STUDIA JURIDICA
et
POLITICA JAURINENSIA

Studies, Conference Proceedings, and Working Papers
of the Faculty and Doctoral School of Law and Political Sciences
of Széchenyi István University

A Széchenyi István Egyetem
Állam- és Jogtudományi Karának és Doktori Iskolájának
Tanulmányai, Műhelytanulmányai és Konferencia-közleményei

STUDIA JURIDICA ET POLITICA JAURINENSIA

2023. 2.

Editorial Office: Faculty of Law of Széchenyi István University, Győr, Hungary.

Mail: H– 9026 Győr, Áldozat u. 12. Hungary. Fax: [Hungary: 36]-96/310-336. E-mail: egresi.katalin@ga.sze.hu

CONTENTS

Imprint:

Published by Deák Ferenc Faculty of Law, Széchenyi István University, 9026 Győr, Hungary, Áldozat street 12.

[Responsible for publishing: dean of the Law Faculty, Prof. Judit Lévayné Fazekas, responsible for editing: Prof. Péter Takács]

ISSN: HU 2064-5902

RECOVERY OF REAL ESTATE TAX ARREARS IN THE SLOVAK REPUBLIC

CAKOCI, KARIN – LAZORÍKOVÁ, ELENA*

In the paper, the authors deal with selected methods of recovery of arrears of real estate tax as one of the most important local taxes in Slovakia, which municipalities, as their administrators, are authorized to impose and collect within their territory. The recovery of real estate tax arrears is an important tool for municipalities that serves to obtain missing funds that belong to these municipalities due to the collection of tax imposed by law and to cover gaps in their local budgets. In the paper, the authors give their attention specifically to two ways to recover real estate tax arrears, namely the recovery of arrears conducted by municipalities being tax administrators in tax enforcement proceedings and recovery of arrears in enforcement proceedings conducted by bailiffs.

Introduction

Constitutional Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended (hereinafter referred to as the *"Constitution of the Slovak Republic"*), in its Article 59(1), has established the classification of taxes in the Slovak Republic, according to which taxes are divided between state and local taxes. The Constitution of the Slovak Republic has set out fundamental constitutional framework for the imposition of local taxes in Article 13 in conjunction with Article 59(2), on the basis of which municipalities are empowered to impose and collect local taxes within their territory on the basis of law, being that Act No 582/2004 Coll. The Local Taxes Act, which has entered into force on 1st of November 2004, and regulates the elements of local taxes and essentially brings these taxes *"into the life"*. The Local Taxes Act regulates local taxes in terms of the municipalities' authority to impose and collect local taxes, the individual types of local taxes, the overall legal structure of the individual types of local taxes and the specificities in the administration of local taxes in comparison with Act No 563/2009 Coll. on Tax Administration, as amended (hereinafter referred to as the *"Tax Code"*).

The legal regulation of local taxes is mainly characterised by the facultative nature[1] of the imposition and collection of local taxes by municipalities, which in practice means that municipalities may impose and collect them on the basis of law, but law does not provide for the obligatory imposition of such taxes. In

* This paper was written as part of the VEGA project No. 1/0214/21 "Real Property Tax - Legal Status and Potential".
doc. JUDr. Karin Cakoci, PhD., Associate Professor, Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Financial Law, Tax Law and Economics, e-mail: karin.cakoci@upjs.sk; https://orcid.org/0000-0003-1862-8798.
Mgr. Elena Lazoríková, internal PhD student, Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Financial Law, Tax Law and Economics, e-mail: elena.lazorikova@student.upjs.sk; https://orcid.org/0009-0000-7984-0763
[1] For more on the characteristics of local taxes, see: BABČÁK, V. *Daňové právo na Slovensku a v EÚ.* Bratislava: Ing. Miroslav Mračko – EPOS, 2019. p. 376.

addition to the nonmandatory character of imposition of payments, being the most important factor in strengthening the position of local self-government bodies in relation to tax obligations, this statement also applies to the determination of certain fundamental elements of taxes, in particular the rate, the establishment of conditions for tax exemptions or reductions, etc. Local tax rates do not have an upper limit (except for the real estate tax, where the upper limit of the tax rate has been set directly by the legislator under the Local Taxes Act). For the land tax the upper limit of the tax rate is set out in § 8 (2)[2], for the tax on buildings in § 12 (2)[3] and for the tax on flats and non-residential premises in a residential building in § 16 (2) of the Local Taxes Act[4] and municipalities themselves decide on the specific tax rate applicable within their territory. The above mentioned creates room to increase and stabilise their own financial resources securing the execution of tasks performed by local self-government bodies; apart from the above-mentioned local taxes, which currently form the system of such payments, municipalities may not impose and collect other payments having local taxes nature; the tax period for most local taxes is the calendar year. This applies to property tax, dog tax, tax on vending machines, tax on non-gambling machines, tax on nuclear installations. It does not apply to the tax on the use of public spaces, the tax on accommodation and the tax on the entry and stay of a motor vehicles within the historic part of the city, for which the tax period is determined by the tax administrator.[5]

Local taxes not only increase the fiscal autonomy of municipalities[6], but also make a significant contribution to the fulfilment of their statutory functions,[7] as well as to the fulfilment of sociery-wide tasks.

[2] Pursuant to Section 8(2) of the Local Taxes Act, the tax administrator is authorised to by a *"generally binding ordinance, according to local conditions in the municipality or in an individual part thereof or in an individual cadastral area, to establish annual tax rates varying for individual groups of land pursuant to Section 6(1). "* d) - forest land, on which there are economic forests, fish ponds and other economically used water areas shall not exceed 10 times the annual land tax rate of 0.25% and the annual land tax rate for land under § 6 (1) (b) - gardens, (c) - built-up areas and courtyards and (e) - building land shall not exceed 5 times the lowest annual land tax rate established by the tax administrator for land under § 6 (1) in the generally binding ordinance.

[3] Also according to § 12 (2) of the Local Taxes Act, the tax administrator is entitled to determine different tax rates for different types of buildings according to § 10 (1). However, the annual construction tax rate so determined for the buildings referred to in Section 10(1) may not exceed 10 times the lowest annual construction tax rate determined by the tax administrator in the ordinance for the buildings referred to in Section 10(1).

[4] According to Section 16 (2) of the Local Taxes Act, *"The annual flat tax rate for a flat or non-residential space under paragraph 1 (this annual tax rate is set at EUR 0.033 per each even started m^2 of floor area of the flat and non-residential space - authors' note) may be reduced or increased by the tax administrator according to the local conditions in the municipality, its individual part or in the individual cadastral area, with effect from 1 January of the relevant tax period. The flat tax rate per flat so established may not exceed 10 times the lowest annual flat tax rate per flat established in the generally binding ordinance."*

[5] BABČÁK, V. *Dane a daňové právo na Slovensku (teória a legislatíva).* Ružomberok: Ing. Miroslav Mračko – EPOS, 2022. p. 393.

[6] For this see: HULKÓ, G. *Some general thoughts on the relation of public property and municipalities.* In: HULKÓ, G., PATYI, A. (eds.). Public Finances : Administrative Autonomies. Magyarország, Győr: Universitas-Győr Nonprofit Kft., 2012. pp. 151-163.

[7] The basic legal regulation governing the status and powers of municipalities, their basic tasks that municipalities are obliged to perform and much more is laid down by the Act of the National Council of the Slovak Republic No. 369/1990 Coll. on Municipal Establishment, as amended (hereinafter referred to as the *"Municipal Act"*). Pursuant to Article 1(1) of that Act, a municipality is considered to be *"an independent territorial self-government and administrative unit of the Slovak Republic; it brings together persons who have permanent residence on its territory. A municipality is a legal person which, under the conditions laid down by law, manages its own property and its own revenue independently."* According to paragraph 2 of this provision, *"The basic task of a municipality in the exercise of self-government is to take care of the all-round development of its territory and the needs of its*

Municipalities have relatively strong powers conferred on them by the legislator, which enable them to influence the level of local tax revenue and thus also the revenue of their budgets.[8] The question is whether municipalities make sufficient use of the possibilities entrusted to them in order to actually fulfil the constitutional assumption that their needs will be financed primarily from their own revenues, and only secondarily from state subsidies. The Constitutional Court of the Slovak Republic[9] has consistently stated thar in order ro ensure the basic constitutional function of local self-government (independent administration of its own affairs on the territory of a higher territorial unit[10]), it is necessary for municipalities and higher territorial units to have their own property and their own financial resources, since it would be illusory to entrust municipalities and higher territorial units (self-governing regions) with the responsibility for the all-round development of the relevant territorial unit without being able to directly - through the exercise of their powers - realistically influence the amount of their revenues.[11]

However, when collecting taxes, municipalities quite often encounter taxpayers who do not fulfil their tax obligations. The fact that there are taxpayers who refuse to pay the compulsory taxes has significant implications for the functioning of the municipality itself. First and foremost, it is linked to a shortfall in revenue in the relevant budget, i.e. fewer resources are available to ensure the tasks and functions of the municipality at that level. This can negatively affect the level of services provided. Revenue shortfalls therefore undermine the possibilities for the provision of public goods and design and implementation of public policies, but they also have an impact on equity in terms of people's contribution to the generation of public resources. Addressing this problem is also important because non-payment of taxes results in revenue shortfalls in local government budgets and has implications for the behaviour of taxpayers themselves. Taxpayers who pay their taxes may feel that they bear the tax burden, while non-payers benefit from public services in the same way as those who fulfil their obligations. This may be perceived as unfair and may negatively affects future tax-paying behaviour of taxpayers.

Methodology

As part of the methodological procedure, the authors have selected 8 regional cities of the Slovak Republic as the analysed sample, for which they have analysed and compared the total amount of property tax revenues

inhabitants. Obligations and restrictions may be imposed on a municipality in the exercise of its self-government only by law and by international treaty."

[8] See CAKOCI, K. a K. ČERVENÁ. *Legal Concept of Local Taxes in the Slovak Legal Order.* In: MRKÝVKA, P., GLINIECKA, J., TOMÁŠKOVÁ, E. a kol. (eds.). The Challenges of Local Government Financing in the Light of European Union Regional Policy: conference proceedings. Brno: Masarykova univerzita, 2018. p. 322 and the following.

[9] Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 5/2012 of 22.01.2014.

[10] Higher territorial units are also known in Slovakia as self-governing regions.

[11] ONDROVÁ, J. a M. ÚRADNÍK. *Vybrané aspekty ukladania a vymáhania miestnych daní a poplatkov.* In: Štát a právo 2-3/2022. p. 160. DOI: https://doi.org/10.24040/sap.2022.9.2-3.156-174.

that these cities expected (and assumed) in the years 2020 to 2022 (hereinafter referred to as the "monitored period") in their budgets with the actual amount of these revenues, which became an actual part of the revenue side of the budgets of the regional cities in this monitored period. The result of the analysis and comparison carried out has been evaluated and recorded in the form of graph, using the descriptive method, with the determination of the percentage of the difference in the implementation of the revenue side of the budgets of the regional cities in the period under review, but focusing only on property tax revenue. The authors have also analysed the amount of property tax arrears for the regional cities of the Slovak Republic for each year in the period under review. Using standard scientific methods of analysis, comparison and description, the authors have evaluated the importance of the institute of recovery of real estate tax arrears in the Slovak Republic and identified possible problems faced by municipalities in the use of this instrument in practice.

Legal basis for the imposition and collection of property tax

In the Slovak Republic, the real estate tax is within the tax system classified as a local tax. The real estate tax is imposed by municipalities within their territory by a sub-legislative legal regulation, which is a general binding ordinance (hereinafter referred to as the *"GBO"*).[12] The real estate tax is characterised by the fact that, according to Section 4 of the Local Taxes Act, it is divided into:

- land tax,
- tax on buildings and
- tax on flats and non-residential premises in a residential building (hereinafter referred to as *"flat tax"*).[13]

[12] According to the current legal order of the Slovak Republic, the GBOs as sub-legislative legal regulations must be in accordance with legal regulations of higher legal force, namely with the Constitution of the Slovak Republic, constitutional laws, international treaties (which take priority over the laws) and with the laws.

[13] In the legal system of the Czech Republic, the real estate tax is regulated in a separate legal regulation, namely Act No. 338/1992 Coll. on the tax on immovable property as amended by later regulations (hereinafter referred to as the *"Act of the Czech Republic on the tax on immovable property"*). In contrast to the Slovak legislation, the real estate tax under Section 1(1) of the Czech Act on the tax on immovable property consists only of the tax on land and the tax on buildings and units. In connection with the above, Radvan points out that Slovakia is the only EU country where the tax on flats is regulated separately under the real estate tax, which means easier orientation in the law for the taxpayer, in contrast to the Czech legislation, where the tax on flats is regulated under the tax on buildings and units. In: RADVAN, M. *Zdanění majetku v Evropě.* 1. vydání. Praha: C. H. Beck, 2007. p. 87.

The property tax is undoubtedly the most important local tax, especially in terms of budgetary importance,[14] although this tax, or local taxes in general, are not among the most important sources of municipal revenue.[15] This is also apparent from the document entitled *"Final accounts of the municipality"*, the draft of which municipalities are obliged to draw up, submit to the municipal council for approval and publish on their website.[16] In the Annual Accounts, the municipalities indicate the total amount of tax revenue and the amount of tax revenue broken down by type of tax which, in a particular calendar year. In this document, municipalities also assess the current state of the amount of tax revenue achieved in a particular calendar year with that of previous calendar years.

Tab. 1: Overview of properry tax revenues in regional cities of the Slovak Republic for the years 2020 to 2022

Regional cities in the Slovak Republic		2020 (€)		2021 (€)		2022 (€)	
		Budgeted	Actual	Budgeted	Actual	Budgeted	Actual
1.	Bratislava	47.000.000	**46.417.624**	47.653.437	**46.774.037**	48.750.000	**47.562.530**
2.	Trnava	11.000.000	11.177.733	11.000.000	11.800.710	11.000.000	12.253.830
3.	Trenčín	7.300.000	7.798.112	7.600.000	8.422.257	7.995.230	8.365.654
4.	Nitra	11.421.000	11.793.964	11.505.000	12.474.727	12.446.000	13.101.690
5.	Žilina	11.371.000	11.589.178	11.890.000	**11.475.953**	11.890.000	12.045.840
6.	Banská Bystrica	9.323.195	9.323.226	8.859.500	9.375.845	9.042.078	9.762.662
7.	Košice	25.750.000	26.556.596	38.226.000	**38.189.014**	33.000.000	33.399.315
8.	Prešov	7.405.000	**7.283.256**	7.600.000	8.006.971	7.480.000	7.870.266

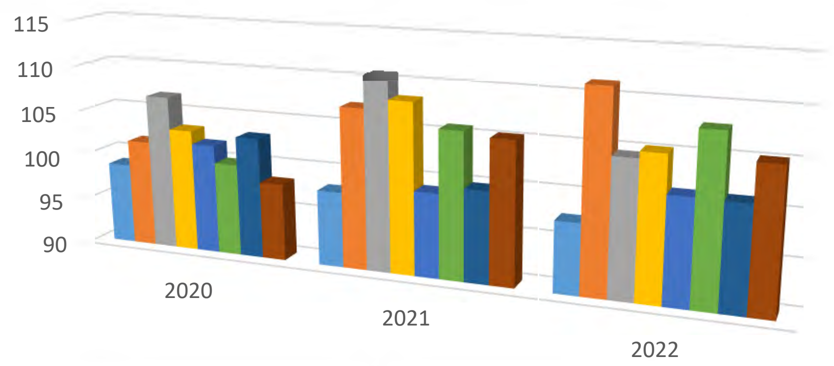
Source: Final accounts of regional cities

[14] A similar view is also held by VARTAŠOVÁ, A. and ČERVENÁm K. in their paper: *Real Property Tax in the Countries of Visegrad Group – Comparative View.* In: Studia Iuridica Lublinensia, 31(1). Poland, Lublin: Wydawnictwo UMCS, 2022. p. 191-211. DOI: https://doi.org/10.17951/sil.2022.31.1.191-211.
See also: BALÁŽOVÁ, E., PAPCUNOVÁ, V. a J. TEJ, 2016. Dopad fiškálnej decentralizácie na výnos z dane z nehnuteľností na úrovni miestnej samosprávy SR. In: KLÍMOVÁ, V. a V. ŽÍTEK, (eds.), XIX. Mezinárodní kolokvium o regionálních vědách. Brno: Masaryk University, p. 891-898.

[15] Currently, the most significant source of revenue for municipal budgets in the Slovak Republic is the personal income tax, also referred to as the share tax. Section 2 of Act No. 564/2004 Coll. on the budgetary determination of income tax revenue for local self-government and on amendments and supplements to certain acts, as amended, stipulates that *"The tax revenue in the relevant budget year is the revenue of municipal budgets in the amount of 70.0%, unless Section 7c provides otherwise."*
This is also pointed out by VARTAŠOVÁ, A. in her paper: *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky.* In: LIPTÁKOVÁ, K. (ed.). Miestne dane v krajinách Vyšehradskej štvorky. Zborník vedeckých prác. Praha: Leges, 2021. p. 127-186.

[16] The obligation of the municipality to process the data on budgetary management in aggregate in the final account of the municipality after the end of the financial year results from Section 16 of Act No. 583/2004 Coll. on budgetary rules of local self-government and on amendments and supplements to certain acts, as amended by later regulations.
Municipalities are obliged to publish data on the approved budget for the current financial year, data on the expected reality of the current financial year and data on the actual implementation of the budget for the previous two financial years within 30 days after the approval of the budget and within 60 days after the end of the financial year. This obligation is imposed on municipalities by Article 9 of Constitutional Act No 493/2011 Coll. on Budgetary Responsibility, as amended.

Graph 1: Overview of property tax revenues in the regional cities of the Slovak Republic for the years 2020 to 2022 - implementation in %



	2020	2021	2022
Bratislava	98,8	98,15	97,6
Trnava	101,6	107,3	111,4
Trenčín	106,8	110,8	104,6
Nitra	103,3	108,4	105,3
Žilina	101,9	99,1	101,3
Banská Bystrica	100	105,83	107,97
Košice	103,1	99,9	101,2
Prešov	98,36	105,35	105,22

Source: Final accounts of regional cities

Assessing comprehensively the situation in the regional cities of the Slovak Republic as a selected sample of cities from the data published in their Annual Accounts, we could concluded that half (50%) of these cities had a higher property tax revenue in the period under review than they had originally budgeted.

For the year 2020, we found that two regional cities (Bratislava and Prešov) had a higher expected revenue than the actual one, and for the year 2021, three regional cities (Bratislava, Žilina and Košice) had a higher expected revenue. The lower actual property tax revenue for these regional cities in 2020 and 2021 could also be due to the adverse consequences related to the outbreak of the Covid-19 pandemic (e.g. related to the closure of various establishments, loss of employment of taxpayers due to their insolvency, etc.). A surprising result was observed for the regional City of Bratislava, capital of the Slovak Republic, which did not achieve a higher actual property tax revenue in 2022 than originally projected. The actual property tax revenue for the City of Bratislava was on average 0.5% lower each year.

