016	2017	2018
All of Poland	5,2	5,6	5,6	5,9	5,7
Dolnośląskie	5,9	6,3	6,9	7,2	6,6
Kujawsko- pomorskie	6,0	6,0	6,4	6,9	6,8
Lubelskie	4,4	4,8	4,4	4,7	4,8
Lubuskie	6,8	7,2	7,3	7,9	7,9
Łódzkie	4,8	5,3	5,3	6,2	5,6
Małopolskie	6,0	6,2	6,1	6,1	5,7
Mazowieckie	4,6	5,3	5,7	6,1	5,4
opolskie	4,0	2,9	2,7	3,2	3,3
Podkarpackie	3,8	4,0	3,9	4,5	4,3
podlaskie	5,1	6,5	6,3	5,7	5,8
Pomorskie	4,7	5,1	5,0	5,7	5,6
śląskie	4,5	4,9	5,1	5,3	5,2
Świętokrzyskie	5,1	5,5	5,7	5,8	5,9

Warmińsko mazurskie	7,1	7,3	7,1	6,8	6,1
Wielkopolskie	5,5	6,0	5,9	6,2	6,4
Zachodnio- pomorskie	6,0	6,0	5,9	6,0	5,6
zagranica	4,9	5,2	5,0	6,8	11,8
nieokreślone	1	1	1	3,5	6,3

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled: Forensic Statistics. Final judgments of adults 2014–2018.

Statistics on the territorial treatment of recidivism as a percentage are much more reliable than the presentation of absolute numbers. It is worth noting that the highest rates dominate in the northern and western voivodships, i.e., Lubuskie, Warmińsko-Mazurskie, Kujawsko-Pomorskie and Dolnośląskie.

An interesting fact is the low result in the Opolskie Voivodeship (the lowest in 2018 – 3.3%). In addition, the lowest results are recorded in the eastern provinces, i.e. Podkarpackie and Lubelskie.

These statistics lead to the conclusion that definitely more crimes in conditions of recidivism are committed in the west of Polish, and less in the east. This may be due to the level of social and economic development, as well as historical conditions, i.e., specific voivodeships were partitioned in the years 1795-1918. Moving on to the details, it should be pointed out that the eastern provinces were under the Russian partition, the southern provinces in the Austrian partition, and the northern and western voivodeships in the Prussian (German) partition.

9.5. Recidivists by type of crime

Type of crime	Number of crimes 2017	Number of crimes 2018
Crimes against life and health (Articles 148-162 of the Penal Code and special laws)	1 332	1 333
Crimes against safety universal and safety in the field of communication (Articles 163-180a of the Penal Code)	822	824
Crimes against freedom, freedom of conscience and religion, sexual freedom,	636	609

and morality (Articles 189-205 of the Penal Code)		
Crimes against the family and guardianship (Articles 206-211a of the Penal Code)	1 140	2 736
Crimes against honour and bodily integrity (Articles 212-217a of the Penal Code)	7	8
Crimes against the activities of state institutions and local government (Articles 222-231b of the Penal Code)	374	396
Crimes against the administration of justice (Articles 232-247a of the Penal Code)	607	457
Crimes against public order (Articles 252-264a of the Penal Code)	61	36
Crimes against the credibility of documents (Articles 270-277 of the Penal Code)	104	79
Crimes against property (Articles 278-295 of the Penal Code)	9 181	9 171
Crimes against economic turnover (Articles 296-309 of the Penal Code)	33	56

Fiscal crimes (Penal Fiscal Code)	0	0
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Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:
Forensic Statistics. Final judgments of adults 2014–2018.

The data on the distinction between recidivism and different types of crimes are very interesting. The vast majority of crimes committed in conditions of recidivism are crimes committed against property – in both 2017 and 2018 the rate is at a similar level.

Interestingly, in second place are crimes thanks to family and care. Interestingly, in 2018 compared to 2017, their number more than doubled. In third place are crimes against life and health, and here the same number in 2017 and 2018 is similar.

The report did not identify any fiscal crimes committed in conditions of recidivism. In addition, the fewest crimes committed in conditions of recidivism are crimes against honour and inviolability, crimes against public order and economic transactions.

9.6. Gender structure (female and male)

Types of recidivism	2014		2015		2016		2017		2018	
	M	F	M	F	M	F	M	F	M	F
Recidivism	97,8	2,2	97,7	2,3	97,7	2,3	97,6	2,4	97,5	2,5
Article 64 § 1	97,7	2,3	97,6	2,4	97,6	2,4	97,5	2,5	97,5	2,5
Article 64 § 2	98,0	2,0	98,7	1,3	98,7	1,3	97,6	1,4	98,3	1,7

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:
Forensic Statistics. Final judgments of adults 2014–2018.