Determination of tax arrears or arrears of real estate tax

The concept of tax arrears is not defined by the Local Taxes Act, but by a basic procedural rule of tax law, namely the Tax Code in Section 2(f), according to which, for the purposes of this Act, a tax arrears means *"the amount of tax payable after the due date for payment of the tax"*. A tax arrears or real estate tax arrears arise if the taxpayer, as the person liable to pay real estate tax, fails to voluntarily and fully fulfil the tax obligation within the due date, i.e. within 15 days from the date of the final decision on the real estate tax assessment.[17] The tax administrator is entitled to additionally call upon the taxpayer to pay the real estate tax arrears within a period not shorter than 15 days, while in the call he is obliged to inform the taxpayer of the consequences of non-payment of the arrears.[18] It follows from the foregoing that a prerequisite for the successful recovery of real estare rax arrears is the existence of an eligible enforcemenr order, which, pursuanr to Article 89(1)(a) and (b) of the Tax Code, is an enforceable decision imposing a monetary payment or an enforceable tax arrears statement.[19] The Constitutinal Court of the Slovak Republic on the nature of the statement of tax arrears has stated as follows[20]: *"The statement of tax arrears cannot be considered as a decision imposing a new tax obligation on the taxpayer and, although it is an enforcement title, the statement of tax arrears has a declaratory character reflecting data from the tax records."* The Constitutional Court of the Slovak Republic has further emphasised in its reasoning that *"the statement of arrears does not affect in any way the fact that the tax liability has already arisen and the tax has become payable directly on the basis of the law by fulfilling the conditions set out therein. Thus, neither the creation of the tax liability nor the payment of the levy was a prerequisite for the issue of a decision by the tax authorities."*

Disclosure of the list of tax debtors on the official board or on the website of the municipality, being tax administrator, pursuant to Section 52(2) of the Tax Code can be considered as a certain instrument of forcing taxpayers to fulfil their tax obligations and at the same time a specific supplementary instrument of the tax administrator in the recovery of arrears of real estate tax. The Tax Code gives municipalities as tax administrators the possibility to *"publish a list of tax debtors whose aggregate amount of tax arrears at 31st December of the preceding year exceeded EUR 160 for a natural person and EUR 1 600 for a legal person."*[21]

[17] The decision on the assessment of the real estate tax pursuant to Section 72(3) of the Tax Code shall become final upon the expiry of 30 days from the date of its proper delivery to the particular taxpayer.

[18] The institute of a call for payment of tax arrears is regulated by the Tax Code in § 80. The Tax Code leaves it to the discretion of the tax administrator whether or not to make use of this institute. That is to say, it is an authorisation, not an obligation, of the tax administrator to send calls for payment to tax debtors.

[19] Pursuant to Section 89(3) of the Tax Code, the statement of tax arrears is enforceable on the date of its preparation, while the municipality as the tax administrator does not notify the tax debtor of its preparation or of its enforceability.

[20] Ruling of the Constitutional Court of the Slovak Republic Case No. PL. ÚS 18/2018-40 of 08.09.2021.

[21] For the content of the list of tax debtors, see Section 52(3) of the Tax Code.

If real estate tax arrears are incurred, the municipality being tax administrator can initiate the so-called forced payment of the real estate tax arrears in two alternative ways under two separate legal regulations. The municipality being tax administrator may in the Slovak Republic:

1. to carry out in its own jurisdiction tax execution proceedings under Title IV of the Tax Code;[22] or
2. to bring an action before competent court[23] for execution pursuant to Act No. 233/1995 Coll. on Bailiffs and Enforcement Activities (the Enforcement Code) and on Amendments and Supplements to Other Acts, as further amended (hereinafter referred to as the *"Enforcement Code"*).

The execution shall be carried out by a bailiff who is authorised by the court to carry out such execution.[24]

It is important to note that municipalities, being tax administrators, can recover real estate tax arrears within the time limit. Tax Code sets out under Section 85 two different time limits within of which tax administrator may rightfully recover the tax arrears, namely the statute of limitations and the expiry of the right to recover the tax arrears.[25]

Tab. 2: Amount of property tax arrears in regional cities of the Slovak Republic in 2020-2022

Regional cities in the Slovak Republic		Amount as at 31.12.2020 (€)		Amount as at 31.12.2021 (€)		Amount as at 31.12.2022 (€)	
		Extinct/ Forgiven	Recorded excluding valuation allowances	Extinct/ Forgiven	Recorded excluding valuation allowances	Extinct/ Forgiven	Recorded excluding valuation allowances
1.	Bratislava	-	2.541.251,2	-	2.364.672	-	-

[22] Section 88(1) of the Tax Code defines tax enforcement proceedings as *"proceedings in which the tax administrator ex officio recovers tax arrears, other pecuniary charges imposed by a decision, enforcement costs and out-of-pocket expenses pursuant to Section 149"*.

[23] According to § 49 of the Enforcement Code, only the Banská Bystrica District Court is causally competent for enforcement proceedings.

[24] The Tax Code directly in the provisions of § 88 (2) gives the municipality as a tax administrator, unlike the tax office or customs office, the possibility to ensure the recovery of tax arrears also according to a special regulation, which in this case is the Enforcement Code.

[25] In the case of limitation of the right to recover the arrears of real estate tax under Section 85(1) and (3) of the Tax Code, the following shall apply: *"(1) The right to recover the tax arrears shall be time-barred after six years after the end of the calendar year in which the tax arrears arose, unless a special regulation* (Authors' note: the specific regulation referred to in the Tax Code is the Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended) *does not provide otherwise. If the tax administrator delivers a summons to the tax subject within the period under the first sentence pursuant to Section 80, a new limitation period shall begin to run after the end of the calendar year in which the summons was delivered. ... (3) The tax administrator shall only take into account the statute of limitations if the tax debtor raises an objection to the statute of limitations, and only to the extent of the objection raised. The lodging of an objection shall have suspensive effect. The decision on the objection may not be appealed by the tax debtor."*

The extinction of the right to enforce the real estate tax arrears is subject to the provision of Article 85(3) of the Tax Code, according to which: *"The right to recover a tax arrearage shall expire 20 years after the end of the calendar year in which the tax arrearage was incurred."*

2.	Trnava	-	2.564.177,52	-	2.615.093,55	-	2.464.184,87
3.	Trenčín	-	1.286.937,64	-	1 210 449,84	-	1.187.382,71
4.	Nitra	-	3.705.455,52	-	3.681.656,50	-	3.437.552,87
5.	Žilina	3.293,35	2.304.237,76	440.712,81	2.171.439,11	54.226,11	1.742.062,80
6.	Banská Bystrica	-	1.694.067,43	-	1.756.811,16	-	1.462.287,12
7.	Košice	-	-	-	-	-	-
8.	Prešov	-	1.215.067,55	-	863.326,36	-	727.391,04

Source: Final accounts of regional cities

As regards to the status of the amount of real estate tax arrears in the individual years of the period under review, all regional cities, but one (the City of Košice), have made reports in their Annual accounts in accordance with Section 16(5) of Act No 583/2004 Coll. on the Financial Rules of Local Self-Government and on Amendments and Additions to Certain Acts, as amended by later regulations. The City of Košice hasn´t disclosed the specific amount or status of its real estate tax arrears for any year in the period under review, and the City of Bratislava hasn´t disclosed the amount of these arrears in its Annual accounts for 2022. The City of Žilina, on the other hand, was the only one in the group of analysed that have regularly published the amount of extinguished and forgiven real estate tax arrears during the period under review.[26] For half of the regional cities (Trenčín, Nitra, Žilina and partly for 2020 and 2021 also the city of Bratislava), the balance of real estate tax arrears has been decreasing each year, which is most likely due to the effective use of the instrument of recovery of real estate tax arrears.

Tab. 3: Overview of the methods of recovery of real estate tax arrears in the regional cities of the Slovak Republic

	Regional cities in the Slovak Republic	Tax enforcement proceedings (claims recovered by municipalities as tax administrators)	Enforcement proceedings (arrears recovered by bailiffs)	Generally mentioned *"enforcement proceedings"*
1.	Bratislava	-	-	✓
2.	Trnava	-	✓	-
3.	Trenčín	-	✓	-

[26] The institute of remission of tax arrears is regulated in Section 70 of the Tax Code. The essence of this institute lies in the fact that the tax administrator may, at the request of the tax debtor, who is a natural person, forgive the tax arrears if their recovery would seriously endanger the maintenance of the tax debtor or persons dependent on his/her maintenance.
The facts causing the extinction of a tax arrear (in our case a real estate tax arrear) ex lege or on the basis of a decision of the competent tax administrator are regulated by Section 84 of the Tax Code.

	Regional cities in the Slovak Republic	Tax enforcement proceedings (claims recovered by municipalities as tax administrators)	Enforcement proceedings (arrears recovered by bailiffs)	Generally mentioned "*enforcement proceedings*"
4.	Nitra	-	-	✓
5.	Žilina	-	-	✓
6.	Banská Bystrica	✓	-	-
7.	Košice	-	-	✓
8.	Prešov	✓	-	-

Source: Final accounts of regional cities

An interesting finding is that not all regional cities have reported in their Annual Accounts the specific methods of recovering property tax arrears. The Annual accounts of individual regional cities have showed that only 2 regional cities (Banská Bystrica and Prešov) have recovered real estate tax arrears directly in tax execution proceedings. The other 2 regional cities (Trnava and Trenčín) have stated in their Annual accounts that they have referred to bailiffs for recovery. The remaining four regional cities (Bratislava, Nitra, Žilina, Košice) have mentioned the recovery of the arrears in their Annual Accounts only in general terms with no specific reference whether tax enforcement proceedings or enforcement proceedings under the Enforcement Code have been taken to collect such arrears.

Tax enforcement proceedings under the Tax Code

The municipality as a tax administrator may also recover the real estate tax arrears itself in the so-called tax execution proceedings. The municipality doesn´t proceed conventionally in tax execution proceedings under the Enforcement Code, but under the Tax Code, which regulates the execution proceedings in the fourth title, namely in §§ 88 to 153. In general, the importance of the recovery of arrears of local taxes in tax execution proceedings executed directly by municipalities lies in the fact that municipalities, as tax administrators, have direct control and supervision over the recovery of their own claims arising from non-payment of local taxes. However, not all municipalities recover the arrears themselves, but rather entrust recovery to the bailiff, who follows the procedure under the Execution Code. According to Ulaher, one of the main reasons why municipalities do not make use of this instrument is the fact that "*municipalities usually do not have the necessary professional capacities to conduct such a relatively difficult procedure, so* *they prefer to entrust the whole agenda to a bailiff."*[27] A similar opinion follows from the statement of the expert team[28] that prepared a document published on the website of the Association of Towns and Municipalities of Slovakia (hereinafter referred to as *"ATMS"*)[29] under the title *"Local taxes and fees as a tool to improve the quality of life of residents of towns and municipalities"*[30] for 2022 (hereinafter referred to as *"ATMS document for 2022"*), with the following additional reasons, for which in particular the smaller municipalities[31] prefer to recover arrears through the bailiff, they also cite *"the reluctance of the city/municipality's statutory body to instruct the responsible official to initiate tax enforcement proceedings due to the unpopularity of this step or the close connection to the debtor (especially in smaller municipalities)."*

In our opinion, another reason why municipalities do not provide for the recovery of arrears in tax enforcement proceedings is the desire to avoid further "unnecessary" administrative burden, possible ignorance of the use or uncertainty of the proper execution of procedure.

It cannot be ruled out that in order to avoid the execution of procedure aimed at the recovery of tax arrears by the municipality, the employees of the municipal offices in charge of the tax agenda and the recovery of tax arrears perform only formal acts, such as sending reminders for unpaid tax or calling for additional payment of property tax[32] or writing off overdue debts from the accounts without the consent of the competent municipal authorities.

---

[27] ULAHER, J. *Vymáhanie daňových nedoplatkov na miestnych daniach*. 2020. Available at: https://www.vssr.sk/clanok-z-titulky/vymahanie-danovych-nedoplatkov-na-miestnych-daniach-2020.htm. (cit. 15.01.2024).

[28] The members of the expert team of the social partner ATMS, which developed the above mentioned document are Ing. M. Kulka as an expert guarantor, Ing. L. Adamovič as the ZMOS coordinator, Ing. I. Ištoková, PhDr. S. Karabinoš and Ing. J. Marušinec.

[29] The Association of Towns and Municipalities of Slovakia is the largest non-governmental organization uniting, representing and representing towns, municipalities and urban districts in the Slovak Republic as legal entities. ATMS was founded to defend common legitimate interests and promote the needs of its members, which are the cities, municipalities and urban districts of Bratislava and Košice, which also means that its role is not to intervene in the solution of individual problems of individual member cities and municipalities. Available at: https://www.zmos.sk/zmos.html.

[30] The above document has been prepared within the framework of the main activity *"Strengthening the professional and analytical capacities of social partners, building infrastructure and communication platform for social dialogue and development of social partnership at national and international level"* part of the National Project entitled *"Supporting the quality of social dialogue"*, ITMS project: 312031V749, and specifically under activity No.1.1 Strengthening the capacities of social partners through analytical activities. The document was developed through the analytical work of the expert team of the social partner ATMS in 2022. Hereinafter, the reference to that document will be in the form: KUĽKA, M. a kol. *Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí.* 2022. [online]. p. 134. Dostupné na: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 20.01.2024).

[31] According to the Municipal Act, the status of a town is granted to a municipality that meets several conditions set out in Section 22(1) of the Act. Such a municipality should have the character of an *"urban"* development and should provide various services within its territory, e.g. transport, cultural, social, etc., for other municipalities and should have at least 5 000 inhabitants. However, Section 22(2) of the Act allows for a municipality that does not meet the population requirement to be declared a town if this is justified by the fulfilment of the other conditions set out in paragraph 1.

[32] The aforementioned finding is also evident from the document prepared by the Supreme Audit Office of the Slovak Republic (hereinafter referred to as *"SAO"*) entitled *"Report on the result of the audit 2022 - Recovery of arrears in local government"*, in which the SAO stated that *"municipalities in the recovery of receivables and arrears mainly apply the sending of summonses, while other acts - the establishment of a lien, the use of execution - were applied to a much lesser extent. One of the reasons for this is the structure of tax arrears in terms of amount, as 81 % of the number of tax arrears is in the low amount of up to EUR 20 or up to EUR 160"*.

If the municipality as a tax administrator chooses to carry out tax enforcement proceedings independently, it is obliged to proceed and carry out actions exclusively in accordance with the Tax Code during the entire course of the proceedings. According to Babčák, the Tax Code does not directly define the principles according to which tax enforcement proceedings should be conducted, but its wording nevertheless indirectly defines the existence of a number of principles which can be considered as principles of tax enforcement proceedings. Among these principles we can identified e.g. the exclusive authority of the tax administrator to recover tax arrears by one of the methods of tax execution according to the Tax Code, the initiation of tax execution proceedings by the tax administrator exclusively ex officio, or the obligation of the tax administrator to investigate, whether it is locally competent for tax execution proceedings and whether all conditions for the execution of tax execution are met, such as the jurisdiction of the tax administrator, the legitimacy of tax execution, verification of the existence of an execution title, the unalterability of the person of the tax debtor, etc.[33]

According to the Tax Code, the municipality as a tax administrator has the possibility to execute a tax execution[34] for the purpose of recovery of arrears of real estate tax in 9 ways in total, namely:

a) deduction from wages and other income,
b) garnishee order,
c) sale of movable property,
d) taking of cash and other non-saleable items,
e) sale of securities,
f) sale of immovable property,
g) sale of a business or part of a business,
h) disposal of property rights attached to a shareholder's interest in a company; and
i) the seizure of a driving licence.[35]

However, the Tax Code allows the tax administrator to execute a tax execution in the manner it determines, and it may execute a tax execution on one tax debtor in several ways at the same time, provided that this Act does not provide otherwise.[36]

[33] For more on the principles of tax enforcement proceedings, see: BABČÁK, V. *Dane a daňové právo na Slovensku (teória a legislatíva)*. Ružomberok: Ing. Miroslav Mračko – EPOS, 2022. p. 748 and the following.
[34] Section 94 of the Tax Code defines tax enforcement as *"compulsory execution to enforce payment of tax arrears or reduction of tax arrears, payment of other pecuniary benefits imposed by a decision and payment of enforcement costs and out-of-pocket expenses in the manner provided for in Section 98."*
[35] Section 98(1) of the Tax Code.
[36] Section 98(2) of the Tax Code.

It follows from the above that the actual method of recovery of real estate tax arrears is fully within the competence of municipalities as tax administrators, which, however, must be locally competent to carry out the tax execution, while it is up to the decision of municipal self-government bodies (the mayor of the municipality and the municipal council), to what extent they will be dedicated to the recovery of arrears and whether they will use all the tools that the Local Tax Act and the Tax Code allow in the case of initiation of a tax execution procedure. However, the 2022 Local Tax Code document shows that municipalities do not use all the tools offered by the Tax Code and most municipalities use only one of them, namely tax execution by deduction from wages pursuant to Section 100 et seq. of the Tax Code.[37]

Enforcement proceedings under the Enforcement Code

If the municipality as administrator for various reasons refuses to carry out a tax execution in its own jurisdiction under the Tax Code, it is entitled to file a petition for execution at the District Court in Banská Bystrica and the execution will subsequently be carried out by a court-appointed bailiff in accordance with the Enforcement Code.

Since municipalities as public authorities are obliged under Section 11 of Act No.305/2013 Coll. on the electronic form of exercising the powers of public authorities and on amendments and supplements to certain acts (the e-Government Act), as amended (hereinafter referred to as the *"e-Government Act"*), to have established and activated electronic mailboxes, they can also file such a motion themselves by electronic means to the electronic mailbox of the Banská Bystrica District Court (hereinafter referred to as the *"Execution Court"*), through an electronic form.[38] Despite the above, the municipality has the possibility to file a motion for execution also through an attorney as its legal representative or, for example, through any bailiff.[39]

It is necessary that the application for execution is authorised by a qualified electronic signature pursuant to Section 23 of the e-Government Act. A copy of the writ of execution together with a confirmation of its enforceability pursuant to Section 48(4)(a) of the Enforcement code must be attached to the application for execution and filed together with the application for execution by electronic means in the court's electronic repository. The instrument permitting enforcement shall be attached to the application for enforcement as an original electronic document which has been authorised.[40]

[37] KUĽKA, M. a kol. Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí. 2022. [online]. p. 134. Abailable at: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 25.01.2024).

[38] Pursuant to Section 48(7) of the Enforcement Code, the electronic form for filing a petition for execution is published on the website of the Ministry of Justice of the Slovak Republic.

[39] Section 48(3)(c) and (d) in conjunction with paragraph 8 of the Enforcement Code.

[40] Section 48(6) of the Enforcement Code.

After the petition for execution has been filed, the Execution Court shall assign the case to a bailiff, which it shall select at random.[41] The court-appointed bailiff shall, after the commencement of the execution, proceed exclusively in accordance with the Enforcement Code and may execute the enforcement only by one of the methods of execution provided for in Part Four of the Enforcement Code.[42]

Conclusion

In terms of the stated research objective (to evaluate the importance of the institute of recovery of real estate tax arrears in the Slovak Republic and to identify possible problems that municipalities in the Slovak Republic encounter when using this institute in practice, or problems discouraging them to use this institute and thus recover arrears on their own account), we have concluded that the selected group of cities does not attach much importance to the recovery of real estate tax arrears on their own account in tax enforcement proceedings. Considering the reasons outlined in subsection 3 of this paper that discourage municipalities as tax administrators from initiating tax enforcement proceedings, it is evident that municipalities prefer to choose a less complicated but more costly method of recovering their arrears, namely recovery in enforcement proceedings under the Enforcement Code. In general, it can be concluded that the amount of arrears for the selected sample of municipalities, compared to the amount of actual property tax revenue in each year of the period under review, represents a significant component of the revenue shortfall in the budgets of these municipalities.

At the same time, it can be stated that the volume of tax arrears has been increasing or, if there has been a decrease, it has been mainly related to the write-off of tax arrears due to the fact that they have become irrecoverable directly by law. In addition to using the institute of recovery of real estate tax arrears in the form of tax enforcement proceedings under the Tax Code or enforcement proceedings under the Enforcement Code, municipalities may also recover real estate tax arrears in other (milder or less invasive) ways. In particular, if the tax debtor is an insolvent natural person, or if several earlier enforcement

[41] Section 55(1) of the Enforcement Code.

[42] The specific methods of execution are listed in Section 63(1) of the Enforcement Code, according to which: *"If the basis for the execution is an enforcement order imposing an obligation to pay a sum of money, the execution may be carried out*
a) deductions from wages and other income,
b) garnishee order,
c) sale of movable property,
d) sale of securities,
e) sale of immovable property,
f) sale of a business. "
At the same time, Section 63(3) of the Enforcement Code provides for a restriction in relation to the execution by sale of the real estate in which the debtor has a declared permanent residence or temporary residence. According to that provision, if the execution is for the recovery of a monetary claim, which, excluding accessories, does not exceed EUR 2 000 as of the date of delivery of the petition for execution (so-called petty executions), the court-appointed bailiff may not execute the execution by sale of that real estate.

proceedings are conducted on the property of this person, the municipality as a tax administrator may enter into an employment relationship with this debtor, whereby this debtor will gain the ability to pay his/her arrears. This procedure enables municipalities to reduce their real estate tax arrears.

Another of our recommendations for the successful recovery of property tax arrears is the development of an internal regulation of the municipality, in order to ensure a uniform procedure for the recovery of arrears of local taxes, to increase the efficiency of the collection of local taxes and fees, to reduce the costs of tax debtors to settle their arrears and to reduce the total arrears of local taxes. The above recommendation also follows from the 2022 ATMS document, which also mentions as a recommendation for the successful recovery of local tax arrears the provision of increasing the expertise of municipal staff in the field of local taxes and fees and encouraging them to improve the quality of their work, which could also lead to an increase in revenue for municipal budgets.[43]

It is important for municipalities to be aware of one fundamental fact that the costs of enforcement proceedings conducted by a bailiff under the Enforcement Code are much higher than the costs they would incur if they conducted tax enforcement proceedings on their own.

[43] KUĽKA, M. a kol. Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí. 2022. [online]. p. 155. Available at: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 26.01.2024)

THE LEGAL, RELIGIOUS, AND LINGUISTIC STATUS OF ARTIFICIAL INSEMINATION AND THE EMBRYO, IN LIGHT OF A POTENTIAL PUBLIC POLICY AND DEMOGRAPHIC SHIFT

BÁGER, Gusztáv– LOVÁSZY, Gábor László*

Introduction

The aim of this study is to explore the (bio)ethical and legal characteristics of artificial insemination and the embryo, based on current domestic and international regulations, statistics as well as the relevant demographic and macroeconomic trends, with the goal of identifying the linguistic interpretation of current definitions and concepts as well as the legal, (public) policy, religious, linguistic-linguistic, communicative, awareness, and current human rights narratives of artificially created and long-term stored embryos in Hungary, with particular attention to the concept of embryo donation.

The centre of the dissertation is the development of the artificial insemination procedure, commonly known as the "IVF procedure," which is perhaps one of the most important medical achievements of the 20th century, developed by Nobel laureate Robert G. Edwards who also recognised and made special reservations regarding the legal and ethical complications of the procedure he patented. Since the birth of the first IVF baby, or test-tube baby (1978)[1], at least eight million[2], and according to the latest estimates, more than 12 million people have been born from IVF and are now have happy, healthy, and dignified lives among us[3]. According to the latest statistical data, infertility is also a global public health problem that affects 9-10% of the population, and a 2015 report estimated that globally there were approximately 48.5 million infertile couples. The growing demand for IVF-related treatments is indicated by the fact that market analysts predict a $50 billion healthcare market in this area by 2030.[4]

The increasing number of couples struggling with infertility signals an evolving complex health and social problem, exacerbated by the fast-paced world and modern, urbanised lifestyles, the challenges of as well as the pressure on women's participation in the labour market, the desire for family formation at an older age,

---

*Prof. Dr. Gusztáv Báger: Chief advisor to the Governor of the Central Bank of Hungary, Pázmány Péter Catholic University; László G. Lovászy: Ph.D, senior research fellow, University of Public Service

[1] BERNARD Artúr: *In vitro fertilizáció története. A meddőség korszerű diagnosztikája és kezelése,* Kaali Nagy Géza- Bátfai György (ed.) Medicina 2018. 181-199.

[2] LOVÁSZY László: *Nyolcmillió új élet.* in: FIGYELŐ: GAZDASÁGPOLITIKAI HETILAP 2020/5. pp. 8-8. Paper: (30 January – 5 February 2020.).

[3] https://www.focusonreproduction.eu/article/ESHRE-News-COP23_adamson (downloaded: 23.11.2023.)

[4] https://www.globenewswire.com/en/news-release/2021/04/29/2219487/28124/en/Global-In-Vitro-Fertilization-IVF-Market-2020-2030-Products-Types-Procedures-End-users-Country-Data-16-Countries-and-Competitive-Landscape.html (downloaded: 23.11.2023.)

the stressful relationships as well as the tension of domestic housework among couples, environmental factors, not to mention various (national) diseases and other, as yet little-known harmful effects (e.g., microplastics that damage sperm).

Regarding artificial insemination, there is a topic – and this is the central topic of this dissertation – that has not yet been elaborated in the literature we have explored and especially in public discourse: embryo donation and its language. Although it may seem like an insignificant question, the meaning of the word *donation*, or even its alternative version, synonym, can change the professional and general, public perspective on IVF. This is an important issue since there has been no significant progress in Hungary regarding the nearly 30,000 "orphaned" (forgotten) embryos that have been frozen but not yet used.[5] In this study, we would like to present this issue and propose a new suggestion: instead of *embryo donation*, let's use the term *embryo gifting* so that – as we try to justify – further progress can be made in embryo adoption and nearly 30,000 embryos can have a better chance at life to promote demographic change.[6]

1. The role of IVF babies and demographic trends – how much do they matter?

Based on the demographic trends in Hungary, the number of women of childbearing age is decreasing so rapidly that despite the significantly improving willingness to have children, only 2,000 more children were born in 2020 than ten years earlier, and the first child is born too late in families The seriousness of the situation is led to the fact that the proportion of third children among all newborns is only around 13%, and the number and proportion of childless couples are brutally high: 2.5 times that of those with three childrenMoreover, contrary to the general belief ("there are many single women")[7] and the public narrative and assumptions about childbearing ("women are less willing to have children"), the number of childless men aged 30-39 is 1.6 times that of women, while for those aged 40-49, this difference is almost twice as high, 1.8 times.[8]

Indeed, late childbearing as a social phenomenon is becoming increasingly dominant recently, as the average age of women giving birth to their first child has increased.[9] Therefore, a large percentage of couples struggling with infertility are diagnosed after experiencing disappointments and failures for a longer period of time, and many of them just after they have turned 30. In addition, couples often disagree on whether to have (more) children or not, and without this specific commitment, few children are born – (single) men

[5] https://jogaszvilag.hu/napi/aggalyos-az-embriok-fagyasztott-tarolasa/ (downloaded: 19.12.2023.)

[6] NAVRATYIL Zoltán: *A fagyasztva tárolt embriókkal összefüggő jogviták – különös tekintettel az Egyesült Államokra*. in: Jogtudományi közlöny, 2011/12., pp. 614-623

[7] MONOSTORI Judit– ŐRI Péter– SPÉDER Zsolt (ed.): *Demográfiai portré 2015*. KSH NKI, Budapest, 2015, pp. 153–170.

[8] https://www.ksh.hu/statnap10_gyermektelenseg (downloaded: 19.12.2023.)

[9] https://www.ksh.hu/nepszamlalas/tablak_demografia (downloaded: 19.12.2023.)

1.3.1 A 15 éves és idősebb nők az élve született gyermekek száma és családi állapot szerint (downloaded: 19.12.2023.)

are less likely to have another child, while women increasingly make the decision to have another child dependent on family work-sharing. In addition to the fact that the first – and in many cases the only – child is born late, the second or subsequent child is usually born to couples who take on the burden of childcare, and mothers receive tangible help in everyday life. (It has been proven that not only married men live longer, but are also in better health than those living alone.[10] Even more, according to the data of the Hungarian Cenrral Statistical Office (KSH), about two-thirds of the married who file for divorce are women as well)[11]. When it comes to the phenomenon of adoption, it should be noted that the majority of couples usually willing to adopt prefer younger babies, primarily to establish early bonding and breastfeeding opportunities. As a result, there is significantly less intention and thus opportunity to adopt older or even school-aged children compared to adopting infants.[12]

According to a 2017 survey by KSH, the number of young childless women has brutally increased in recent years in Hungary. In 2016, 56% of women aged between 25 and 35 were still childless (regardless their initial intentions). This increase is shocking because compared to other EU countries, where 6% of men and 4% of women consciously choose to be childless, the rate in Eastern European countries remained below 3% according to the 2011 Eurobarometer data. Furthermore, 86% of the Hungarian adult population agrees that having children is necessary for a fulfilling life, according to the 2008 European Values Study.[13] In case of intended children, the use of IVF programs could clearly improve the trends. Since 2010, more than 41,000 state-funded artificial insemination procedures have been performed, with a success rate of approximately 21%. This means that nearly 8% of the desired live births are achieved annually (so far, approximately 3,200 children).

Therefore, to the question of how much "test-tube babies" matter in demographic processes, it must be answered that they indeed play an increasingly important role in the lives (and the numbers) of children born with this technology. Since infertility is becoming more and more of a social phenomenon, it therefore needs to be addressed much more if we want a demographic turnaround and even more happy families with (more) children in the future. Concerning that fertiliry and reproductive capacity are declining at a younger age today, this became an urging issue to change the current trends.. It is also an important issue for voters to consider, as more importantly, attention also should be paid to that the exemplary free IVF program is

[10] https://mta.hu/data/dokumentumok/fiatal_kutatok_helyzete_felmeres_eredmeny.pdf
[11] KSH Statisztikai Tükör, A válások demográfiai jellemzői http://www.ksh.hu/docs/hun/xftp/stattukor/valas17.pdf
[12] TAKÁCS Judit– NEMÉNYI Mária. *Örökbefogadás és diszkrimináció Magyarországon.* Esély 2015/2. pp. 32-61 https://www.academia.edu/13350172/%C3%96r%C3%B6kbefogad%C3%A1s_%C3%A9s_diszkrimin%C3%A1ci%C3%B3_Magyarorsz%C3%A1gon_Adoption_and_discrimination_in_Hungary_2015_ (downloaded: 19.12.2023.)
[13] Központi Statisztikai Hivatal: Magyarország 2022. Budapest, p. 263.

now widely available in Hungary, which has a high level of social acceptance, while the number of opponents is considered low.[14]

2. On the relationship between childbearing and the national economy – what does the Hungarian National Bank say?

When it comes to demographic changes, economic perspectives are also essential. Demography plays a significant role in the national economy, so it cannot be ignored that households are one of the main players in the national economy, and also the key to the future of households in terms of childbearing. Based on all of this, the issue of artificial insemination musr also be examined from the perspective of rhe national economy's stakeholders, as well as its impact on the structure of the different national economic sectors.

The stakeholders of the national economy, namely households, businesses, and the government, are fundamentally dependent on the demographic situation and its future prospects. Within the national economy, households and their individual members play different roles, as they appear as consumers, as they consume goods produced by businesses, and some members of households also provide one of the production factors, labour. For households struggling with infertility, (accessible) artificial insemination is a fundamental issue, and its greater prevalence significantly affects household (and the nation's) reproduction. Even though households bear the lion's share of the costs of artificial insemination from their own resources, but other stakeholders in the national economy must also contribute to some extent to help households achieve their reproductive goals. However, this requires not only financial but also other, immaterial as well as in-kind resources and specific provisions from businesses (such as flexible working hours, home-office) and the government (such as budget transfers, available health services).

The other important element of the national economy is businesses as producers (they produce goods thar households consume) and tradirionally also carry out further investmenrs ro employ (more) members of households. Furthermore, the maintaining or increase of the role of businesses in the national economy is unimaginable without stable and sustainable household reproduction. Therefore, it is in the interest of businesses to support households directly, and indirectly, through the tax system, to support the financing of artificial insemination for families. Businesses can directly support households by sacrificing their own resources in the short term to create the personal or material environment of artificial insemination. Moreover, in Hungary, businesses and economic organizations have a legal obligation: according to Section 65 (1) (e) of Act I of 2012, the employer cannot terminate the employment contract by dismissal during the six-month period from the start of the human reproductive procedure, but no longer than this. All of this

[14] LOVÁSZY László– SZOBOSZLAI-KISS Katalin: *A mesterséges megtermékenyítésről, mint az élethez való jog lehetőségéről és az ebből származó etikai dilemmákról*

means keeping a long-term goal in mind, which is sure to be difficult for profit-oriented businesses at the outset. It is already necessary to mention the need for government involvement and that of protection, that is, without state involvement, businesses will not voluntarily take significant steps in terms of accessing to artificial insemination, which is crucially important for infertile households.

The Hungarian Government aims to increase the number of children born in Hungary by improving access to assisted reproductive treatments[15], including artificial insemination. Significant changes have been made since 2020 to achieve this goal. According to the regulations that came into effect in 2021[16], only state-owned centres that provide infertility treatment with fully financed by the central budget are authorized to perform interventions for infertility treatment from September 30, 2021. The operating licenses of private institutions for this purpose expired on June 30, 2022, and ongoing treatments and frozen samples were transferred to the state-designated service provider. More importantly, since 2020, the drugs used in infertility treatment have been 100% state-funded. As a result, infertility treatments have become free for couples touched upon in Hungary, and in addition, even the performance and volume limits (TVK) of clinics performing IVF with state support have been abolished. Diagnostic services have also become publicly funded, and the financing of insemination (artificial insemination) has completely changed. This change has also affected significant budgetary resources: the amount of the coverage of infertility treatments has essentially doubled compared to 2019.[17]

Based on this argument, it seems that we have the centre of the circular flow of economic activity. Why? Households receive salaries from companies in exchange for labour and use this financial asset to purchase goods and services from companies. Companies therefore invest the revenue received from households to produce (more or alternative) goods and services, which are then also purchased by households. The government can act as both a producer and consumer. This circular flow must also be present in the context of artificial insemination as an aim to reproduce more children to the economy and the society.

The Hungarian National Bank, one of Hungary's most respected institutions that supports national strategic planning and is independent from the incumbent government, also made recommendations[18] regarding artificial insemination in 2019. These recommendations are as follows:

1. The introduction of targeted screening tests related to childbearing and greater state involvement in healthcare services related to childbearing can contribute to the desired birth of first children and the birth of more children at the right time.

[15] NAVRATYIL Zoltán: *Az asszisztált reprodukciós eljárások főbb fajtái és történeti kialakulásuk az etika-jogi reakciók tükrében.* Iustum aequum salutare, 2011/1., pp. 109-123.

[16] 2021. évi CI. törvény egyes vagyongazdálkodási kérdésekről, illetve egyes törvényeknek a jogrendszer koherenciájának erősítése érdekében történő módosításáról

[17] https://www.koppmariaintezet.hu/docs/Meddosegi_kezelesek_2021.pdf

[18] MATOLCSY György: *Versenyképes egészségügy a fenntartható felzárkózásért. presentation* 5.12.2019. p. 40. p. 14. https://www.mnb.hu/letoltes/matolcsy-gyorgy-semmelweis250-20190905.pdf

2. Supporting artificial insemination is one of the most effective ways to increase the number of children, as it specifically supports couples who have already made the decision to have children but are unable to do so for health-related reasons.

3. After the takeover of fertility centres by the state, it is necessary to strengthen confidence in state services in the future, which means an effective tool for strong professional and financial control, well-functioning and continuously updated protocol-based treatment, and more personalized care. In addition, it would be worthwhile to expand capacity, as there had been a significant waiting list for state services.

3. Childbearing and Biotechnological Perspectives – Disease-Centred Care as a Solution and What the Future May Hold?

The demographic and economic challenges of childbearing are accompanied by an increasingly significant health issue, which unfortunately is becoming more prominent among couples intending to start a family, namely the issue of infertility. Previously, only women were examined for infertility, and this burden carried the stigma of femininity being undermined – nowadays, inferrility is also spreading among men, as sperm count has halved in the developed world over the past few decades.[19] In about 30% of infertile couples, the male partner is the cause of infertility. In addition to genetic conditions, numerous factors may be responsible for this, such as alcohol consumption, smoking, drug use, severe mumps infection after puberty, hernias, hormonal imbalances, exposure to toxins, certain types of medications, urinary tract infections, exposure to various types of radiation, wearing underwear that is too tight, lumbar injuries, and even the heat emitted by laptops when placed on the lap. Recently, it has become clear that even the use and carrying of mobile phones in pockets could also contribute to this crisis.[20]

As to the social and health perspective of the issue, in our view infertility is definitely a disease[21], which can be treated more effectively with early detection, partly through the use of ultrasound devices. In terms of education policy – and emphasizing the importance of language – it should play a much more important role not only in avoiding infertility, but also in preserving health in general, so that even a young person's desire to assess their general health status (including potential) is more natural, and embryo adoption, analogous to adoption, can be more widespread. Prevention, awareness of overall health, healthy sexual identity, and preparation for procreation (family building) should be brought into educational institutions

[19] The Guardian: Sperm counts among western men …, 2017.

[20] NYÍRI Kristóf (ed.), *Mobil információs társadalom: Tanulmányok,* Budapest: MTA Filozófiai Kutatóintézete, 2001.

[21] According to the latest statistical data, infertility is a global public health issue that affects 9-10% of the population, and a 2015 report estimated that there were approximately 48.5 million infertile couples worldwide. The increasing demand for treatments is indicated by the fact that market analysts predict a $50 billion healthcare market in this area by 2030. – Globenewswire.com: Global In-Vitro Fertilization (IVF) Market 2020-2030, 2021.

with the involvement of specialists based on the agreement with parents touched upon. As we have seen, a large percentage of couples struggling with infertility are faced with the diagnosis after a long period of disappointment and failure and who usually could be over 30 years old by that time.

4. About the bioethical-religious and regulatory background of embryo donation and gametes, as well as the legal status of the embryo

There is no complete agreement among different churches, denominations, and religious figures regarding all aspects of artificial insemination. *„The terms "zygote," "pre-embryo," "embryo," and "foetus" represent the successive stages of human development according to biology. Please feel free to use these terms in the following instructions if they all have the same ethical content, namely the fruit of human procreation, from its visible or invisible existence to birth."*[22] This excerpt is from the document titled Donum Vitae, which contains ethical guidelines related to artificial insemination, officially adopted by the Catholic Church. It is importanr to emphasize rhat the authors of rhe article strongly agree on defining embryos as human beings and respecting them as such from the very moment of conception. The document expresses the Catholic Church's position on an existing biomedical (IVF[23]) therapy, indicating that the dignity of life and the respect for embryos and some of its elements are in indeed conflict with religious and moral doctrines, making it unacceptable for the members of the Catholic Church and directly contraindicated in the protection of marriage and sexual life. What is even more important is that, citing the dignity of human life, the direct destruction of embryos shall be considered equivalent to abortion, even if other childs are also born from the same IVF treatment (from the remaining embryos).