Gender statistics clearly show that men are the perpetrators of crimes both under normal conditions and in conditions of special and multiple recidivism. From 2014 to 2018, the share of men in the structure of committed crimes ranges from 97.5 to 98.7 percent. The proportion of female, on the other hand, is negligible, ranging from 1.3 to 2.5 percent.

When analysing the structure of recidivism, gender, and types of crimes, it should be emphasized that male representatives are included in each of the types of crimes. Female, on the other hand, taking into account their fractional share in this structure, commit only some crimes.

However, given the social changes taking place, we may face more crimes in the future where the perpetrators will be female.

9.7. Age

Age	Number of convictions	Together	Article 64 § 1	Article 64 § 2
Total	275 768	15 749	14 072	1677
17-21	32 517	257	218	39
22-24	24 467	1 042	998	44
25-29	43 318	3 433	3 160	273
30-34	45 566	3 564	3 081	483
35-39	39 506	2 843	2 475	368
40-44	30 128	1 733	1 528	205
45-49	20 414	1 184	1 062	122
50 i więcej	39 578	1 676	1 536	140
nieokreślony	274	17	14	3

Prepared by Tomasz Bojanowski on the basis of a report prepared by the Department of Strategy and European Funds of the Ministry of Justice entitled:
Forensic Statistics. Final judgments of adults 2014–2018.

The age statistic does not look good. The highest number of recidivism crimes committed in 2018 is in the 30-34 and 25-29 and 35-39 age groups. On the other hand, the least is the 22-24 and 45-49 age range.

The statistics concerning the youngest are alarming, but the number of crimes committed in the conditions of recidivism is much lower here than in other age groups. From the age of 40, the number of crimes decreases.

It should be added that in the years 2014-2016, the highest number of people returning to crime was recorded in the 25-29 age group, while in 2017-2018 in the 30-34 age group.

10. Conclusion

Moving on to the summaries, it should be pointed out that the regulations on recidivism should be adapted to socio-political and criminological conditions. Therefore, the legislature and the executive branch should closely follow the statistics on recidivism and react. Recent data are not positive, indicating that the overall number of crimes committed is decreasing, but the number of crimes committed under conditions of recidivism remains at the same level. Therefore, the above considerations should be summarized with a few conclusions that are directly apparent from the statistics.

Firstly, between 20014 and 2018, the percentage of repeat perpetrators, both convicted on the basis of special, basic and multiple recidivism, has been steadily increasing in relation to the total number of legally convicted perpetrators. Moreover, the number of convicts in the conditions of special primary and multiple recidivism remains relatively stable.

Secondly, out of the total number of persons convicted in 2014 under conditions of recidivism, 51.88% committed a crime again in the first year after the final sentence was imposed, 24.74% in the second year, 15.59% in the third, 7.12% in the fourth and 0.67% in the fifth year. It follows that in more than half of the cases, the crime is committed within the first year of the final imposition of the sentence.

Thirdly, out of the total number of persons convicted in 2014 under conditions of recidivism, 43.29% of convicts committed a crime again in the first year after the end of their imprisonment or conditional release, 27.73% in the second, 19.22% in the third, 8.95% in the fourth and 0.81% in the fifth. It follows that, in law, half of the cases are committed in the first year after the final sentence has been imposed.

Fourthly, almost 70% of repeat perpetrators are between the ages of 25 and 39. In addition, nearly 80% of repeat perpetrators have been convicted of property crimes.

Fifthly, sentences of deprivation of absolute imprisonment predominate. The share of this type of punishment in the total number of convictions ranges from 65 to 84%.

Sixthly, the average sentence of absolute deprivation of liberty in 2017 imposed on repeat perpetrators was 28 months and was more than twice as long as the sentence imposed on non-repeat perpetrators (13 months).

Seventhly, the recent amendment to the Penal Code, which added the type of recidivism, according to the drafters, i.e., the Ministry of Justice, puts an end to the philosophy that the most degenerate perpetrators should only be rehabilitated. Punishments must be both inevitable and severe. Especially for the most serious crimes against life and health. In addition to the change to recidivism, penalties have been increased in a number of laws. The maximum prison sentence has also been increased.

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URŠKA SORŠAK LEJAK*

***Legal regulation and issues of assisted reproduction procedures in slovenia-
what we have done and what more can we do?***

Abstract: In this article I will outline the legal regulation and issues of child's right to know his identity (origin) in Assisted reproduction procedures and adoption in Slovenia. Child's right to know his origin itself is not explicitly in the Constitution of the Republic of Slovenia, but a Constitutional Court of Republic of Slovenia granted this right the status of a personal right in one of the decisions in 2007 and set its basis in the constitutionally established right to person dignity, security and protection of privacy and personality rights. Regardless of that, the Child's right to know his origin has not yet been fully implemented in the Assisted reproduction technology procedures (with use of donor cells) and also not in adoption, because the child, conceived with the donor cell has no right to know any personal data of the donor (the donor is anonymous) and also the adopted person has no right to know the personal data of his biological parents, without their consent.