„Human life must be respected and protected from the moment of conception."[24] The authors of this study unanimously support this Christian position, along with opponents of the IVF program, but also consider ir as a starting point for clarifying opposing views.[25] According to the Hungarian Constitutional Court's practice, this debate also touches on a fundamental question of whether the foetus is a legal entiry or not. This is such a problematic issue (also from a legal dogmatic point of view) that the Court itself did

[22] Donum vitae, In. https://katolikus.hu/dokumentumtar/2660 The Donum Vitae is the ethical directive of the Catholic Church regarding human reproductive medicine.
[23] In vitro fertilization (IVF) is a medical therapeutic method used during infertility treatments.
[24] Szentszék: Családjogi Charta 4. In. Donum vitae, In. https://katolikus.hu/dokumentumtar/2660 (downloaded 06.05.2021.)
[25] The process of artificial insemination is carried out using various medical methods. For some, drug support is sufficient, while in other cases, male gametes are introduced into the uterus using a device, which is called insemination. In some cases, neither of these two methods can be applied, and in a certain percentage of cases, the IVF method (in vitro fertilization = IVF; ICSI when the male gamete is injected into the egg) will be effective. The parents" gametes are combined outside the body, and the developing embryos are kept under laboratory conditions, with the conditions for natural fertilization being replaced by external technical means and expert care. The pre-embryos are implanted in the uterus on the most ideal day for the natural continuation of life, while the remaining embryos, i.e., the twins, are put into a protective solution (vitrification or freezing) to give them a chance at life. The debate should indeed be about the protection of human embryos that are destroyed in the process.

not want to decide it unequivocally and actually came to contradictory results as early as 1991[26], however, this is not the subject of this paper therefore this argument will not be discussed further.

The rules for handling gametes and embryos, as well as their frozen storage, are particularly special. The fundamental reason for this is that the status of the embryo is also unique, as it has a living, human DNA (with a individual and unrepeatable genetic structure); however, according to the law, it is not a person, but a "being". Even more, some exisring, specially adopted rules for higher level of legal protection, such as stricter regulations for animals, or legislation on things or property (rights in rem), are not applicable to it (completely).

In addition, the right to dispose of the embryo changes depending on where the embryo is physically located. If the embryo is in the mother's womb – and with the exception of a special case when the mother dies (for example, in an accident) and the foetus is still alive in the mother's body – then the woman always has the exclusive right to dispose of it. If the embryo is already outside the mother's body, then the father also has (partial) right to dispose of it, as well as the father's separate consent statement is required at the beginning of the IVF procedure regarding the disposal of the embryo later if conditions are met (e.g., in the case of a decision to destroy the embryo after the procedure is completed). The peculiarity of the IVF procedure is that there is also the possibility of storing a third ('shared') slife of two parents, the embryo, and even in their state as gametes – outside the mother's body, through freezing.

The issue of embryo' rights (donated or deposited) arises in the case of gametes and embryos, which is a question of protecting the embryos, and its (legal) status is a question of particular importance to the followers of prominent religious communities (Catholic, Reformed, Lutheran, and Jewish denominations). However, the position of the Catholic Church, as well as the Protestant and Jewish churches, is partly (mutually) contradictory. For the latter two religions (denominations), the use of IVF technology is recommended with due caution for their followers for the sake of having new life, while the Catholic Church does not support this technology based on several reasons when it comes to bring out new life arguing that more protection is needed for the human life's digniry. The permissive approach fundamentally differs from the Catholic perspective, as it examines the issue from the viewpoint of couples suffering from infertiliry and seeks to reconcile the procedure of artificial insemination with the goal of marriage becoming a family with the birth of a child, while placing less emphasis on the (technical) circumstances of conception itself

[26] *„According to the 64/1991 (XII. 17.) majority decision of the Constitutional Court, "the issue of the legal personality of the fetus cannot be decided by interpreting the Constitution." However, the same decision later, somewhat exceeding its own jurisdiction, decided this issue*: "According to Hungarian law, the fetus is not a legal entity," although only the law (Constitution) can decide on fundamental rights and their limitations (i.e., not the Constitutional Court). For more information, see
LOVÁSZY László: *Brief Reflections on the Modern Abortion Paradox in the Light of Hungarian Constitutionalism from the Perspective of the State"s Obligation to Protect Life.* in: Európai Jog: Az Európai Jogakadémia Folyóirata 2010/5 pp. 3-12., p. 10 p.

compared to the expected blessing of a child. Therefore, opponents of IVF treatment do not consider this goal to be achievable at any means, so there are cases where couples explicitly give up on becoming a family through blood-born children because they do not consider the promotion of childbearing through IVF methods (conception not through natural means) using science and medicine to be supportable and acceptable, as they find it conrrary to the teachings of the Catholic Church (conception does not occur through marriage and natural intercourse). This also means, however, that these couples can eventually ultimately only adopt a child born through later adoption using the IVF method, so they can still accept a child who was not born through natural means in their marriage.

According to the authors, every embryo – regardless of whether it comes from believers or non-believers – has an unequivocal and equal right to life in the procedure. The authors consider the pre-embryos created to be human, so they could agree with the enforcement of laws regarding the integrity of the fully developed human body for their organs and lives. The authors, therefore, do not consider offering embryos for experimentation to be compatible with their views.

The authors of this study (together with Katalin Szoboszlai-Kiss)[27] believe that recognizing embryos as humans rather than 'objects' (in rights in rem) could contribute to the social burden and that it would be more advantageous if the cost of storing temporarily unused embryos were partially or entirely covered by the parents in the future, depending on their financial situation, in addition to the free-of-charge IVF procedure. This is similar to child support in the event of a divorce, as only the parents can be held responsible for the innocent child's life, which came into existence due to reasons beyond their control. It would be unworthy to shift the entire responsibility (and costs) to society, especially if no newborn human will come from them, who would then contribute to the nation's growth and later to joint efforts and burden sharing in society, even though they were "created by taxpayers money".

5. Spiritual, mental and linguistic approaches – donation or gift?

In the context of spiritual and linguistic approaches, it is important to clarify *the concept and linguistic expression of infertility*, as this term means something quite different in medical jargon than in everyday language. In everyday life, we usually consider someone infertile when they are no longer able to have children, and all such efforts are doomed to failure, a "sterile" attempt. In medical terminology, a couple is diagnosed with "infertility" if they have not conceived a child after at least one year of unprotected, regular sexual intercourse (2-3 times a week).[28] In the vast majority of these cases, children are eventually born,

[27] LOVÁSZY– Szoboszlai-KISS: *ibidem*
[28] BENDA József - BÁGER Gusztáv: *Jövőnk a gyermek. Veszprémi Humán Tudományokért Alapítvány kiadó,* 2020. pp. 432.

either spontaneously or as a result of investigations and interventions carried out at so-called infertility centres. In this article, we use the term "infertility" in the latter sense, roughly as a synonym for "struggling with conception difficulties". When we hear about the psychological causes of infertility, we usually think of one thing: a physically healthy woman who wants to have a child but subconsciously does not want to, so she does not get pregnant. Although psychological factors can indeed influence the success of conception, the reality is somewhat more complicated and inexplicable.

Historically, the first theory that explored the psychology of infertility was indeed the so-called *psychogenic infertility* theory:[29] when some psychological barrier prevents a woman from getting pregnant. According to psychoanalytic thinkers of the 1950s, such unconscious psychological barriers are primarily characteristic of immature, 'girlish' women who subconsciously still want to remain children, as well as Amazon-type, overly masculine women who reject femininity. Of course, unconscious psychological barriers can also hinder male fertility, and in these cases, early analysts assumed that an overly close or pathological relationship with the man's mother was the underlying cause. Apart from this, however, male infertility in fact was practically unheard of during that period.

Modern theories of infertility[30] mostly reverse the question: experts believe that it is worth addressing the psychological problems that infertility, or facing conception difficulties, causes in the couple's life, and how the development of these problems affects the chances of pregnancy in the future. The most common experience of a couple struggling with conception difficulties is grief, although the grief associated with infertility differs greatly from the grief felt when losing loved ones. During the recognition of infertility, several kinds of losses must be mourned, such as the couple's faith in their health. Although unknown infertility can also shake this faith, a difficult-to-cure disease (tumour) or a condition that irreversibly reduces the chance of conception (early menopause) is an even more serious loss. Although fertility difficulties are not a disease in the classical sense of the word, during infertility investigations, the otherwise healthy couple inevitably falls into a sick role: between referrals, blood tests, ultrasound and laboratory results. (However, their situation is complicated by the fact that society often does not consider them sick, but rather "unfortunate" for those affected.) In addition, the "desired" and lost child must also be mourned: the little person who does not exist, but the couple has already imagined what it would be like if they did exist. During attempts to conceive, it may also be necessary to mourn unfertilized eggs, unattached embryos, and miscarriages. The grief caused by infertility is a difficult process because losses accumulate in small doses over a long period of time, and because, compared to grief associated with death, infertile couples generally

[29] SZIGETI F. Judit– KONKOLY THEGE Barna: *A meddőség pszichés velejárói egy hazai pilot-vizsgálat tükrében.* Magyar pszichológiai szemle, 2012/4., pp. 713-731.
[30] SZIGETI F. -KONKOLY THEGE: ibid pp. 561-580.

receive or use much less social support (because they tend to conceal the problem or because their environment does not understand their experiences and challenges).

For many infertile couples, having a child through donated reproductive cells is the only option. Therefore, the topic of artificial insemination always arouses strong emotions, whether in public discourse or in personal conversations. It seems that people simply cannot remain objective in this question, in many cases empathy is also missing when it comes to the conflict arisen between dogmas and everyday life's challenges. There is a lot of mutual and oversimplified accusations, as those who speak out against artificial insemination easily receive the response that they should not interfere in other people's private lives because it is none of their business. On the other hand, supporters emphasize human rights and the right to have a child, often leaving their personal involvement in the matter in the shadows.

Nowadays, few people take a spiritual and psychological approach to the difficulties and tasks that arise in their lives. When infertility and childlessness become a visible problem, parents are desperately capable of doing everything to have a child. However, the unconditional desire for a child is often an attempt to avoid a deeper psychological problem, just so that those affected do not have to face it. They may feel that a child will divert their attention from the emotional and psychological burden (problems in the relationships among couples included), but this is, of course, not how it works. Because more intense deeper psychological difficulties already prevent conception under the existing emotional and psychological circumstances. There are those who, under parental or social pressure, urge childbearing by following patterns, while it would be primary to come to terms with themselves to prepare themselves at all levels, and heal themselves so that they can maturely and consciously face the challenging task of raising children.

If someone is in a situation where they need external (artificial) help to have a child, it is recommended that they first target the psychotherapeutic remedies and try them – this is also recommended by religious organizations and churches. With the family constellation method, you can dissolve all the subconscious blocks and obstacles that prevent conception or childbearing. Believe that you can indeed eliminate those deeper effects and burdens that you carry within you without knowing it. Give at least one chance before artificial insemination to achieve the desired goal with a more natural and delicate method.

When a woman is fertilized with a stranger's sperm – because her husband (partner) is infertile – it essentially a significant risk at putting an end to their relationship, their marriage. The process of fertilization may indeed have great spiritual and psychological significance, as it is a life-giving, creative process. If a woman is not fertilized by her partner, husband, the relationship is expected to become more difficult, as it will always be in the "air" that (even indirectly) another man was needed for fulfilment and joy. Of course, the topic can also be handled consciously, but – based on the information obtained by the authors in private conversations with those affected – it is highly likely that distancing and isolation from each other will occur. (This area should also be empirically researched, explored.) It is worth considering that the couple may gain more if they accept childlessness and jointly bear the pain that comes with it. In their shared grief, they can go further on the path of their relationship than if they were to fulfil their desire for a child at all costs. It is an important question whether, with regard to embryo donation, those affected should also consider whether giving birth to a child is more important, without a real blood relationship, or avoiding the risks and difficulties arising from the difference between the adoptive parent and the biological parent.

When it comes to both partners are infertile and they found a family with the help of eggs and sperm from different women and men through artificial means, they may create a situation where the child(ren) are limited in their basic rights in certain cases. This happens in particular when they cannot know who their real parents are or where they come from. Such uncertainty and ambiguity, which they feel deeply in their souls even if their adoptive parents lie to them throughout their lives – even after they reach adulthood – has serious implications later in their lives. In this case, they will not be able to connect, but will have to face emptiness, purposelessness, identity confusion, relationship and self-realization problems. A child must always know who their parents are. Adoption is one option here, but it is also an option that can carry risks and difficulties, so potential stakeholders should always think about all circumstances in advance.

In terms of *linguistic and language characteristics*, the question of the status of the embryo deserves special attention in connection with the fact that in Hungary, the legal practice uses the concept and term of embryo donation. However, according to the interpretations of synonym dictionaries and etymological dictionaries, this practice is questionable for several reasons. One of them is that in the linguistic environment of the concept of donation – although it is formally close and similar, but not the same in meaning to the concepts of gift – the act of donation primarily takes place with the concepts of specific things, objects, and thus primarily draws favorable attention to the donor rather than the recipient of the donation. In contrast, in the linguistic environment of the gift, there are such emotional concepts as reward, inheritance, and acquisition, acceptance, which – in terms of effects – make the recipient of the gift equal to the giver due to our human nature, and thus can evoke positive human feelings in the affected fellow human beings, avoiding the cold reality of a business contract.

Finally, it is worth mentioning that originally, the gift is an old Hungarian word known since 1372, so this expression is more suitable for Hungarian traditions as well.

6. Redefining the concept of embryo donation – the solution?

In summary, we quote the words of a medical professor who is an international authority in the field of human reproductive medicine and who helped five thousand children to a happy life during his twenty years of work. His words faithfully reflect the ethical view of medical science in Hungary: „What happens to embryos that have expired after ten years? We have not destroyed a single embryo, even though I cannot say whether we will ever use them or not. But I can confidently say that the whole world is like this. Therefore, storing excess embryos is a problem throughout the country. It costs huge amounts of money, yet we insist that if life is destined to be stored because parents requested it, then we will try to preserve it until the end of our lives."[31] The quoted excerpt is worth considering for those who oppose those involved in artificial insemination and can also be an argument for supporters of embryo donation, reflecting the attitude of Dr. Tamás Kőrösi, a medical professor and director of the Kaáli Institute in Győr.

Infertility is a disease, and couples suffering from it carry their desire for children with them as a lifelong wound. If medical techniques can provide relief in this painful disease, they should be used, keeping strict ethical considerations in mind, especially in the age of declining demographics. The most drastic but increasingly effective application of infertility treatment is the human reproductive procedure described, which is a great medical miracle of the 20th century. The most remarkable part of this miracle is that tens of thousands of people are still waiting for a chance at real life and birth. They are not charity to families, but gifts from God, who can only be given further, as parents do not own their children, and every life is a miracle."

Regarding the concept and linguistic formulation of embryo donation, it is necessary to discuss the term "donation" itself and its meaning. Donation is a custom that serves people's intentional honour and delight without expecting anything in return. The meaning of the custom is symbolic: it can express respect; the degree and depth of kinship preservation, as well as – among many other things – the most diverse and natural traditional ways of obtaining joy. Giving gifts has always brought joy, served as an expression of love, and led to spiritual enrichment for both the giver and the recipient. This is especially true when it helps the affected party to give birth to a long-awaited child.

At the end of our study, we arrive in the world of literature. Karinthy's poem, "Foreword" is not only about those who are voiceless and invisible to most, such as those suffering from infertility, but also about those who seek the tiny miracle. For them, it is not important whether their baby is conceived spontaneously or through embryo transfer, as long as the long-awaited and desired child is finally born. The one of the most respected Hungarian novelists, Sándor Márai and his wife, Lola Metzner were unable to have their own child after leaving their beloved country when the Communist took power, and the resulting, consuming pain deeply affected the great writer and his spouse. Therefore, let us conclude our thoughts

---

[31] KŐRÖSI Tamás: A *mesterséges megtermékenyítésről*, interjú. https://www.youtube.com/watch?v=uN9DiOx12kY (downloaded: 11.05.2021.)

with the words of Sándor Márai, so that there may be more understanding and compassion in the world towards infertile couples: "Why is it that whenever I hear someone speaking Hungarian to a child in a foreign land, an overwhelming sadness overcomes me, and I have to hurry away to some deserted side road to wipe away my tears from strangers?"[32]

[32] MÁRAI Sándor: *Négy évszak*, Helikon 2003, p. 110.

THE ROLE OF VOCATIONAL TRAINING IN CONFLICT MANAGEMENT – CONTINUOUS AND SUSTAINABLE KNOWLEDGE DEVELOPMENT

ANTAL, Orsolya*

Social sustainability provides complex responses to the increasingly pressing challenges of our world, which have an impact on all aspects of life, including conflict resolution through mediation. My aim is to examine the methodology of mediation from the perspective of how education and training in the subject can adequately respond to the demands of social sustainability.

Introduction

The expectations of social sustainability, in keeping with the nature of the subject, also require a multifaceted response in the field of mediation, and the training courses in this field must therefore offer lifelong opportunities for self-development for professionals in the field.

From the point of view of social sustainability, training and education in this field are expected to transform mediation into a tool capable of bringing about a qualitative improvement in the community as a whole, with a higher level of cooperation than previously. Mediation is most effective in the innovative dimension of social sustainability, where creative problem-solving is an essential element. This leads to the thesis that the primary task of mediation is to use its creativity to put the conflict into a new perspective, where its resolution can be achieved by the interests of all parties involved in the conflict.

1. Contradictions in attempts to define sustainability

From the very beginnings of the idea of sustainability (Our Common Future see: Brundtland Report)[1]; it can be observed that the most serious challenge at the level of definition has been the need to harmonise priority criteria in competing areas. What are these competing areas?[2]

1. Aspects of the protection of the natural environment
2. Aspects of social sustainability
3. Aspects of economic growth

*PhD student at Széchenyi István University, Deák Ferenc Faculty of Law and Political Sciences

[1] PERSÁNYI, Miklós: *Közös jövőnk: A Brundtland-jelentés*, [Our Common Future: The Brundtland Report], Budapest, Mezőgazdasági Kiadó, 1988.

[2] GÖPEL, Maja: *The Great Mindshift. Wuppertal Institute*, Berlin, Springer Open, 2016. available at: https://doi.org /10.1007/9783319-43766-8 (cit. 15.07.2023.)

There is considerable potential for research into:

1. whether mediation can play a role in balancing these competing aspects, and
2. and, if so, in what form.

Iván Gyulai points out another important contradiction, which, in turn, arises in the area of conceptual interpretation. In his view the concept of sustainability, which is taking root in the vernacular, interprets sustainability as the chronological state of a given thing, its survival. In contrast, Gyulai argues that sustainability is primarily about continued growth that is not accompanied by a worsening of environmental pressures[3].

The dilemma of taking a position on which system's sustainability should take priority over other systems also requiring sustainability is also detectable in the strategies (e.g.: EU 2020 Strategy) available to the public on this issue, many of which are accompanied by political considerations. At the level of policy-making, there is typically a predominance of the economic growth dimension, with a decline in the other two.

However, further away from the political arena, a different view is emerging, particularly among sociologists. These researchers are arguing for the primacy of social sustainability as a result of the recognition that this area has the greatest potential to positively influence efforts to increase the sustainability of the other two systems[4]. According to Csath, social sustainability is a concept consisting of three elements:

1. members of society trust each other,
2. members of society working together,
3. members of society feel responsible for each other[5].

As we will see later, mediation can play a major role in shaping the perspectives of the parties to a dispute so that it becomes clear to the individuals involved that:

1. what trust means,
2. what cooperation means, and

[3] GYULAI, Iván: *Fenntartható fejlődés és fenntartható növekedés,* [Sustainable development and sustainable growth], in *Statisztikai Szemle,* Vol. 91. No. 8–9. 1991. pp.797–822.
[4] CSATH, Magdolna: A *fenntarthatóság mint emberi és társadalmi fejlődés,* [Sustainability as human and social development], in: *Acta Humana,* Vol. 1. 2020. p. 28.
[5] Ibidem.

3. what it means to have a sense of responsibility towards each other[1].

2. The role of mediator training in promoting social sustainability

Social harmony is an indispensable element of a sustainable society, in which a shared vision of the future and a common set of values are all important[2]. *"A sustainable society therefore requires not only better and more technology, but also its wise use as well as moderation, justice, the rebuilding of love and trust between people, and the appreciation and sustainable use of the values of the environment. The social architecture for sustainability must work in a way that strengthens, not weakens, the values needed for sustainability."* - says Gyulai[3]

Mediation can also be an important method for knowledge diffusion, in addition to knowledge creation. However, it also requires social cooperation, social harmony and a high level of trust[4].

Both motivation and competence are needed to resolve conflicts peacefully[5]. Mediation cannot, however, be understood as a single, unified method, given that there are several stances on approaching and managing conflicts. We can talk about evaluative, facilitative, transformative and narrative approaches. On the basis of the transformative approach, we can conclude that mediation in the right way is therefore also a serious tool for shaping attitudes, which influences the disputants who use it to recognize the importance and inescapability of trust, cooperation and responsibility[6].

Transformative mediation has a very optimistic vision of society. It is a process in the mediation procedure, the essence of which is that a destructive relationship can be transformed into a constructive cooperation, a process that can be taught to the parties. Thus, more and more conflicts are being transformed in a way that cooperation based on understanding of the other party makes respect and appreciation a solid element of the conflict. In the long term, this quantitative change can bring about a qualitative change in human communication and conflict management that will be felt also at the societal level. However, the vision of a cooperative society based on mutual understanding, respect and appreciation is, in the view of critical thinkers, an over-optimistic and idealistic vision[7].

Yet, from a sustainability perspective, we see the need for qualitative and structural change rather than a quest for constant growth. At the same time, a shift from a resource-intensive to a knowledge-based structure

[1] STRASSER, Freddie-RANDOLPH, Paul: *Mediáció: a konfliktusmegoldás lélektani aspektusai,* [A Psychological Insight into Conflict Resolution Continuum] Budapest, Nyitott Könyvműhely Kiadó, 2005. pp. 41-59.
[2] CSATH: A *fenntarthatóság mint emberi és társadalmi fejlődés,* [Sustainability as human and social development], cit. p. 28.
[3] GYULAI: *Fenntartható fejlődés és fenntartható növekedés,* [Sustainable development and sustainable growth], cit. p. 816.
[4] CSATH: A *fenntarthatóság mint emberi és társadalmi fejlődés,* [Sustainability as human and social development], cit. p. 31.
[5] SMITH, Eliot. R.-MACKIE Diane M.-CLAYPOOL Heather M.: *Szociálpszichológia,* [Social psychology], Budapest, Eötvös Kiadó, 2016. pp. 692-696.
[6] KERTÉSZ, Tibor: *Mediáció a gyakorlatban,* [Mediation in practice], Miskolc, Bíbor, 2010. pp. 97-114.
[7] KERTÉSZ: ibid, pp. 110-114.

would allow for a more efficient use of human resources, individual development and, as a result, an improvement in the quality of life. Economic development is thus based on the qualitative characteristics of society's human capital, i.e. knowledge and creativity. This in turn requires continuous learning at the societal level, thus laying the foundations for knowledge-based competition[8].

2.1 Legal regulation of mediator training in Hungary

In Hungary, the mediation process as a possible way of alternative dispute resolution came into the focus of attention at the turn of the millennium. Several recommendations of the Council of Europe call for the recognition of mediation procedures and their use before, during and after court proceedings; at the same time, they call on Member States to make wider use of alternative dispute resolution procedures (Recommendation No R (98) 1 of the Committee of Ministers; Recommendation Rec (2002) 10 of the Committee of Ministers).

In Hungary, the general rules, as well as additional and specific rules, have been gradually introduced. At present, alternative dispute resolution is available for specific disputes in several branches of law (civil law, labor law, administrative law, criminal law). These include: mediation in the areas of personal, property, child protection, public authorities, health and education, consumer conciliation, conciliation of individual or collective labor disputes, arbitration conciliation-mediation.

In the context of domestic legislation, mediation is defined by the Act LV of 2002 on Mediation, hereinafter referred to as the "Act on Mediation") as

1. a specific conciliation, conflict management, dispute resolution procedure, which facilitates the conclusion of a dispute or of a judicial or administrative procedure,
2. the aim of which is to reach a written agreement between the parties to the dispute, by mutual agreement of the parties involved in the dispute, with the involvement of a third party (mediator), with a view to resolving the dispute.

The mediator's role is to contribute impartially and conscientiously to the best of his or her ability to reach an agreement between the parties to the dispute (Act on Mediation, No. 2-3.).

The general content and form of the mediation procedure is laid down in Act on Mediation.

The aim of the legislator is to facilitate the settlement of civil and administrative disputes concerning the personal and property rights of natural persons and other persons in which the parties' right of disposal is

[8] CSATH: A *fenntarthatóság mint emberi és társadalmi fejlődés*, [Sustainability as human and social development], cit. p. 31.

not restricted by law (Act on Mediation, No. 1.). Court mediation is also covered by this law. (Act CXVII of 2012 amending the Acts on Justice and Public Administration. Act No. 39 (2))

The general regulation is laid down in the Act on Mediation and in the IRM Decree of the Ministry of Justice and Law Enforcement (hereinafter referred as: Training Decree) No. 63/2009 (XII. 17.) on professional training and further training of mediators.

As a general rule, a natural person may be a mediator if he or she has a higher education degree and at least five years of proven professional experience from the date of obtaining the degree and has completed the specified professional training as a mediator. The Minister responsible for justice shall keep a register of mediators of mediators in civil matters and of legal persons or companies without legal personality (mediation associations, foundations, etc.) employing mediators (Act on Mediation, No. 4-5 (1))

The register of mediators does not include court mediators appointed by the President of the National Office for the Judiciary to act as mediators, nor does it contain a list of mediators acting in other mediation proceedings not covered by the Act on the Regulation on the Law on Mediation; it is contained in the registers established on the basis of other sectoral legislation.

The regulation issued by the Ministry of Justice and Law Enforcement stipulates that professional training must include a minimum of 60 hours of theoretical and practical training, and also provides for a continuing training requirement of 50 credits.

Upon completion of the theoretical part of the training, students must also acquire specific cognitive knowledge and related skills and competences. These include:

1. basic conflict theory knowledge and skills,
2. basic negotiation knowledge and skills,
3. technical mediation knowledge and skills, methodological knowledge and skills
4. process management, dynamic knowledge and skills,
5. questioning knowledge and skills,
6. technical mediation knowledge and skills appropriate to different levels of conflict,
7. technical mediation knowledge and skills for dealing with problematic actors,
8. psychological knowledge and skills, and
9. legal knowledge relevant to mediation (Training Decree No. 3 (1))

During the practical part of the training, practical experience should be acquired, at least in relation to one completed full mediation case, by one of the following methods:

(1) Simulated case practice, which aims at reconstructing a completed mediation case, involving an evaluation of the role of the mediator and the parties, with the participation of the trainer and the members of the training team.

(2) Mentored case practice, which involves the actual conduct of a real mediation process. The conduct of the mediation process and the evaluation of the role of the mediator and the parties will be carried out under the continuous guidance of the instructor.

(3) Participation in a case discussion group.

(4) Preparation of a case study.

(5) Method-specific supervision, i.e. an instructor-led practice learning method to analyze a mediation case that has taken place, to identify mistakes and best practices in the course of the mediation, in a group or consultative format.

Method-specific supervision is based solely on the appropriateness of the methods used and not on the content or outcome of the mediation (Training Decree No. 3 (1)-(4))

Pursuant to Section 12/A (1) of Act on Mediation, in order to ensure the appropriate professional standard of mediation activities, the natural person is obliged to participate in further training in order to maintain and develop the acquired knowledge and skills.

Pursuant to Article 7(1) to (2) IMR, the obligation to undergo continuing training may be fulfilled by acquiring continuing training credits. A natural person on the intermediary register (intermediary) must achieve 50 continuing education credits during a continuing education period. A look at the training institutions shows that the range is very wide, both for initial and continuing training. Among the registered training institutions, there are universities, chambers of commerce and industry, associations, public benefit associations, companies, public benefit foundations, where the necessary skills can be acquired either in adult education or in university education. From 60 to 327 hours of training, there is a wide range of courses, and whichever one you choose, you have complied with the legal obligation under the Regulation.

2.2 Critical examination of education and training in mediator training

We can see how fragmented the practical implementation of mediator training is compared to the minimum conditions laid down in the legislation. However, there are also significant differences in the conditions for becoming an intermediary, as regulated in the Act on Mediation and other sectoral laws, in the systems for continuing training and in the supervision of the activity. As training institutions have very different approaches and working methods, the quality of training cannot be uniform. Training lacks output assessment, supervision and follow-up, and there is little transparency on the functioning and effectiveness of the system. There is also a need for client evaluation of the quality of the work done by mediators. Overall, it can be said that the whole mediator training system needs reform. (Report of the Commissioner for Fundamental Rights in case AJB-75/2018) At the initiative of the Ministry of Justice, the Mediation Working Committee was established on 15 October 2018 to review the current state of the mediation profession, 15 years after the adoption of the Mediation Law, and to identify the directions in which this crucial profession can move. In the course of its activities, the Working Committee will create the opportunity for an intensive professional dialogue.

As a result of its work, the Commission will report to the Government with the aim of raising awareness of mediation and enabling citizens to recognise the possibility of out-of-court settlements in as many of their cases as possible. A further aim is to support the choice of the people concerned with high quality services from the mediation profession. To understand the characteristics of social behaviour, the different dimensions of communication and to acquire the skills related to them, a 60-hour training course is a surprisingly limited framework. The acquisition of skills and competences is typically achieved through implicit learning. Implicit learning is generally understood as learning that takes place involuntarily and unconsciously[9]. We do not know when or how we acquired the knowledge, but we possess it. Typically, we learn skills that we cannot verbalise precisely by implicit learning. These include language use, playing an instrument, driving a car and riding a bicycle[10]. In addition to all these cognitive and motor skills, this learning mechanism is also evident in a number of social skills. In decision-making, communication and emotions, we can also discover different sequences that help us adapt to the environment in everyday life by unconsciously anticipating certain behaviours and events[11]. It is therefore important to allow sufficient time for these new skills to become embedded.

2.3 Summary of the results of the critical review

It can be seen that the most controversial area is the subject of training for the practice of mediation. If we look at the training offered by training institutions from a methodological point of view, we see a very

[9] SHANKS, David R.: *Implicit learning*, in LAMBERTS, Koen-GOLDSTONE Robert L.: *Handbook of Cognition*, London, Sage, 2005. 202–220., available at: https://dx.doi.org/10.4135/9781848608177.n8 (cit. 15.07.2023.)

[10] NORMAN, Elizabeth-PRICE Mark C.: *Social intuition as a form of implicit learning: Sequences of body movements are learned less explicitly than letter sequences*, in: *AdvCogn Psychol* Vol. 8. No. 2. 2012. pp. 121–131. available at: https://researchgate.net/publication/225281045_Social_intuition_as_a_form_of_implicit_learning_Sequences_of_body_moveme nts_are_learned_ less_explicitly_than_letter_sequences (cit. 24.07.2023.)

[11] HEEREY, Erin A.-Velani, Hemma: 2010, *Implicit learning of social predictions*, in *Journal of Experimental Social Psychology*, Vol. 46. No. 3. 2010. pp. 577–581. available at:
https://researchgate.net/publication/247331766_Implicit_learning_of_social_predictions (cit. 20.07.2023.)

heterogeneous picture. Some are explicitly practice-oriented training, while others take a more literature-based approach[12]. There are several types of training available in accredited training institutions. These are not exhaustive: Mediation Training, Divorce Mediation, Business Mediation, School Mediation, Facilitation, Circle Facilitator Training, Restorative Training, Family Mediation, Relationship Mediation, Workplace Mediation, Family Law and Family Mediation, Labor Mediation and Restorative Mediation, Legal Skills for Mediation in Practice, Child Protection/Family Mediation Training, Psychopathology Basics for Mediators, Organizational and inter-organizational (economic) mediation, Technical mediation knowledge and skills for dealing with problematic actors, Family and minority mediation, Mediation of community conflicts, Group and reparative mediation, Intercultural mediation, Mediation in social institutions, Master mediator training, Facilitative and transformative mediation, Adolescent mediation. If we look at the training courses in higher education institutions, we can see that the professional courses are classified in different disciplines (humanities, social sciences, economics, political sciences, law) with different titles (general and family mediation), general and judicial mediation, mediation in the helping professions, alternative dispute resolution adviser in the economy, alternative dispute resolution - mediation specialist lawyer, mediator in the public service, mediator in museums, intercultural mediator, visual mediator - school designer, community and family mediation. The many and inconsistent titles can make it difficult to identify training courses.

As stated by the Commissioner for Fundamental Rights in his Report in case AJB-75/2018, "*the absence or the possible lack of knowledge of child protection law in the training system of mediators in relation to child protection and supported mediation procedures is a violation of the right to protection and care of children ... there is a need for increased quality control and professional supervision of training institutions. It is a concern that there is currently no outcome evaluation, client assessment or follow-up. This would improve the quality and professional reliability of mediation procedures and increase client acceptance of these methods.*"

The heterogeneity in training described above could be reduced by the preparation of a uniform professional methodological guide, the development of a uniform training regime based on it, quality control of training and further training in training institutions, a uniform database and the definition of the professional competences expected of mediators. It seems to be clear that mediation is a multidisciplinary activity that can be applied to many areas of life. The fact that any field can be practised by anyone, in accordance with the general input requirement under the legislation, should be subject to review in the

[12] MALIK, Éva: *Gondolatok a polgári jogi közvetítői szakmai képzésről és továbbképzésről,* [Reflections on professional training and continuing training for civil law mediators], in. *AKV Európai Szemle,* Vol.1. 2018. pp.31-32.

future, with reference to the above-mentioned Ombudsman's report. Through impact assessments, also following feedback from professional groups, the current legislation should be amended as necessary[13].

3. Characteristics of peer behavior, mediator's preparedness

One of the basic motivations of people is that they want to save face. They want to believe that as objective beings they are able to resist influence, but at the same time they desire to be able to influence others. To understand people's social behavior, social psychology provides a starting point to see that, despite our best efforts, we are still influenced by certain phenomena.[14] When we look at the effects of social and cognitive processes on individuals, we can see that we are significantly influenced by physical presence, as well as by a perceived and mediated opinion, feelings about ourselves or our group, perceptions, memories, and motivations[15].

A mediator's work requires a range of knowledge in the field of conflict. He or she must be familiar with the concept of empowerment, the relationship of cooperation and competition to mediation, and the importance of transforming negotiation styles. Untrained or inexperienced mediators do not have this knowledge or do not use it consciously. In the course of their work, mediators typically work with the parties to resolve situations of tension. Trust and understanding are needed to lay the foundations for working together[16].

During the discussions, the client opens up, becomes vulnerable and defenseless. This responsibility must be a permanent feature of mediation work. Research on mediation has found that the degree of effectiveness depends solely on the mediation skills and the amount of practice. The more skilled a mediator is and the more experience he or she has, the more likely he or she is to be able to provide professional assistance to the parties in managing the conflict consensually[17].

Dr. Masau Emoto's experiments with water and ice crystals, and his findings along the way, are deeply thought-provoking. Does an ice crystal made from a drop of water really react differently to different words, thoughts, music, and the power of prayer? Could this be possible? The water crystal images show that it can. And if a single drop of water can undergo such a dramatic change through the power of words, in what way can it strike a human being, a sentient being whose body is 60% water?[18] If we look at different cultures,

---

[13] MALIK, Éva: *Gondolatok a polgári jogi közvetítői szakmai képzésről és továbbképzésről,* [Reflections on professional training and continuing training for civil law mediators], cit. pp.45-47

[14] SMITH-MACKIE-CLAYPOOL: *Szociálpszichológia*, [Social psychology], cit. pp. 55-62.

[15] PLÉH, Csaba: *A lélek és a nyelv,* [The soul and language], Budapest, Akadémia Kiadó, 2013. pp. 79-98.

[16] KERTÉSZ: *Mediáció a gyakorlatban* [Mediation in practice]: cit. pp. 35-47.

[17] KERTÉSZ: *Mediáció a gyakorlatban,* [Mediation in practice]: cit. pp. 35-47.

[18] EMOTO, Masau: *A víz rejtett bölcsessége,* [The Hidden Messages in Water], Budapest, Édesvíz Kiadó, 2005.

religions, trends, and methods, we see that the belief in the healing power of words, the magical power that they lend, appears in different forms. It appears in prayer, a mantra, hypnosis, autogenic training, mind control and positive thinking[19].

They say the word is the most natural medicine in the world. We live in a world today – in health care too - where people will go as far as they can until they get a good word from someone. In many cases from charlatans. It is a proven fact that the placebo effect and suggestion work in conventional medicine. The patient is cured, and they get better. It is also the key to things of the soul. Therapeutic work operates with words. It heals wounds and reframes situations and thus lives[20]. *"Both death and life are in the power of language, and as one likes to live by it, so one eats its fruit."* (Proverbs 18, 24.)

4. Conclusions

Our social well-being is not measured by macroeconomic performance as measured by GDP. It typically depends on things such as the ability to carry out activities at home, the quality of relationships with neighbours, belonging to a healthy community and having strong social capital[21].

Gyulai stresses that social well-being does not necessarily go hand in hand with well-being; the two are not the same. *"By wellfare we mean the existence of material goods, and by well-being we mean a good life, a decent quality of human life. Our well-being includes a healthy and secure life, friendship, love, faith and trust, the exercise of mutual generosity, equal access to the opportunities provided by nature and society, knowledge and wisdom, a good environment, living according to moral standards, the joy of fulfillment at work, self-esteem, a sense of identity, self-determination, care for others and our environment, justice, respect for life."*[22]

When we take stock of the principles of mediation, we find that many of them correspond to, or at least support, the qualities that make the above qualities possible. The principles of voluntarism, equality, personal presence, confidentiality, forward-looking, independence, impartiality and neutrality can also be, by analogy, instruments of well-being, as can the principle of non-solicitation, which does not allow intimidation or any attack on the other. It demands respect from the parties in all circumstances[23].

[19] ROSENBERG, Marshall B.: *A szavak ablakok vagy falak,* [Nonviolent Communication… A Language of Compassion], Budapest, Agykontroll Kft., 2001.
[20] Ibidem
[21] CSATH: A *fenntarthatóság mint emberi és társadalmi fejlődés,* [Sustainability as human and social development], cit. p. 29.
[22] GYULAI: *Fenntartható fejlődés és fenntartható növekedés,* [Sustainable development and sustainable growth], cit. p. 813.
[23] NAGYPÁL, Szabolcs: *A közvetítés jogelmélete: a mediáció folyamata és alapelvei,* [The legal theory of mediation: the process and principles of mediation], in *Jog, Állam, Politika,* Vol. 3. No. 2. 2011. available at: https://dfk-online.sze.hu/images/J%C3%81P/2011/2/Nagyp%C3%A1l.pdf (cit. 20.07.2023.)

In the future, therefore, we must strive not to sacrifice such important and significant things as our human and social resources for the sake of economic capital[24].