Keywords: Keywords: Child's right to know his origin, assisted reproductive technology, principle of anonymity, adoption, full adoption system.

1. Introduction

Children. They represent the beginning of life and the possibility of the continuation of humanity. The protection of their best interest, as one of the most vulnerable and at the same time very important group of people, is because of that advocated in all areas by both, national legislation and international programs and organizations. Also in Slovenia the Constitution of the Republic of Slovenia (Constitution)¹ itself provides, that children are entitled to special protection and care and as such enjoy all human rights and freedoms. One of the most important rights of children is also the knowledge of their own origin, which, precisely because of their vulnerability and powerlessness, the State must help to realise by means of appropriate legislation and guidelines. As will be shown below, although Slovenia has already taken some steps in this direction, this right has not yet been fully realised in the case of assisted reproduction technology and adoption.

* Urška Soršak Leja, researcher, University of Maribor, Slovenia, Department of Medical Ethics and Law

¹ Ustava Republike Slovenije (Constitution of the Republic of Slovenia- Constitution).

2. Incorporating the right of the child to know his origin into the slovenian legal order

The protection of children's best interests is a matter of national and international concern. One of the first instruments to protect children was the Geneva Declaration on the Rights of the Child of 1924,² followed by the Declaration of the Rights of the Child of 1959 and then with the Convention of the Rights of the Child (CRC),³ adopted in 1989 which is the founding instrument and the first binding international legal instrument on child protection. It is based on the confidence that the family, as a fundamental social group and the natural environment for the development and well-being of all its members, especially children, must be given the necessary protection and assistance to enable it to assume its full responsibilities in society.⁴ It encourages States Parties to take measures to protect children, taking the best interests of the child as the guiding principle. In the Slovenian legal system, the Constitution itself already provides for the special protection and care of children. Article 56(1) of the Constitution stipulates that children shall enjoy special protection and care, whereby human rights and fundamental freedoms shall be enjoyed by children in accordance with their age and maturity. The fundamental code that ensures the protection of the best interests of children and the exercise of their rights is the Family Code,⁵ which regulates, inter alia, the relationship between parents and children, material support for a child, measures to protect the best interests of the child, adoption, the attribution of parental care to a relative, foster care and guardianship of children, highlighting the principle of the best interests of the child as a fundamental principle in all procedures which include children.⁶

As regards the child's right to know his origin, Article 7 and 8 of the CRC directs States Parties, inter alia, to respect the child's right to preserve his own identity. However, it does not impose them this obligation, but it is leaving the regulation to individual legislations. In Slovenia, although the right of the child to know his own identity is not explicitly implemented in the Constitution RS itself, nor in the Family Code or other sectoral laws, a step forward was taken towards its recognition in the Slovenian legal order in 2007 with the decision of the Constitutional

Court of the Republic of Slovenia,⁷ when it assessed the constitutionality of an Article in the Marriage and Family Relations Act in force at the time,⁸ which

² Geneva Declaration of the Rights of the Child (1924).

³ Convention of the Rights of the Child- CRC (1989).

⁴ According to the Preamble of CRC.

⁵ Družinski zakonik (Family Code).

⁶ Article 1 of Family Code.

⁷ Constitutional decision number U-I-328/05-12 from 18. 10. 2007.

⁸ Zakon o zakonski zvezi in družinskih razmerjih (Marriage and Family Relations Act).

provided that a child could bring an action for the establishment of paternity no later than five years from the date on which he became of age.⁹ In the reasoning of the decision, the Constitutional Court, although not expressly guaranteed by the Constitution of Republic of Slovenia, gave the right to know one's own origin the status of a personality right, which is expressly protected by Articles 35 and 36 of the Constitution (right to personal dignity and security and protection of the right to privacy and personality rights). It took the view that this right should be regarded as an element of fundamental or decisive importance for the development of the individual's personality, since, on the one hand, it enables the individual to have an idea of himself (a psychological need), it affects family and relatives ties, it is important for medical reasons (such as information on hereditary diseases) and for the individual's material interests (such as inheritance), and, on the other hand, the impossibility of ascertaining one's own origin can also impose a heavy burden and uncertainty on the individual.¹⁰