[24] CSATH: A *fenntarthatóság mint emberi és társadalmi fejlődés*, [Sustainability as human and social development], cit. p. 32.

"LANDSCAPE AFTER BATTLE"

ON THE MARGINS OF THE HUNGARIAN PUBLIC EDUCATION ACT

EGRESI, Katalin*

Protests by teachers' and students' NGOs and civil disobedience movements have drawn attention to the fundamental deficiencies of the Hungarian public education system. The controversial so-called „*Status Law*", which provoked intense debates, redefined the careers of reachers (called narional career parh model - see below) and rhe whole organisarion of public educational system. The mosr significanr dilemma of the legislation act is how to interpret the constitutional right to education and the autonomy of public education. In answering this question, it is necessary to point out the government's intention and the wide social/political debate that also emerged behind the government decree on child protection and has resulted in the exclusion of LMBTQ-themed learning materials from school texrbooks. The latter has led to the need to wrap LGBTQ books in the youth literature section of bookshops. Why and how have education and child protection issues become politicised and ideologised in Hungary?

Introduction

Since 2022, the dissatisfied teachers' unions and civil society have tried to put pressure on the FIDESZ-KDNP government through various forms of protests, including strikes, warning strikes, demonstrations and civil disobedience. The reasons of the protests were very complex. They have discussed, among others, the failure to introduce a career model for teachers, low salaries, a high level of centralisation of the public education system, the amount of teaching materials and the insistence on outdated teaching methods. The growing dissatisfaction has pointed to the need for a new legislative act.[1] Until the *Status Law* was passed, the Government had reacted to the crisis situation by restricting protests.

1. Legal background of the Hungarian Public Education System

From a legal point of view, the starting point for the analysis is that Hungarian Government has enjoying *excessive regulatory power* that was first acquired in the spring of 2020, due to the pandemic situation. The

*associate professor and deputy head of Department of Legal Theory, Széchenyi István University, Deák Ferenc Faculty of Law: egresi.katalin@ga.sze.hu . The article is part of JOGA programme.

[1] The right to education is enshrined in the Fundamental Law (Article XI (1) Fundamental Law and in 2011 a law on national education was passed (see: Act CXC of 2011. on national public education) In. https://net.jogtar.hu/jogszabaly?docid=A1100190.TV (15.10.2023)

Government has been maintaining a *„rule by decree*" system, lately using the war in Ukraine, which it extends every six months, so in effect we have had more than two years of government by decree.

During this period, a number of constitutional amendments and legislative acts in different important social interests issues have been enacted. The European Commission in its *Rule of Law Report* has criticised the extended regulatory power: „…it has been using its emergency powers „extensively"… for purposes that not related to the ground for the state of danger.[2]

The first response to the protests was the government decree 36/2022 (11.II.), which entered into force the next day and restricted the right to strike. It should be also mentioned that the *Act VII. of 1989 on Strikes* prescribes that if the parties cannot agree on the level and the conditions of minimum services, the unions appealed to the court to establish the minimum services.[3] In contrast the Government decree determined the necessary minimum services such a high level, that made the strike practically meaningless and deprived it of its true function. (The decree provides that the 50 % of students' classes and all classes of final-year students must still be held; the day spent on strike would be deducted from the striking teacher's salary.)

According to Hungarian Helsinki Committee the government used its regulatory power in *abusive manner*:

a) The decree violated *teachers'right to strike* as enshrined in the Fundamental Law of Hungary and protected by Article 11 of the European Convention on Human Rights when it restricted their right to strike without a legitimate aim, in an arbitrary and disproportionate manner.
b) The decree prevented teachers (the unions) from seeking *meaningful judicial remedy*, as the court they finally turned to could only conclude that since the level of necessary minimum services had been determined in a government decree, it was not any more in the position to decide on the issue otherwise. This amounted to the *violation of the right to fair trial* as

[2]The Government has used its emergency powers extensively. As of 1 June 2022, the Government terminated the second 'state of danger' it declared in January 2021 in response to the COVID-19 pandemic. During the reporting period, Parliament authorised the Government to further extend the applicability of the Government's emergency measures until the end of the pandemic-related 'state of danger'. The Government went beyond the Parliament's authorisation when it issued emergency measures to regulate matters unrelated to the COVID-19 pandemic. It **also used its emergency powers to overrule judicial decisions, thereby limiting the right to strike and media freedom.** On 24 May 2022, Parliament adopted the **Tenth Amendment,** allowing the Government to declare a 'state of danger' in case of an armed conflict, war or a humanitarian catastrophe in a neighbouring country. On 25 May 2022, the Government declared another 'state of danger' under the amended Article 53 (1) of the Fundamental Law, in view of the armed conflict and humanitarian catastrophe in Ukraine and with a view to averting their impact on Hungary. On 8 June 2022, Parliament adopted Act VI of 2022, authorising the Government to extend applicability of emergency measures until 1. November 2022. In. European Commission, 2022. *Rule of Law Report*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf 26. (25.10. 2023).
At present, the Government has extended the state of danger until 25. November 2023, on the basis of the Fundamental Law's authorisation (author's note).
[3] Art 4 (3): The level and conditions of service that are still sufficient may be determined by law. In the absence of a statutory provision, the level and conditions of the minimum service must be agreed in *pre-strike negotiations*; in this case, the strike may be maintained if the parties have concluded an agreement or, failing that, if a final decision of the labour court has been made at the request of either of them, the level and conditions of the minimum service have been determined. In. *Act VII. 1989 on Strikes.* https://net.jogtar.hu/jogszabaly?docid=98900007.tv (15.10.2023)

> enshrined in the Fundamental Law and in Article 6 of the European Convention on Human Rights... In addition, this legislative step also went against the UN Basic Principles on the Independence of the Judiciary, which sets out that there *shall not be any inappropriate or unwarranted interference with the judicial process.*[4]

In protest at restrictions on the right to strike two teachers union submitted a constitutional complaint against Government Decree. The Constitutional Court declared it inadmissible.

In the spring of 2022, some teachers went on civil disobedience. In order to organise the school-leaving examinations, the government cemented the violation of teachers right to strike on a statutory level. It reintroduced the restrictions included in rhe government decree in Art. 14-15 of Acr V of 2022. In July 2022 the opposition members of Parliament have appealed to the Constitutional Court in posterior norm control. In their petition referred to the violation of 1) right to strike, 2) freedom of expression and 3) right to a fair administrative procedure. The petition was rejected:„...according to the Act on National Public Education, public education insritutions primarily serve to ensure children's fundamental right to education and to proper physical and mental development. The fundamental rights of children can be achieved through the active conduct of the state. In the contested Act, the law-maker, in differentiating between the minimum service levels that are still sufficient, took inro accounr rhe righrs of children with different needs (e.g. children abour to graduate from school, pupils, kindergarren children, children wirh special educarional needs, etc.). The Constitutional Court found that the restriction of the right to strike in the public education institutions was made for legitimate purposes, to the extent necessary and in a balanced manner, i.e. proportionately, taking into account the fundamental rights and constitutional values to be protected in contrast with it. *The functioning of public education institutions, and thus the rights of children, are legitimate objectives for restricting the right to strike.* Therefore, the provisions of the Act regulating the provision of services that are still sufficient are in line with the provisions of the Fundamental Law, and the Constitutional Court rejected the petition for a posterior norm control of the conformity of the Act with the Fundamental Law."[5]

The last step before the adoption of *Status Law* was to modify the rules on dismissal. The 4/2023 (I. 12) Government Decree changed the rules of how can dismiss employees of public education instirurion for violating labour obligations. It is extended the deadline of extraordinary dismissal from 15 days to long months. The employer has the right to dismiss a worker with immediate termination until 1 August 2023 if the employee takes part in civil disobedience. The Decree could be applied *retroactively* if the employer

---

[4]Hungarian Helsinki Committee: *Curtailing the rights of teachers in Hungary. How the Government used legal tools to crack down on teachers asking for improvements in the public education system.* on 23. March 2023. *Executive summary.* 4-5.
[5]Decision 1/2023. (I. 4.) AB of the Constitutional Court. [II/01665/2022 (mkab.hu)] (download: 16.10.2023).

was informed of a violation of a labour obligation before the decree entered in force, provided that at the time of decree's entering into force less than 15 days.

The government's intentions are clear: with a 2/3 majority in parliament and extended regulatory power, it restricts constitutional rights by decree, without taking into account the opinions of the parties (civil society) to the protest. During these months, not only social organisations and trade unions protested, but also the Hungarian Academy of Sciences intervened on the state of Hungarian public education. In its two resolutions summarised the reasons for the unsustainable situation and proposed remedies. The guidelines applied to the political/professional and social actors responsible for the development of the education system. On the one hand, it can be seen that the public education is a sub-system of social policy in which there has been a very significant *loss of confidence* since the transformation of the political regime. The debates on education have become *politicised*, with professional arguments being outweighed by the political affiliations of the parties involved. As a first step, *a new social contract* is needed to define:

a) the common vision for the future and determines the tasks, the duties and the responsibilities for achieving it.
b) the place and role of public education in the Hungarian national strategy responding to the challenges of the 21st century.

To realize this, a new approach is required, which can be promoted through *commitment and dialogue.* The Hungarian education will only be competitive and able to respond to the challenges if it established a *well-developed, effective, equal opportunities and long-term stable public education system.*[6]

c) To make teaching an attractive career and raise the *quality of public education, teachers must be given professional* autonomy. This can only be provided by good professionals, well-functioning teaching staff and public education institutions, and appropriate professional quality standards. Salaries should be preformance-based. Teacher training at universities must be strengthened to ensure a supply of teachers.
d) Our country needs a thorough *reorganisation of the public education system*, a public education development programme that covers all electoral cycles, which, in addition to nurturing outstanding talents, also fulfils the objectives of increasing social cohesion and catching up. This can only be guaranteed by a shared social consensus.[7]

[6] The Resolution of the Presidency of the Hungarian Academy of Sciences on the situation of public education and the necessary improvement tasks. (20.12.2022.). In. https://mta.hu/mta_hirei/az-mta-elnoksegenek-allasfoglalasa-a-kozoktatas-helyzeterol-es-a-fejlesztesehez-szukseges-teendokrol-112639 (20. 10.2023.)
[7] Ibidem

This also means that many elements of the teachers' unions' protest can be found in the resolution of the Academy's Presidency. The Academy was severely critical of the organisation of public education, the lack of autonomy and, above all, the need to develop a national education programme based on a wide-consensus. This also implied a reconsideration of the whole reform-programme of the public education.

2. The so-called „Status Law" and its consequenses

The circumsrances of the adoption of the Status law, which the opposition calls *vengeance law*, are already questionable. On 2 March 2023, the Ministry of Internal Affairs published a draft law on the legal status of those employed in public education and the amendment of certain related laws with a 10 March 2023 deadline to submit opinions in the framework of public consultation. The Hungarian Helsinki Committee in its Recommendation called for the removal of legal restrictions, including the right to strike, the extraordinary dismissal or immediate termination of employment (decree 4/2023 (II.12); and the freedom of expression of teachers. The Recommendation suggested extending the consultation period for Draft Status Law and the representatives of consultation.[8]

On 26 April, a day after police fired tear gas at protesters outside the Prime Minister's residence, negotiations were starting between the two trade unions (PDSZ, PSZ) and the State Secretary for Education at the Ministry of the Interior.)[9] On 6 June, the Minister of Interior sent the draft to Parliament. On 16 June, opposition and the government debated the draft for more than 18 hours. (On 22 June, the FIDESZ majoriry adopted the final version of the draft. Although the opposition had proposed more than 40 modifications without voted by the majority.

The Status Law introduced complex and profound changes in the status of public education staff and the functioning of educational institutions. The change primarily concerned the legal status of education workers, the maintenance, employer- and financial competences of the education system. However, the „demarcation line" is only partially drawn with the adoption of the Status Law.

The essential difference is found between the situation before and after 2013. In 1990 local governments became responsible for the provision of primary and secondary education in Hungary. Though private (church and non-church) schools are also present, the majority of schools were owned, funded and run by local governments. The state budget contributed to the cost of education through a formula funding system

[8] Hungarian Helsinki Committee: Curtailing the rights of teachers in Hungary…. Executive summary, op. cit., 11-12.

[9] Diákok és tanárok tüntettek a Karmelitánál a rendőrség a könnygázt is bevetette. (Students and teachers protested at the Carmelite and police used tear gas.) https://hvg.hu/itthon/20230424_Diakok_es_tanarok_tuntetnek_a_Karmelitanal_a_rendorseg_konnygazt_is_bevetett_ELO (30.10.2023)

based on the number of students studying in public schools in the municipality, and some other variables.[10] In 2013 the central government took over public schools from local governments. This reform has changed the funding and governance of schools and reshaped the rules and practice of education governance. One of the declared policy goals of the reform was to improve the large disparities in the distribution of school resources and quality, related to differences in fiscal capacities of local governments.

The law, in force since 2013 and adopted by the FIDESZ-KDNP government with a 2/3 parliamentary majority, has implemented rapid and strong centralisation.[11] Educational institutions (schools) were run by a central organization, the Klebelsberg Institution Governance Centre (abbreviated as KLIK). In the first phase of the reform, local government rights were abolished. The rights and powers (including employer rights, the choice of teachers and school personnel, or the autonomy in dealing with everyday management problems, purchase order placements, etc.) of headmasters or principals diminished drastically. Eight-year basic schools providing elementary and lower secondary education are generally operated by the local branch of KLIK. Secondary schools including vocational schools, vocational secondary schools and academic secondary schools offering non-vocational 'academic' upper secondary education programs are usually operated by the county centre school district in each county[12].

In the second phase of the reform the central unit was remodelled: the Klebelsberg Centre (Klebelsberg Központ or KK) organizes the work of school districts and provides supervision and professional guidance to them, but the decisions are made by the individual school districts themselves. This change was at the same time a further step in centralization (as the number of school districts was reduced drastically), and a massive decentralization as well, as their responsibilities and degree of autonomy greatly increased.[13]

The centralisation also extended to the choice of school teaching materials. The freedom to use a licensed textbook was severely reduced, and the number of approved textbooks was cut drastically. This meant that the government saw the development of a learning programme that prioritised Christian, conservative and national values as the primary task of educational management. It ignored efforts by some teachers' unions to promote competence-based education and to reduce the quantiry of the teaching materials. (The government regularly ignores the causes of Hungarian students' increasingly poor results in the PISA tests.[14])

[10]HERMANN, Zoltán – SEMJÉN, András: *The effects of centralisation of school governance and funding on inequalities in education Lessons from a policy reform in Hungary.* KRTK-KTI WORKING PAPERS, Institute of Economics Centre for Economic and Regional Studies, 2021/38. 3. In.

[11] see:National Public Education (Act CXC of 2011); and a law (Act CLXXXVIII of 2012) on the taking over of the control and funding of some education institutions from local government by the state. In. HERMANN, Zoltán – SEMJÉN, András: op. cit., 4.

[12] HERMANN, Zoltán – SEMJÉN, András: op. cit, 4-5.

[13] Ibidem

[14] Hungarian students at the age of 15 scored lower than the OECD average in the 2018 PISA (Programme for International Student Assessment) survey in all three areas tested (reading, mathematics and science), and the survey showed that their "mean levels of basic skills are significantly below the EU averages and have declined since 2009": In. Hungarian Helsinki Committee: Curtailing the rights of teachers in Hungary…. Executive summary, op. cit. 2.

The most important point of the Status law is that it abolishes the status of public servant for teachers, and introducing the status of *public education employee*. Teachers are informed before the entry into force that their status as a public servant will be terminated and will have to declare whether they wish to transfer to the status of public education employee. Those who do not accept the new legal status will be exempt from the obligation to work from 1. November 2023.

It is introduced the possibility of disciplinary proceedings against teachers. The period of resignation is increased from 2 to 3 months. [15]The teachers may be transferred to another place of work within the same district (if they have to travel up to 3 hours round trip), except for teachers whose children are in primary school or younger, or who are pregnant, raising children alone or caring for dependants.[16]

The number of substitutions has been increased from 26 hours per week to 30 days per year. Up to now, it has been the board of education that has adopted the organisational and operational rules, the pedagogical programme, the annual work plan and the house rules, but now it has only the consultative right except for the house rules. An important restriction is that only if the trade union organisation is above 10%, there is a possibility to conclude a collective agreement.[17]

It is now possible to terminate classes or groups because of a teachers' strike and transfer children to another school. The school year can be extended until 15 July.

3. The case of „wrapped books" and the protection of children

Another important and discussed issue, which partly concerns the situation of public education, is also worth mentioning. The controversial *Anti-paedophilia Act* (LXXIX. 2021) and the subsequent amendment of the government decree (n. 2010/2009) involved the textbooks of public education and restricted the choice of teaching materials. The former prohibits the „display or promotion" of homosexuality or gender reassignment in educational material or TV shows for people under 18. [18]The government decree 473 of 2021 (III.6.) prohibits or restricts the publishing of LGBTQ books: „1) Art. 20/A: „No product portraying a deviation from the identity of one's gender at birth, gender change, or self-serving sexual content, as well as products depicting or promoting homosexuality may be distributed within 200 metres of an entrance to an educational institution, child and youth protection institution, church or other place of worship. Art. 20/A: The same products may only be marketed separately from other products in closed packaging."[19]

[15] Act LII of 2023 on the New Career system of Teachers, Art. 54 (3)
[16] Act LII of 2023 on the New Career system of Teachers, Art. 68 (4.)
[17] Act LII of 2023 on the New Career system of Teachers Art. 144 (4)
[18] Art. 5/A §. Act LXXIX of 2021
[19] Government Decree 473/2021 (VIII. 6.)

According to the law, the teaching material that deals with or relates to LGBTQ issues is not allowed in public educational institutions. The bookshops must sell all books with this content in closed packaging, unless there is a school or church within 200 metres, because there they cannot sell books with LGBTQ content at all. (The government decree was applied this year, Libri bookstore received a fine of 1,000,000 ft /2 625 EU/ and Lira bookstore 12, 000,000 ft./31.500 EU/).[20]

Why is problemaric and highly controversial these legislations? From legal view point the text is not clear. This is why Líra has appealed to the court. They argued that the text of the government decree contains a grammatical error, i.e. the comma between packaging and separation is missing, and therefore it is not clear what constitutes a legal obligation to comply with the law. Indeed, the bookstore interpreted the text of the legislation as meaning that products in sealed packaging must be sold separately, while products not in closed packaging must not.

In fact, one significant approach to the interpretation of legislation is grammatical/logical analysis. One of the famous studies by the American philosopher Lon Fuller - *The Morality that makes Law possible* - argues that the law is made impossible to follow if the text of the law is not clear and unambiguous. [21] This, it should be added, also threatens the principle of legal certainty, since the meaningless text, the inconsistency, is problematic from the point of view of the judicial application.

However, we must also examine the text of the legal norm in terms of the legislator's intention (legislative goals). What is the legislator intending to protect and is the value it is protecting in accordance with the convictions of society or not? The current situation is *one stage in a long-term process*. The 9th Amendment of the Fundamental Law declared, - in the context of state of danger -, that the father is male and the mother is female.[22] The reasoning of the amendment can be summarised as follows: the western ideology is changing

[20] 12 milliόra bírságolták a Lírát, mert nem fóliázott be egy könyvet. (Lira was fined 12 million for not wrapping a book) https://hvg.hu/kultura/20230713_12_milliora_birsagoltak_a_Lirat_mert_nem_foliaztak_be_egy_homoszexualitast_megjelenito_konyvet (31.10.2023)
Currently, a similar political and social debate is unfolding in connection with the World Press photo exhibition opening at the Hungarian National Museum. Dóra Dúró, a representative of the Mi Hazánk Movement, has taken the initiative to restrict access to the exhibition because some of the photos contain LGBTQ content. Her initiative was supported by the Minister of Culture, and the Museum's Council of Curators decided not to allow people under the age of 18 to visit the exhibition. However, the museum is not a public authority and cannot control or sanction those who do not comply with this provision. (author-note).