The Constitutional Court has given the same interpretation of the right to know one's origin in subsequent cases,¹¹ where the Court also assessed the constitutionality of the provisions of the Marriage and Family Relations Act relating to the limitation period within which a child may initiate proceedings for the establishment or contestation of paternity. The Constitutional Court reiterated that the right of a child to know his origin (referring to Article 35 of the Constitution) is a personal right and that this right, which is part of the broader concept of a right to personal identity, gives rise to the right of an individual to know the identity of his natural parents.¹² In this regard, the Court explained that, under Article 35 of the Constitution, an individual is not only entitled to know who his biological parents are, but that the right of the child to know his origin implies an obligation on the State to take measures to ensure that the child has the possibility of forming a legal bond. It is the State that can enable the child to exercise this right, unless the parents, who are not the biological parents, decide to do so independently or voluntarily. Without the State's involvement, the child is thus dependent solely on the information provided by his parents, who often have no such desire, owing to their subjective feelings and their fear of the possible disclosure of such information and of the breaking of family ties.¹³ The above-mentioned decisions of the Constitutional Court thus demonstrate the importance of the right to know the origin of the child, since the Court's decisions, although

⁹ Marriage and Family Relations Act was replaced by the Family Code, which was adopted in 2017 and has been in force since 2019.

¹⁰ Ground 9. and 10. of the Reasoning of Constitutional Decision No. U-I-328/05-12 from 18 October 2007.

¹¹ Decision No. U-I-85/10-10 from 13. 10. 2011, U-I-30/12-12 from 18. 10. 2012.

¹² Ground 5. of the Reasoning of Constitutional Decision, No U-I-85/10-10 from 13. 10. 2011.

¹³ Ground 5. of the Reasoning of Constitutional Decision No U-I-30/12-12 from 18. 10. 2012.

not expressly provided for in the Constitution, have elevated it to the level of a fundamental personal right of the child, deriving from the constitutionally enshrined right to personal dignity and security and the protection of the right to privacy and the rights of the person.

However, the Court emphasise that the right of a child to know his origin is not absolute and unlimited, as it is limited by the Constitution and by the rights of others (biological parents, the donor of a sexual cell). As a result of the above-quoted decisions, the right of the child to know his identity is exercised or realised in proceedings for the establishment and contestation of paternity, since under the legislation currently in force, which, in drafting the provisions, took into account the decisions of the Constitutional Court, a child may contest paternity within five years of the date on which he became aware of circumstances giving rise to doubts as to paternity. However, this time limit may not begin to run before the child is able to perform the procedural acts independently (i.e. it may not begin to run before the child is 15 years of age and is capable of understanding the meaning and consequences of his actions). The Court weighed the child's right to acknowledge his origins against the interest in safeguarding the permanence and stability of existing family-law relationships, and gave priority to the child's right.¹⁴ Notwithstanding the fact that the above-mentioned decisions of the Constitutional Court have been followed in the assessment of the constitutionality of the limitation period for filing an application for the establishment or contestation of paternity, the inclusion of the child's right to know his origin in the personality rights (Article 35 of the Constitution) is (or it should be) an important guideline for other procedures and, in general and also for the exercise of this right of the child in general in all areas. In this respect, in particular, the procedures of assisted reproduction technology and adoption, where the child does not know his biological parents in principle, come into play, since it is in these cases that the child's desire and need to know his biological parents most often arises. However, it is precisely in assisted reproduction technology and adoption procedures, where this is most needed, that the right of the child to know his parentage is not yet fully realised, as will be explained below.

3. Biomedically assisted reproduction technology procedures

One of the constitutionally recognized rights in the Slovenian legal system is also the right of Freedom of Choice in Childbearing, which provides that everyone shall be free to decide whether to bear children and that the state shall guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children (Article 55 of the Constitution). The

¹⁴ KRALJIČ S.: Družinski zakonik s komentarjem (Family Code with commentary). Maribor, Poslovna založba MB., 2019, 419.

right to free decision making in childbearing gives a person the ability to decide voluntarily whether to have children, when to have them and how many to have.¹⁵ The realisation of this right is reflected, among other things, in the legalisation of assisted reproduction technology procedures, which gives those who cannot have children naturally, the possibility of realising this right.

Health measures to assist persons who are unable to conceive a child naturally were first regulated by law in Slovenia in 1977 by the Act on Health Measures in the Exercise of the Right to Freedom of Choice in Childbirth,¹⁶ which regulated, among other things, the diagnosis and treatment of fertility decline. However, with the development of medicine and the emergence of new methods of assisted reproduction technology, new legal issues came that were not regulated by the law at that time, and which brought about the need for a new law.¹⁷ So the new law was adopted in 2000 and is still in force today. This is the Act on Infertility Treatment and Assisted Reproductive Technology (AITART).¹⁸ The law regulates two types of procedures, firstly it regulates the treatment of infertility, which includes procedures to determine the causes of infertility or reduced fertility and to eliminate these causes through expert advice, medication and surgical interventions. Secondly, it regulates the procedures of fertilization with biomedical assistance.¹⁹ In both cases, these are medical measures to assist a woman and a man in conceiving a child and thus enable them to exercise their freedom to decide on the birth of their children (Article 1 of AITART). It is based on the principle of "*ultima ratio*," which means that the medical measures it regulates are intended only to help those who are unable to conceive a child naturally or only when the causes of infertility or the reduction of infertility cannot be remedied by less severe means or when there is a possibility of passing on a serious hereditary disease to the child. This means that biomedical assisted reproduction procedures are an extreme measure, which come into play when the nature do not allow parents the exercise of their right free decision on childbearing.

¹⁵ Predlog zakona o spremembah in dopolnitvah zakona o zdravljenju neplodnosti in postopkih umetne oploditve z biomedicinsko pomočjo (2000) (Draft Act on Amendments and Supplements to the Act on Treatment of Infertility and Artificial Insemination Procedures with Biomedical Assistance).

¹⁶ Zakon o zdravstvenih ukrepih pri uresničevanju pravice do svobodnega odločanja o rojstvu otrok (Act on Health Measures in the Exercise of the Right to Freedom of Choice in Childbirth).

¹⁷ Predlog zakona o spremembah in dopolnitvah zakona o zdravljenju neplodnosti in postopkih umetne oploditve z biomedicinsko pomočjo (2000) (Draft Act on Amendments and Supplements to the Act on Treatment of Infertility and Artificial Insemination Procedures with Biomedical Assistance).

¹⁸ Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo (Act on Infertility Treatment and Biomedical Assisted Fertilization Procedures – AITART).

¹⁹ ŽNIDARŠIČ SKUBIC V.: Civilno medicinsko pravo (Civil Medical Law). Uradni list Republike Slovenije (Official Paper of Republic of Slovenia), Ljubljana, 2018, 130–131.

4. Eligibility for Assisted Reproduction Procedures

Under current Slovenian legislation, a man and a woman who are married or in a civil partnership and who, according to the experience of medical science, cannot be expected to achieve conception through sexual intercourse and other fertility treatments have not been successful, are eligible for assisted reproduction procedures (Article 5 of the AITART). The above-mentioned wording of the law thus implies two basic conditions for access to assisted reproduction procedures: firstly, the procedures are only available to different-sex couples in a marriage or civil partnership, and secondly, they are only available to such persons on condition that they have already made use of other means of conception which have failed, or exceptionally in the case where they are capable of preventing the transmission of a serious hereditary disease to the child (*this is a consequence of above mentioned "ultima ratio" principle*). Single women and same-sex partners are therefore not eligible for assisted reproductive technology procedures. It is worth pointing out here that while in recent years Slovenia has made great step forward towards full equality between different-sex partners and same-sex partners,²⁰ the exception to this equality remains the case of assisted reproductive technologies, where it is explicitly decided that only a man and a woman may use them. However, infertility treatment is, of course, available to same-sex partners under the AITART, since it is only medically justified and cannot be refused on grounds of the principle of equality.²¹

As regards single women, the regulation is, among other things, a consequence of the fundamental precepts of the law, since some other provisions of the AITART also deny them access to assisted reproduction, namely, if a single woman were to decide to assisted reproduction procedures for non-medical reasons, this would be contrary to the fact that these procedures are "*ultima ratio*," provided only for cases where conception of a child by natural means is not possible. However, if a single woman with fertility problems who needs both, a female and a male donor, would decide for such a procedure, it would require the simultaneous donation of both, a female and a male donor, which is also not allowed in Slovenia.²²

In addition to same-sex partners and single women, a woman who intends to give her child to a third party for free or for consideration after birth is not eligible for assisted reproductive technology procedures (Article 7 of the AITART). So

²⁰ Decisions of the Constitutional Court of the Republic of Slovenia number U-I-486/20, Up-572/18 from 16. 6. 2022 and number U-I-91/21, Up 675-19 from 16. 6. 2022.

²¹ KRALJIČ S.: i.m. 2019, 424.

²² The second paragraph of Article 5 AITART and the third paragraph of Article 8 AITART.

this means that assisted reproduction procedures which will result in surrogacy are not allowed. While there are not other rules which would prohibit the surrogacy, this means that surrogacy is not explicitly prohibited in the Slovenian legal system, but it is not achievable through assisted reproduction procedures, precisely because of Article 7 of the AITART. In addition, the AITART prevents gestational surrogacy by other rules, such as a provision prohibiting the simultaneous use of donated eggs and sperm (third paragraph of Article 8 of the AITART). As regards criminal liability for surrogacy, it is worth noting that the legislation does not provide for criminal liability for the surrogate mother herself, but only for the legal person, the person in charge of the legal person and the person participating in a team of biomedical experts, when the procedure of assisted reproduction results in surrogacy. For these persons, the AITART provides for a fine. It also provides for criminal liability under the Criminal Code (CC-1),²³ for those who unlawfully carry out a procedure of assisted reproduction for the purpose of surrogacy. This person is liable to imprisonment for up to three years (paragraph 4 in conjunction with paragraph 3 of the CC-1). The above-mentioned is a clear indication of the concept of surrogacy in Slovenia, namely surrogacy is not explicitly prohibited by any law, but it is not possible and not allowed in connection with assisted reproduction technology and it is also punished through in this way.