[21] Fuller in the legal system distinguished eight correlative kinds of legal excellence: (1) the requirement of generality; (2) the promulgation of the rules; (3) the prospective application of law; (4) the clarity of laws; (5) avoidance of contradictions in the laws, that is, consistency in laws is necessary; (6) avoidance of laws commanding the impossible; (7) the constancy of law through time, that is, avoidance of too frequent changes in the law; (8) the congruence between official action and declared rule, that is, prevention of discrepancy between the law as declared and the law as actually administered. These eight principles of legality constitute the inner morality of law. In. FULLER, Lon: *Az erkölcs, amely lehetővé teszi a jogot.* (*The Morality that makes possible the Law.*) In. *Szabadfalvi* József: *Lon Fuller.* Fejezetek a jogbölcseleti gondolkodás történetéből, Bíbor Kiadó, Miskolc, 1999. 239. ISBN: 9638103209

[22] Article L) (1) of the Fundamental Law shall be replaced by the following provision:
"(1) Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman, the father shall be a man." In. *Opinion* No. 1035/2021 CDL-REF (2021) 045. Europeam Commission for Democracy through Law (Venice Commission), *Hungary Ninth Amendment to the Fundamental Law*

in a way that necessitates guaranteeing the child's right to self identity. According to the legislator intention the child's identification is based on Christian culture, and Hungary's constitutional identity. The marriage is the union of one man and one woman. It is the right of the parents to bring up the child, which cannot be directed to the opposite sex at birth.

The referendum, which was held at the same time as the 2022 general election, was also the subject of a series of questions drawn up by the government to test the public opinion on the rejection of LGBTQ and gender issues, with reference to child and family protection.[23] The referendum was rejected because it did not get the required number of votes. In addition to another 2/3 electoral victory, it sought to minimise the significance of rhe referendum's invalidity. [24]

This means that the government keeps LGBTQ issues on the agenda. Since the so-called Anti-Paedophilia law, it has tried time and time again to find social consensus to tighten the law. It has done so by amending the constitution. This was followed by an invalid referendum and then fines under a government decree. While the system of "rule by decree" is working well, influencing the public opinion is not. It should also be noted that in government propaganda, the different meaning of the words: gender, feminism and LGBTQ is obscured, and a large part of the population is not even conscious of this. Communication is highly reduced and bipartite. What is not Christian and conservative is wrong. In such a dominant worldview, the diversity, the tolerance and dissent are seen as dangerous. The government's solution is the centralisation and the heavy sanctions. However, it is worth reflecting on what children and young people will grow up to be if they receive one side and exclusive values. In addition, the category of "child under 18" is extremely wide. The reality of a child is different from that of an adolescent. A young person with the experiences in everyday life that "I can't go to a museum or, I can't read a book in a bookstore because it contains "dangerous topics and stories ", what he or she will think about politics, culture and

---

and Explanatory Memorandum. In. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)045-e (download 31.10.2023)

[23] Questions of referendum (03.04. 2022):

Do you support holding information events on sexual orientation to minors, in public education institutions without parental consent?

Do you support the promotion of gender-reassignment treatments to minors?

Do you support the unrestricted exposure of minors to sexually explicit media content, that may influence their development?

Do you support showing minors media content on gender changing procedures?

The percentage (%) to each question are as follows: agreed: 1) 7,06% 2) 4,08% 3), 4,67% 4) 4,83%

against: 1) 92,32% 2) 95,92% 3),95,33% 4) 95,17%

(the percentage of valid votes for all four questions: 47%) -

Országos népszavazás (National Referendum) In.

https://vtr.valasztas.hu/nepszavazas2022 (download 31.10.2023)

[24] Regarding the invalidity of the referendum, the Prime Minister concluded: „…the result is not a political mandate, but a political obligation that the government must implement... We have achieved a great result with the referendum, never before have so many people voted in one direction in any referendum,"

In. https://hvg.hu/itthon/20220406_Orban_Viktor_sajtotajekoztato (25.10.2023) different ways of thinking? How will they be able to reflect, think and critically interact with the world? It should learn all this at school.

Conclusions

It seems that the Hungarian public education (and child protection) is a wicked problem. With a 2/3 parliamentary majority and decree government, all legislation can be amended quickly and easily. The government will use all legal tools to impose its own values in child-raising and education. This is embodied in the exclusivity of Christian and national values since the first parliamentary elections in 2010. Such a majority does not require that a different set of values from the government's position be taken into account. When draft legislation is discussed, opposition aspirations and the trade unions and social organisations representing them are not included in the interest negotiations. This is manifested in a strong centralisation of education policy and a radical reduction of professional autonomy. Dissent is demonised, essentially framed in terms of enemy images, which is reflected in legislation advocating the distribution of LGBTQ books. It ignores not only the provisions criticised by trade unions, but also by professional organisations, scientific institutes and legal organisations, and the proposals made to eliminate them. One reason for this legislative process is naturally the parliamentary majority. On the social side, it is clear that there is a profound lack of trust in social institutions and organisations. The teachers' unions, and opposition parties *are not able to set goals that would unite and mobilise the large masses of teachers and citizens* who dissatisfied with the public education but represent a multiplicity of viewpoints.

ADMINISTRATIVE ADJUDICATION IN THE HISTORY OF THE DEVELOPMENT OF THE COUNTRY

KOZÁK, Bettina*

Administrative adjudication is not unknown in Hungarian history. From the end of the 19th century until the middle of the 20th century, administrative courts, separate from the ordinary courts, exercised judicial control over the public administration. After the socialist takeover, the administrative courts were abolished and judicial control was relegated to the background, with judicial review, limited to an extremely narrow circle, being carried out by the ordinary courts. After the change of regime, with the rule of law coming to the fore, judicial redress became more prominent again and the idea of setting up administrative courts was again raised, but concrete steps in this direction had to wait until the mid-2010s. After lengthy legislative and constitutional work, the constitutional and legislative basis for the establishment of administrative courts was created by 2018, but as a result of EU and international pressure, they were not established.

1. Introduction

Judicial control over public administration is a conceptual element of the modern rule of law, a fundamental constitutional right of citizens enshrined in the Fundamental Law. Judicial control ensures the protection of the individual against the administration. The principle of separation of powers and the rule of law also requires the possibility of judicial remedy against alleged or actual wrongful acts or omissions by public authorities, thus ensuring effective legal protection for citizens. Whether this is done within the ordinary court system or by specialized courts is a matter for the legislator and the constitutional legislator to decide. In Hungary, there have been examples of both types of organization in the course of history. At the end of the 19th century, the legislator voted in favour of special courts, which were abolished after the socialist takeover and the ordinary court system took over the task of administrative adjudication. After the regime change, the idea of establishing special courts was raised again, but the first step in this direction, namely the establishment of administrative and labour courts, had to wait until 2013. The process led to the fact that the 7th Amendment to the Fundamental Law of Hungary (hereinafter: Fundamental Law) established at a constitutional level that in Hungary the ordinary and administrative courts are courts. All the legislation necessary for the establishment of the administrative courts was enacted, but at the last minute, the constitutional legislator reverted to the administrative judiciary integrated into the ordinary court system.

This paper aims to use descriptive and analytical methods to show how judicial control over administrative decisions was exercised in Hungary in different periods and how the organizational model of administrative adjudication has evolved over the course of history. Finally, I will briefly analyse why in 2019 the constitutional legislator finally backed down from setting up a separate administrative court system.

2. The situation of administrative courts in Hungary until 1950

The establishment of the Hungarian administrative judiciary dates back to the end of the 19th century. Act XLIII of 1883 established the Financial Administrative Court, modelled on the Austrian model, which was a single-rier public courr with national jurisdiction and competence to hear appeals against decisions of individual tax and duty authorities.[1] This court was replaced by the Royal Hungarian Administrative Court established by Act XXVI of 1896. The Royal Administrative Court of Hungary was organized as a single, independent, special court at the same level as the then-supreme court, the Curia. The judges were appointed by appointment by the Head of State.[2] When the Royal Administrative Court of Hungary was set up, the idea of a two-tier administrative court was raised, but was eventually abandoned due to concerns about the possibility. However, the need for a two-tier system arose again at the time of the enactment of Act XVI of 1933, which limited the appeal to a single instance on the assumption that it would be supplemented by the lower administrative courts.[3]

The Royal Administrative Court of Hungary was divided into two departments: the Financial Department, which carried out the work of the Financial Administrative Court, and the General Department. The two divisions were divided into several councils, consisting of four members in addition to the President. Of the four members, only half had judicial qualifications.[4] The cases falling within the jurisdiction of the Royal Administrative Court of Hungary were established in a taxative manner in Article XXVI of the Act of 1896. According to the perception of the time, this court also performed the functions of a constitutional court, as its jurisdiction extended to the defense of local governments against decisions of the state administration.[5] He had broad discretionary powers over contested decisions, as he could also rule reformatories, cassatorius, and meritorious.[6] Special rules of administrative procedure were also established for the operation of the Royal Administrative Court of Hungary, which laid down the procedure for bringing administrative disputes before the court, the procedure of administrative proceedings, the acts of the court,

*PhD Student, Széchenyi István University Doctoral School of Law and Political Sciences, kozakbettina@gmail.com

[1] PATYI András: *A bírói kontroll kihívásai.* In: Jog, Állam, Politika - Jog- és Politikatudományi Folyóirat, 2011. Különszám, pp 54.
[2] PATYI András: *A magyar közigazgatási bíráskodás elmélete és története*, Budapest, 2019, Dialóg Campus Kiadó, pp 21.
[3] MAGYARY Zoltán: *Magyar Közigazgatás – A közigazgatás szerepe a XX. sz. államában a magyar közigazgatás szervezete működése és jogi rendje*, Budapest, 1942, Királyi Magyar Egyetemi Nyomda, pp 629.
[4] MAGYARY: *ibid* pp. 629.
[5] KÜPPER, Herbert: *Magyarország átalakuló közigazgatási bíráskodása*, in: MTA Law Working Papers, 2014. év 59. szám, pp. 3.
[6] PATYI: *ibid* pp. 54.

and the persons involved in the proceedings, the scope of these acts and the legal consequences of these acts.[7] The divisions of the Royal Administrative Court of Hungary could issue decisions on matters of principle which came before them, which the councils of the division were obliged to follow until they were changed by another division agreement. In addition, decisions of so-called case law and decisions of principle were also known.[8] In this way, the judiciary has also developed law.

The subjecr of the administrative lawsuit was a public law dispute, in which the court examined whether a decision or action by a public authority had caused harm to the legal entity concerned. The defendant was always a public authority, which meant that the rules of civil procedure could not be applied in their entirety. This need for regulation led to the development of a mixed procedural system, akin to both civil and criminal litigation.[9] The procedure of the Royal Administrative Court of Hungary was regulated as a special administrative procedure by Act XXVI of 1896. As there was no legislation in force regulating administrative procedure in general, the rules of administrative court procedure were drawn from the rules of the Code of Civil Procedure.[10]

The Royal Administrative Court of Hungary acted only on the initiative of the injured party. The application that initiated the proceedings was the complaint. Two forms of complaint were distinguished: the private complaint and the official complaint. The complaint could be based on a right infringed by a decision or action of an administrative authority. A private complaint could be made by any party who had an interest in the harm caused by the public authority. If only one of several interested parties complained, the other interested parties were generally not affected and the administrative decision became final against them. The exception to this was where the issue could only be decided uniformly for all interested parties. A private complaint could be lodged both to redress harm to rights and interests and to protect private or public interests.[11]

An official complaint against the action and decision of the chief magistrate, the magistrate and the administrative commission, the deputy magistrate, the director of finance, the superintendent of education, the administrative commission in the administrative branch they represent, and the rapporteur of the tax clearance commission against the decision of the tax clearance commission. The complaint could be lodged within 15 days. The complaint could also include facts or evidence that were not raised in the previous administrative procedure.[12]

[7] KMETY Károly: *A magyar közigazgatási jog kézikönyve. Ötödik kiadás,* Budapest, 1907, Politzer Féle Könyvkiadó Vállalat, pp. 220.
[8] MAGYARY: *ibid* pp. 630.
[9] BOÉR Elek: *Magyar Közigazgatási Jog. Általános rész, Kolozsvár,* 1908, Stief Jenő és Társa Kiadó, pp. 136.
[10] MAGYARY: *ibid* pp. 631.
[11] PATYI András – VARGA Zs. András: *A közigazgatási eljárásjog alapjai és alapelvei,* Budapest-Pécs, 2019, Dialóg Campus Kiadó, pp. 101.
[12] MAGYARY: *ibid* pp. 631.

In the administrative court procedure, in addition to the trial principle, the investigative principle has also become very important. The administrative court had the right to involve persons it considered interested in the administrative proceedings and could take measures of its motion to clarify the facts, and was even obliged to clarify the facts. To this end, it could summon not only witnesses and experts but also the parties, on the pain of a fine. The court was not bound by the parties' requests for evidence. The administrative procedure was not simply a continuation of the previous administrative procedure, but even a reopening of it, since the case could be placed on a completely new factual basis, both in the complaint and in the defence of the authority and the 'defense'. The procedural rules transformed the Royal Administrative Court of Hungary from a simple review or annulment forum into a genuine appellate forum.[13.]

It is important to mention that in 1907 the Court of Jurisdiction was established to resolve conflicts arising within the asymmetrical bipolar court system. The Court of Jurisdiction was composed of the President of the Curia the President of the Royal Hungarian Administrative Court and 8-8 judges of the latter, and it adjudicated jurisdictional disputes between the courts and the administrative bodies, as well as between the ordinary courts and the Royal Hungarian Administrative Court.[14]

After the end of the Second World War, the socialist takeover began to reduce the administrative judiciary, which eventually led to the abolition of the Royal Hungarian Administrative Court and the Court of Appeal in 1949. The administrative courts were considered to be a typical institution of the bourgeoisie since their existence was based on the principle of separation of powers and the division of state power. The Royal Administrative Court of Hungary was replaced by the Arbitration Committee for Remuneration and Finance, and the Court of Appeal was replaced by the Arbitration Committee for the Court of Appeal. The Arbitration Committees were quasi-judicial bodies. The Financial and Remuneration Arbitration Committees were under the supervision of the Minister of Finance, but the chairman of the arbitration committee could only be a judge. The Finance and Remuneration Arbitration Committees were not long-lived, as they were abolished in 1950 with the establishment of the Council. The Arbitration Committee for Appeals was a joint committee, chaired by the Deputy Minister of Justice and composed of delegates from the Supreme Court and the main High Courts. The Appeals Committee was dissolved under Act II of 1954, with the establishment of the new judicial organization.[15] After that, administrative cases were heard by the ordinary courts.

[13] *Ibidem* pp. 102.
[14] KÜPPER: *ibid* pp. 3-4.
[15] BERÉNYI Sándor (eds): *Államigazgatási jog – Általános rész*, Budapest, 1975, BM Tanulmányi és Propaganda Csoportfőnökség, pp. 452-453.

The competent district court had jurisdiction to hear the action, applying the rules of the Civil Procedure Act. The action had to be brought against the administrative body which had taken the contested decision. The action could be brought before the body which issued the decision at the first instance or before the competent district court within 30 days of the notification of the decision challenged by the action.[16] The range of cases that can be challenged in judicial review, and the scope of judicial review, have varied over the years.

Act IV of 1957 on the General Rules of State Administrative Procedure (hereinafter: Act IV of 1957) only allowed recourse to the courts in a specific category of cases. An action could be brought only if expressly permitted by law, decree-law, or decree of the Council of Ministers. In addition, an action could only be brought if the right of appeal in the case had already been exhausted. The court action was therefore an extraordinary remedy. In addition, the court could not, as a rule, change the decision of the administrative body, but could only annul it and order the administrative body to conduct new proceedings. The right to alter the decision was conferred on the court only by express provision of law. The administrative body was obliged to act again based on the court's decision and to take a new decision. Once the court had given its decision, res judicata applied, i.e. the same facts and the same case could not be reopened.[17]

Under the early system of Act I of 1981 amending and consolidating Act IV of 1957 (hereinafter: Ae.), judicial review could take two forms. In one, the court acted on an express application by the client for judicial review (direct judicial review). This request by a party for a remedy triggered a state administrative remedy, irrespective of the fact that the remedy was ultimately decided by a court rather than a state administrative body. In this case, the court was entitled and obliged to review the administrative decision directly based on the party's application for judicial review in cases where judicial review was expressly permitted by law. In the case of indirect judicial review, the court did not act based on the party's application for judicial review but entered into the review of the administrative decision to decide the case pending before it. In this case, the client did not have the right to apply for judicial review but had the right to appeal against the decision taken in the judicial review. The direct object of the indirect review was therefore not the administrative decision, but without reviewing it, the court could not make a well-founded decision on the case pending before it. What distinguished these two types of judicial review was the case where the proceedings in a particular type of case were conducted by a public administration, but its power to decide the case was limited and the remaining question was a matter for the court. In this case, a judicial procedure was attached to an administrative case hut did not constitute a judicial review. A similar situation existed where a public administration acted in the first instance hut the court ruled in the next forum. Such cases

[16] *Ibidem* pp. 225.

[17] *Ibidem* pp. 218-224.

were cases concerning the protection of property. In these cases, the client and the public administration were not the two parties to the litigation, so these cases did not fall into any of the categories of judicial review.[18]

Initially, the General Tax Code defined the scope of cases in which ordinary courts could review decisions of public administrative authorities using a limited general clause. The MT Decree No. 63/1981 (XII. 5) of 5 December 1981 on administrative decisions reviewable by the courts (hereinafter: MT Decree), which was issued to implement the General Law, applied a positive enumeration method. The general clause in the General Decree would have allowed judicial review in the vast majority of cases, but the MT Decree limited it to cases in which judicial review was already allowed under the General Decree. After 1981, the number of cases that could be challenged before the courts continued to increase, but it was only after the change of regime that the right to appeal to the courts became general. Judicial review could still only be requested if the client had exhausted his right of appeal or if an appeal was excluded in principle. So judicial review was an extraordinary remedy. Judicial review was only for the law, i.e. the court could only correct administrative decisions that were in breach of the law. In general, it did not have full jurisdiction, because, in most types of cases, it could only make a cassation decision. The court only had reformatory decision-making powers in a few types of cases. As was the case under the rules in force at the time of the St., the state administration was bound by the decision of the court and *res iudicata* was established by a final court decision. The rules governing the procedure of the court were contained in Chapter XX of Act III of 1952 on the Code of Civil Procedure.[19]

3. The situation of the administrative courts in Hungary after the regime change

After the change of regime, the amendment of the Constitution by Act XXXI of 1989 created the constitutional basis for judicial review of administrative decisions, with Article 50 (2) of the Constitution giving the courts the power to review administrative decisions, and Article 57 (5) of the Constitution making it a subjective right of the individual to appeal to the courts against administrative decisions. These provisions of the Constitution, however, did not specify at all what kind or which court, in what procedure, what decisions, and from what point of view, was entitled or obliged to review.[20] Since the possibility of judicial review of administrative decisions was not generally guaranteed even after the amendment of the Constitution, the Constitutional Court annulled the Constitutional Act of the Hungarian Constitutional Court (AB) No. Article 72 (1) of the Act and the MT Decree. It also found that there was an

[18] *Ibidem* pp. 732-733

[19] MADARÁSZ Tibor: *A magyar államigazgatási jog alapjai.* Budapest, 1995, Nemzeti Tankönyvkiadó, pp. 522.