5. Assisted Reproduction Procedures

The procedure of assisted reproduction can be carried out either intra-corporeally (IVI - insertion of sperm cells into the woman's genital organs or insertion of ova together with sperm cells into the woman's genital organs) or extra-corporeally (IVF - fusion of ova and sperm cells outside the woman's body or insertion of early embryos into the woman's genital organs), in accordance with law. IVI is set as the primary procedure, and if IVI, as a less restrictive procedure, is not successful, the IVF can be proceed. In both cases, the procedure of homologous or heterologous fertilization can be carried out. In the first case (homologous fertilization), a woman is fertilized with the semen of her husband or her cohabiting partner, while in IVF, the sex cells of a woman and a man (couple) who are participants in the artificial insemination procedure are used for the procedure. In the second case (heterologous fertilization), in the IVI procedure, the woman is fertilized with donated semen, and in the IVF procedure, donated eggs or sperm cells are used.²⁴

²³ Kazenski zakonik (Criminal Code- CC-1)

²⁴ ŽNIDARŠIČ SKUBIC V.: i.m. 2018, 134.

As a general rule, according to the AITART, the sexual cells of a man and a woman who are married or in a civil partnership are used for the procedure of assisted reproduction (so the homologous fertilization is primary option), but if this is not possible, the Slovenian legislation has enacted with AITART that either in the IVI procedure or in the IVF procedure the use of donor ova or donor sperm cells is allowed, when, according to the experience of biomedical science, there is no possibility of pregnancy with the use of the sexual cells of spouses or cohabiting partners, or if other assisted reproduction procedures with the biomedical assistance from AITART have been unsuccessful, or if this is necessary to prevent the transmission of a serious hereditary disease to the child (Article 8 AITART). The heterologous fertilization is therefore a measure that beneficiaries from AITART can only resort to if the procedure with their own cells is unsuccessful or if there is a risk of transmission of a serious hereditary disease to the child. The simultaneous use of donated eggs and sperm cells is not allowed, with this it is ensured that the child will genetically belong to at least one person from the couple which undergo the assisted reproduction procedure.²⁵ Under AITART nor the donation of an embryo, or the use of cells from several persons of the same sex is not allowed.²⁶ Sexual cell donation is also only allowed for altruistic reasons, as no payment or other benefit can be given or accepted for donated sex cells, and contracts providing for this are null and void. The donor is only entitled to reimbursement of the costs incurred by the donor in coming, staying and returning to Assisted reproduction technology center (Center), being examined at, and having his or her gametes collected from the Centre (Article 10 of the AITART). However, it is precisely in the case of assisted reproductive technologies with use of donated sex cells that several legal issues arise, relating to the parenthood of the children resulting from donated sex cells and to the right of these children to know their origin, i.e. their access to personal data about the donor, as we will see in the continuation.

6. Parenting in Biomedical Assisted Reproduction Procedures

As far as parenthood is concerned, Slovenian law provides for a presumption of parenthood in the Family Code. However, the Code does not make any significant distinction between the natural conception of a child and the conception of a child by means of a procedure of assisted reproduction, nor does it make any distinction between whether the child was conceived with the parents' own sex cells or with the use of donated sex cells. In all cases, the woman who gave birth to the child is considered to be the mother of the child. This is an ancient Roman legal presumption which, with the development of medical science

²⁵ ŽNIDARŠIČ SKUBIC V.: i.m. 2018, 133.

²⁶ Article 8(3) and 13 of AITART.

in the field of biomedicine, has led to the conclusion that the woman who gives birth to a child is not necessarily its biological mother.²⁷ This is precisely the case when a child is conceived with the help of a donated female sex cell, since the woman who gives birth to the child is not the biological mother, but is the gestational mother, who is also subject to the presumption of maternity. There is thus no difference in maternity in the case of natural conception and conception with procedure with biomedical assistance, but there is a difference in establishing or contesting maternity. When a child is conceived naturally, the law allows for the establishment and contestation of maternity.²⁸ However, in the case of a child conceived through assisted reproductive technology, maternity may not be contested in any case if the mother has consented to the procedure. This is, among other things, a consequence of the rule that if the child has been conceived with a donated egg, maternity also may not be established. The presumption of parenthood extends to paternity in assisted reproduction procedures, although there are some more differences between the legal consequences in the case of natural conception and in the case of assisted reproduction procedures. The basic presumption is that the father of a child (conceived naturally) born in marital relationship is the husband of the child's mother, and the father of a child born out of the marital relationship is the man who acknowledges paternity or whose paternity is established by a court decision. On the other hand, in order to establish a presumption of paternity in assisted reproduction procedures the consent of both, the father and the mother, to the conception or the insemination procedure itself is required for paternity to "occur", and the father, even if he is the mother's common-law partner (partner in civil partnership), does not need to make a specific acknowledgement of paternity, since this is the purpose of the consent to the assisted reproduction procedure. The father of a child conceived by assisted reproduction is therefore the mother's husband or her cohabiting partner, provided that they have both gave consent to the procedure.

Furthermore, as with maternity, there is a difference in contesting and establishing paternity in the case of natural conception or assisted reproductive technologies. However, in the case of assisted reproduction, paternity may not in principle be contested, but the Family Code only allows one exception, and this is if it is alleged that the child was not conceived by means of an assisted reproduction procedure. Similarly, paternity may not (in any case) be established if the child was conceived with a donor's sperm cell.

7. Child's Right to know his origin in Assisted Reproduction Procedures

²⁷ KRALJIĆ S.: i.m. 2019, 382–429.

²⁸ 127. and 132. Article of Family Act.

The above-mentioned legal regulation concerning the impossibility of contesting and establishing paternity in the case of conception of a child with the help of a donated cell in a procedure of assisted reproduction, is a consequence of the fact that Slovenia has established the principle of anonymity of the procedure of assisted technology, in both ways, in procedure with use of the sex cells of parents who undergo the procedure and in case of donation of a sperm cell. So the anonymity applies to all participants in the procedure; the anonymity of the parents who undergo the procedure of assisted reproduction; the child conceived in the procedure and in case of help with a donor, the anonymity of the donor.

From the point of view of the child conceived with a donor cell, the child's right to know the origin of the donor's is not adequately protected by this arrangement, since, firstly, the law does not impose any obligation on the child's parents to inform the child of the fact that he has been conceived with a donated sex cell, and even if they do, the child has no right of access to the donor's personal data and thus cannot establish his identity. The AITART expressly provides that the employees of a centre for assisted reproduction who are involved in the procedure must protect as a professional secret all information relating to the assisted reproduction procedure, which includes personal and medical information about the woman who is the subject of the procedure, her husband or cohabiting partner, the child conceived through the assisted reproduction procedure, and any male or female donor of a sexual cell (Article 18). Also the donor has no rights or obligations towards the child, there are no consequences for the donor, not in family law or any other aspect. A child conceived with donated sexual cell may only have access to the donor's medical data, and the child may request the Centre to disclose such data if the child is judicious, at least 15 years of age and if there are medical reasons justifying such disclosure. Before the age of fifteen, instead of a child, his legal representative with the authorisation of a court may obtain knowledge of the information, also provided that there are exceptional medical reasons for doing so. In this respect, it is clear from case law and theory that medical reasons must be interpreted extensively. For example, among other things psychological problems due to uncertainty about the origin of the donor's may be included. The medical information about the donor that may be obtained in the case of the above-mentioned medical reasons is primarily the one which is necessary for the diagnosis of the child's illness and for the child's medical treatment. The donor's medical information may be used for the purposes of the diagnosis and treatment of the child's illness. However, the child's doctor has access to the donor register and can have insight in it when there are medical reasons or when the child's medical needs dictate it, as he can know the identity of the donor of the sex cell through which the child was conceived and can contact the donor to ask for medical information, to request a possible organ donation or other assistance for

the child.²⁹ Also the courts and administrative authorities have access to information on the donor if this is necessary for the performance of their duties in the enforcement of this Act. In this respect, doctors, courts and administrative authorities must protect the information they obtain from the register as a professional secret and must not disclose the identity of the donor to the child.

On the basis of the above, we can see that the child's right to know his origin, despite the importance pointed by the Constitutional Court decisions, is not realised and implemented in assisted reproductive technology procedures, where the need for it is most often manifested, since the child is completely prevented from having access to personal data concerning the potential donor and thus from knowing his own identity. Anonymity is justified by the protection of human personality and the donor's right to privacy. On the one hand, anonymity is intended for parents, who fear the intrusion of the donor into their lives, in order to ensure that family ties are not broken, and on the other hand, donors, who have their own personal and family life and also in some way want anonymity.³⁰ The principle of anonymity is thus established in favor of the parents, the donor and the (social/ family) binding between the child and the parent, which, in this case, outweighed the child's right to know his own identity.

8. Adoption in slovenian legal system

The next institution where, apart from Assisted reproduction tehnology, the need for a child to know his origin most often arises, is adoption. The actual legal regulation of adoption varies from country to country and thus there are several types and forms of adoption - full and incomplete adoption, open and closed adoption, blank and incognito adoption, voluntary or consensual and forced adoption, domestic and international adoption, unilateral and joint adoption.³¹ In Slovenia, according to the Family Code, only a child may be adopted (according to Article 5 of the Family Code, a child is a person who has not yet attained the age of 18 years and has not yet acquired full legal capacity). It should be noted that adoption before the birth of a child is not possible, which means that there are no prenatal adoptions under Slovenian law.³² The Family Code allows for joint or unilateral adoption (Article 213 of the Family Code), as a child may be adopted by spouses or partner in civil partnership (joint adoption); a spouse or cohabiting partner may adopt the child of his/her spouse or cohabiting partner, or a child

²⁹ Predlog zakona o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo (ZZNPOB) - EPA 681 – druga obravnava (2000) (Draft Act on Infertility Treatment and Biomedical Assisted Fertilization Procedures – EPA 681 – second reading).

³⁰ ŽNIDARŠIČ SKUBIC V.: i.m. 2018, 134.

³¹ KRALJIČ S.: i.m. 2019, 730–736.

³² Article 212 of Family Code.

may also be adopted by a person who is not married or in civil partnership, if this is in the best interest of the child or if the child is adopted by one person (unilateral adoption).

9. Child's Right to know his Origin in Adoption

As regards the child's right to know his identity, the realisation of this right in each country is linked, *inter alia*, to whether national law allows for full or partial adoption. Incomplete adoption can be dissolved, whereas in the case of a full adoption, between the adoptive parent, his relatives and the adopted child and his descendants there is the same relationships as it would be in case of biological parents.³³ In Slovenia, before the Family Code and its predecessor, the Marriage and Family Relations Act, the system of incomplete adoption was in place, as adoption did not affect the rights and obligations of the adopted child towards the biological parents and their relatives (the child retained the legal right of inheritance towards them), while also the adoptive parents had the right to exercise their parental right and they were child's legal representative.³⁴ However, under the current legislation Slovenia has a system of full adoption, whereby on the one hand the adoption terminates the rights and obligations of the children towards their biological parents and relatives (except in the case of a spouse or civil partner adopting the child of his/her spouse or civil partner), and on the other hand between the child and his descendants and between the adoptive parent and his relatives the same relationship is created as if the adoptive parents were the child's biological parents (Article 219 and 220 of Family Code). The adoptive parents are also entered as the child's parents in the civil registry (an extract is issued without an endorsement of the adoption).³⁵ Apart from assisted reproduction technology procedures in the case of the use of donated sex cells, the legal consequences of full adoption make this the only exception under Slovenian law where the parents of the child are not also his biological parents. For this reason, this is one of the institutes where special attention should be paid to the realisation of the child's right to know his identity, which is not fully realised in Slovenia, but is in some way respected. That is why as a result of the system of full adoption, the adopted child has no right to know the personal data of his biological parents, which are kept in the civil registry or other records, and the biological parents have no right to know the personal data of the child (Family Code, Article 222). The legislator justifies the regulation by establishing greater

³³ NOVAK B.: Komentar Družinskega zakonika (Commentary of Family Code). Ljubljana, Uradni list Republike Slovenije (Official Paper of Republic of Slovenia), 2019, 740.

³⁴ KRAJČIČ S.: *im.* 2019, 781.

³⁵ Pravilnik o izvrševanju zakona o matičnem registru (Rules on the Enforcement of the Civil Registry Act), Article 29.

stability in the relationship between the adoptive parent and the child and by protecting the safety of the biological parents, who wish to keep their identity secret. However, the law has provided for an appropriate exception or proportionality between the rights of the parents (biological parents and adoptive parents) and their anonymity and between the right of the adopted child to know his origin by allowing the child to exercise the right with a possibility that the personal data of the biological parents may be communicated to the child, if a child expresses an interest in it or initiates it, and the biological parents gave the written consent to disclose their personal data. Similarly, the personal data of the adopted child may be disclosed to the biological parents if the adopted child give consent to that. Consent is obtained by the social work centre at the initiative of the adopted child or the biological parents, whereby a child who has reached the age of 15 may give his own consent if he is able to understand the meaning and consequences, or, if not, his legal representative may give it on his behalf. As in the case of assisted reproduction procedures with the help of a donated sex cells, in the case of adoption, the adopted child or his legal representative has access to the health data of his biological parents (e.g. hereditary illnesses, treatment planning, family planning, etc.).³⁶ So the child's right to know his identity is in some way realised in adoption, if the child shows interest and if the biological parents give consent. With this type of solution Slovenia in one hand complies with the child's right to know his origin, and on the other hand with a biological parent's right to their anonymity.

10. Conclusion

As we can see from the above mentioned considerations, from the decision of Constitutional Court of the Republic of Slovenia in 2007, in Slovenia we have made some progress to justify child's right to identity and this right is partly implemented in family law, especially in Child's ability to contesting and establishing paternity, and also in some way in adoption (where the allowance of biological parents is needed), but there is still much we can do, precisely in assisted reproduction procedures, where this right is not realized at all.

³⁶ NOVAK B.: i.m. 2019, 743.

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