[20] PATYI András: *A magyar közigazgatási bíráskodás elmélete és története* ibid pp. 172.

unconstitutionality of omission due to the failure to legislate on the judicial review of administrative decisions, and therefore called on the Government to submit to Parliament a bill regulating the judicial review of administrative decisions by the Constitution by 31 January 1991.[21]

As a result, Act XXVI of 1991 on the extension of judicial review of administrative decisions was adopted. The Act regulated the jurisdiction of the courts by a general clause and applied the negative taxonomy exception only to a very narrow range of cases, thus making judicial review of administrative decisions essentially general. The preamble to the Act stated that Parliament had enacted the Act only to implement Article 50 (2) of the Constitution pending the full establishment of administrative adjudication.

Initially, there were two levels of court procedure, with the local court at the county court's seat acting as the court of first instance, and the county courts and the Budapest Metropolitan Court acting as the court of second instance. Appeals against the decisions of the local courts were fully permitted.[22] However, the extension of the possibility of judicial review has posed a serious challenge to the court system. Another difficulty was that the court system was not prepared to handle such a large number of judicial review applications. Although training of administrative judges was started, initially administrative judges were drawn from the redeployment of civil judges, from clerks or secretaries, or the then civil service. As a result, the whole organization was characterized by uncertainty. With the extension of the possibility of judicial review, the number of cases also increased to a staggering number. Whereas in the 1980s, approximately 1.200-1.300 judicial reviews of decisions of the public administration were launched each year, the number of new cases rose to 5.000 in 1991 and to 25.000 in 1993. The peak in the number of judicial reviews was reached in 1997 when around 40.000 cases were opened. Such a rise in the number of cases has resulted in a significant increase in the length of proceedings and a lengthening of the administrative and litigation process.[23]

On 1 January 1999, with the amendment of the Hungarian Civil Code, the competence of judicial review was transferred to the county courts, thus judicial review became a single instance. This change has had a positive impact on the duration of litigation and has made the operation of the court more efficient from an administrative and professional point of view.[24]

For a few years after the change of regime, the need for a separate administrative court was discussed, but by the end of the 1990s, the idea of setting up separate administrative courts seemed to have been completely silenced. However, during the preparation of the Fundamental Law, the idea of setting up separate

[21] 32/1990. (XII.5.) AB határozat, operative part
VADÁL Ildikó: *A közigazgatás bírósági kontrollja Magyarországon,* In: Pólusok folyóirat, 2020. I. évfolyam 2. szám, pp. 92.
[23] SPERKA Kálmán: *Quo vadis közigazgatási bíráskodás? A közigazgatási bírósági szervezetrendszer átalakításával kapcsolatos kihívások,* In: ACTA HUMANA, 2019/1. szám, 125-126. oldal (http://real.mtak.hu/121228/1/Sperka_2019.pdf, download: 2022. április 20.)
[24] *Ibidem* pp. 126.

administrative courts was again raised. During the preparation of the Fundamental Law, the chairman of the Parliament's Ad Hoc Committee on the Preparation of the Constitution asked a three-member so-called expert drafting committee to deal with the large number of draft texts and to prepare a unified concept, with the experts being allowed to contribute as authors to the drafting of the text of the draft resolution. The draft resolution H/2057, prepared by the Parliamentary Ad Hoc Committee on the Preparation of the Consritution, would have provided for the establishment of an administrative court separate from the ordinary court. The Constitution was not adopted with this wording, so the future of administrative adjudication was still defined within the judicial system, with the control of the legality of administrative decisions being a separate judicial task.[25]

With the adoption of the Fundamental Law, a new area of administrative adjudication, the control of local government norms, has appeared. Previously, the Constitutional Court was the sole body responsible for this activity, but now a shared competence has been created between the Constitutional Court and the Curia. After the adoption of the Fundamental Law, the Constitutional Court can only carry out a constitutional review of local government regulations, while the Council of the Curia can decide on the conflict with an annulment of another law and on the determination of the failure of a local government to fulfill its legislative obligations under the law. The activity of reviewing norms was a completely new task compared to the judicial review of decisions in individual cases, but the Curia, relying on the previously established jurisprudence of the Constitutional Court, quickly settled down to the task.[26]

The first major step towards the creation of administrative justice in organizational terms had to wait until 1 January 2013, when the administrative and labour courts were set up. Although they were still part of the ordinary court system and therefore not yet formally independent, at least they were already called administrative courts. The administrative and labour courts had the same legal status as district courts, but their jurisdiction was the same as that of the courts of law. Administrative and labour courts did not have legal personality but were subject to the legal personality of the tribunal. The Administrative and Labour Court was a branch of the tribunal, under the administrative and financial control of the president of the tribunal, who had direct powers of intervention in the administration of the Administrative and Labour Court in certain matters. The court of first instance was the court of appeal, with the tribunal above it.

However, the seeds of organizational autonomy have already been sown in the case of the six regional colleges of administration and labour. The college was a regional organization covering several counties, not

[25] PATYI András: *Útközben Alapkérdések a szervezetileg önálló közigazgatási bíráskodás megszervezése kapcsán,* In: ACTA HUMANA, 2019/1. szám, pp. 100.
[26] SPERKA: *ibid* pp. 128-129.

aligned with the jurisdiction of the courts, in which the administrative and labour judges of the region met together or separately to discuss professional issues.[27]

4. Rethinking the redress system and administrative justice

Up until the mid-2010s, a faster and more efficient system of redress was seen in the regulation of appeals as ordinary appeals, i.e. substantive administrative decisions could, as a rule, be challenged using an appeal, which was then adjudicated by another, rypically higher administrative body. Under this system, the right of appeal to the courts was only available after the appeal had been exhausted and was therefore only available as an extraordinary remedy. For a long time, it was felt rhar the primacy of administrative litigation would jeopardize the simple, speedy, efficient, and professional handling of administrative cases. Many argued that judicial review would hamper the speed and efficiency of the procedure, that the courts lacked the necessary administrative expertise, and that the generalization or extension of judicial review would lead to the overburdening of the courts. Indeed, speed is counteracted by the fact that the time required for proceedings without time limits is significantly longer than the time limits for the administration of administrative cases. The requirement of simplicity is called into question by the fact that the application is much more complex in form and content than the previously almost informal application. Other views argue that the broad judicial review of administrative decisions will lead to a consolidation of legality. In addition, the advantages in terms of the protection of citizens' rights far outweigh the disadvantages in terms of administrative efficiency.[28] It was probably with the latter in mind, and because of the ineffectiveness of years of efforts to speed up and make more efficient the system of legal remedies in public administration. To reform the administrative procedural law, the preparation of the Act on the Code of Administrative Procedure and the Act on the Pseudo General Administrative Procedure was launched in 2015. Both laws were adopted by the Parliament on 6 December 2016, but the Head of State requested the Constitutional Court to declare the provisions of the Administrative Procedure Act concerning the Higher Administrative Court to be unconstitutional and invalid under public law, which was confirmed by the Constitutional Court in its Decision No 1/2017 (I. 17.) AB. The Parliament finally adopted Act I of 2017 on the Administrative Procedure Code (hereinafter: the "Act I of 2017"), as amended by the Constitutional Court's decision, on 21 February 2017, which deleted the term "court acting as a higher court". Both laws entered into force on 1 January 2018.

[27] KÜPPER Herbert: *Magyarország átalakuló közigazgatási bíráskodása.* In: MTA Law Working Papers, Magyar Tudományos Akadémia, Budapest, 2014/59. szám, pp. 2-15.

[28] FAZEKAS Mariann – FICZERE Lajos (eds): *Magyar közigazgatási jog Általános rész,* Budapest, 2006, Osiris Kiadó, pp. 495-496.

Act CL of 2016 on the General Administrative Procedure broke with the previous model of remedies and classified administrative lawsuits as ordinary remedies and appeals as extraordinary. An appeal can now only be lodged if expressly permitted by law.

Changes in the system of redress are also typically closely linked to changes in the organizational system. The CP initially introduced changes to the jurisdiction and scope of competence of administrative and labour courts. As a result of the changes in the jurisdiction, the vast majority of administrative cases were heard at first instance by 8 specialized administrative and labour courts with regional jurisdiction. These were: the Administrative and Labour Courts of Budapest, the Budapest Region, Debrecen, Győr, Miskolc, Pécs, Szeged, and Veszprém. All the administrative and labour courts had jurisdiction in disputes relating to social security, social and child protection benefits, and benefits or assistance provided by public employment services. In addition, for certain types of litigation, only the Metropolitan Court of Justice was competent.

The next step towards a separate administrative judiciary was the amendment of the Fundamental Law. On 20 June 2018, the Parliament adopted Amendment 7 to the Fundamental Law, which, among other things, provided for the establishment of the Higher Administrative Court. The amended Article 25(1) and (3) of the Fundamental Law provided that "[the] courts shall exercise judicial functions. The ordinary and administrative courts are courts. The administrative courts shall decide administrative disputes and other matters specified by law. The highest body of the administrative court organization is the Higher Administrative Court, which shall ensure the unity of the administration of justice of the administrative courts, issue decisions on the unity of the administrative courts, and issue decisions on the unity of the administrative courts, which shall be binding on the administrative courts."[29]

Act CXXX of 2018 on Administrative Courts (hereinafter: the Act on Administrative Courts), which regulates in detail the duties and competencies of the Higher Administrative Court, was adopted by Parliament on 12 December 2018. This completes the process of setting up administrative courts.

The proposed law, which contains specific, additional rules on the organization and status of administrative judges, has been the subject of lively debate at home and interest abroad. Hungary has been the subject of numerous criticisms and attacks from both international and EU sources. Such criticism was expressed, among others, by Dunja Mijatovic, Commissioner for Human Rights of the Council of Europe, in a statement issued on 14 December 2018, in which she stressed that the fact that the Minister of Justice would have strong influence over administrative courts under the Administrative Courts Act raises serious questions about the independence of the Hungarian judiciary. He regretted that the Hungarian government and parliament did not wait for the Venice Commission's opinion before adopting the package of laws

[29] Article 25 (1) and (3) of the Magyarország Alaptörvénye

initiated by the justice minister. He also regretted that the public debate on the measure was rather limited. Dunja Mijatovic called on the President of the Republic to send the package back to Parliament to allow for a thorough review. She added that she would raise the matter in her talks with representatives of the Hungarian authorities.[30]

In 2018, for the first time in the history of the European Union, the European Parliament asked the European Council ro declare thar Hungary had violated the EU's fundamental values. Among these, one of the European Parliament's main concerns was the independence of judges. The European Commission has launched infringement proceedings against Hungary for breaching the independence of the judiciary.[31]

The Venice Commission, as the advisory body of the Council of Europe on Fundamental Rights, also strongly criticized the new court system planned to be in place from 2020 in its Resolution CDL-AD(2019)004-e, issued on 18 March 2019. The Venice Commission's main concerns and recommendations were as follows:

The new law would have placed a great deal of power in the hands of very few leaders and would have lacked checks and balances to limit that power.

The Minister of Justice would have had too much power to appoint judges and their careers, to promote them to senior positions, and to raise their salaries, without any real recourse.

In many respects, the Minister of Justice would have had even more power than the President of the National Court of Justice.

The Minister would have had a great deal of power when the courts were set up, even in the initial period: he would have had the power to determine the size of the courts and would have had too much influence on the selection of future judges and presidents of the courts, without adequate guarantees.

The Venice Commission concluded by asking the Hungarian authorities to review the law with the participation of the organizations concerned.[32]

In response to the criticisms outlined above, Judit Varga, Minister of Justice, announced on 31 October 2019 that following a serious professional debate, the Government believes that the court should be protected from unnecessary disputes, and therefore the unified court system will be maintained, and the independent administrative court organization will not be established. Given this, the entry into force of Act CXXX of 2018 on Administrative Courts has been postponed indefinitely with the adoption of Act LXI of 2019 on the postponement of the entry into force of the Act on Administrative Courts. As a next step,

---

[30] https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts

[31] https://www.europarl.europa.eu/news/hu/press-room/20180906IPR12104/magyar-jogallamisag-a-parlament-fellepesre-szolitja-fel-az-uniot

[32] Velencei Bizottság CDL-AD(2019)004-e számú állásfoglalása (2019). Elérhető: www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)004-e (download: 2022. április 21.)

on 12 December 2019, the Fundamental Law was amended again, based on which the provisions on separate administrative courts introduced by Amendment 7 were removed from the Fundamental Law. Finally, on 19 December 2019, the Parliament adopted Act CXXVII of 2019 amending certain Acts in connection with the creation of single-tier district courts, which abolished administrative and labour courts as of 31 March 2020. The successors of the administrative and labour courts are the competent courts, and in the case of the Administrative and Labour Courr of Budapest, the Metropolitan Court. The regional administrative and labour colleges and the administrative and labour college of the Metropolitan Court of Justice were also abolished as of 31 March 2020. As of 1 April 2020, labour colleges were established in the magistrates' courts and administrative colleges in the courts of law dealing with administrative matters. The labour section of the Administrative-Labour Chamber of the Curia has been separated from the Administrative-Labour Chamber of the Curia and merged into the Civil Chamber of the Curia as of 1 March 2020. As of 1 April 2020, the Administrative Chamber of the Curia will operate independently. On this basis, as of 1 April 2020, the organization of the Court of Cassation and Justice will essentially revert to the situation as it was before 1 January 2013. This effectively brings to an end almost a decade of work.[33]

On this basis, as of 1 April 2020, the organization of the Court of Cassation and Justice will essentially revert to the situation as it was before 1 January 2013. This effectively brings to an end almost a decade of work.

5. Summary

Based on the experience of the history of public administration, the principles of administrative organization are always applied and are always given prominence or relegated to the background in the specific circumstances of a given period. They are never one-way and irreversible processes. How they are brought into or out of the foreground always depends on when and which of the social and economic needs that trigger the reforms are met, and which of them best serves the objectives of the period, which is the most effective and appropriate solution to the political and social problems of the time, without compromising, or rather, improving the values of a democratic state based on the separation of powers and the rule of law. In choosing the guiding principles for the organization of public administrations, governments should always be mindful of how a country has developed in the past, but also of what can and should be done in the international context of a globalized world.[34] The judicial system must also be adapted to the needs of

[33] Az egyes törvényeknek az egyfokú járási hivatali eljárások megteremtésével összefüggő módosításáról szóló 2019. évi CXXVII. törvény 88. § (1), (2)

:[34] BALÁZS István: *A közigazgatási jogérvényesítés egyes szervezeti és működési kérdéseiről Magyarországon 1990-től napjainkig,* In: Közigazgatás Tudomány, 2021. 1. évfolyam 1. szám, 22. oldal (http://real.mtak.hu/128460/1/ A Közigazgatasi Jogérvényesítés...pdf, download: 2022. április 17.)

the times so that it can provide an effective means of enforcing subjective and objective rights in equal measure. The purpose of judicial control over administrative decisions is to ensure the rule of law in all areas of public administration. As we have seen, the organizational form of the judicial control mechanism over administrative decisions in Hungary has been shaped by the ideas of the political elite in power. While after the socialist takeover, the constitution-maker considered the administrative court as an institution of the bourgeoisie and therefore abolished it, the constitution-maker who drafted and shaped the Fundamental Law included the administrative courts among the achievements of our historical constitution and decided to re-establish them using the 7th Amendment to the Fundamental Law. Nevertheless, he did eventually abandon this idea, even though, in my opinion, the establishment of separate administrative courts was indeed necessary. In favor of special administrative courts is the special nature of administrative cases compared with civil and criminal cases, which, because of the specific nature of the preventive procedure, require a completely different knowledge and way of thinking compared with the other two major areas of law. Thus, a separate court system, with a specialized judicial apparatus for administrative cases, can, in my opinion, better serve the objective and subjective function of legal protection. We have also seen that the international and European Union criticisms have not been directed at the institution itself, but only at how it is implemented. That is why, in my view, there was no need to abolish the administrative judiciary, but merely to transfer the powers that were intended to be vested in the Minister of Justice to another body or person outside the executive branch. This would have prevented criticism and would not have put an end to nearly ten years of work.

MEASURING DIGITAL GOVERNMENT AT THE LOCAL LEVEL

MOLNÁR Péter*

Digital government is now inseparable from the idea of a modern and efficient public administration. Although the conceptual framework of digital government is still a matter of debate, national and international programmes and action plans have identified the use of digital tools in almost all areas of public administration as a priority worldwide. In order to be able to analyse the impact of digital public administration tools on operational efficiency, it has become necessary to establish international comparative performance measurement frameworks (benchmarking reports).

These measurement frameworks, which typically include rankings based on complex indicator systems, usually include scores that identify which countries have successfully met the expectations of the framework. These types of reports are therefore well suited to indirectly influence the digital government developments in each of the countries measured. Consequently, it is important to study the frameworks and monitor changes in measurement techniques. In this paper, I attempt to describe the changes in the most relevant macro-level analyses over the last five years, focusing mainly on local governments, which are less in the centre of interest.

1. Introduction

The local level of public administration or in other words the world of municipalities, plays a key role in the lives of citizens. The relationship between local government and the local population is crucial in two ways. On the one hand, local public affairs, which are carried out by local municipalities, have a major impact on our daily lives. For a significant proportion of people (particularly in rural areas), local government is also the closest 'physical' administrative location to their homes, making it a key place of personal contact in many countries, including Hungary as well.

Local government administration is an integral part of public administration and is considered to be its other major subsystem, alongside state administration. The effective functioning of local government as an administrative body or organisational structure is therefore no less important than that of the central government's institutions and authorities. Despite this, the possibilities, the theoretical and practical issues of improving effectiveness or efficiency through the use of infocommunication technologies (hereinafter: ICT) tools were not, or only partially, addressed in the early international documents on the subject.

In 2018, I conducted a comprehensive research project with the primary aim of identifying the main international digital public administration benchmarking reports that also cover the local government level. Five years ago, I found that, although there was a need for a methodology specifically focused on the local level in the documents, only the United Nations E-government Survey and the Rutgers University's Global E-Government Survey had a real indicator system.

In this paper, I will describe the changes that have taken place in recent years, while also trying to point out the reasons for these changes.

2. Defining the research goal, hypotheses

My paper focuses on whether digital government as understood at the local government level is evaluated and compared internationally in defining and most frequenrly cited Digiatl (electronic) Government reports.

The biggest crisis in recent years, which has undoubtedly affected the day-to-day operational functioning of public administrations, was the COVID-19 pandemic. The emergency measures imposed in the context of the pandemic (general curfew, quarantine obligations for infected persons) led me to the following hypothesis:

H1: As the recent COVID-19 pandemic has highlighted the importance of digital public administration tools for local governments, I expect more and more reports and benchmarking methods to explore and analyse the use of digital government at the local level to identify good practices.

My second hypothesis can be tested partially independently of the first one.

H2: I expect that the local government specific benchmarking frameworks, and in their absence the general digital government ranking indicators for local governments, have undergone significant changes compared to the 2018 indexes, as the pandemic has changed the requirements and expectations for digital public administration at the local level.

An important aim of this research is to explore and present these new approaches.

3. Methodology

In the first part of my paper, I will examine the concept of digital (electronic-) government and the different meanings of the term, as comparative reports can only be subjected to a consistent analysis if this is known. By clarifying the concept, I also set out a framework for interpretation.

In an international comparative study, it is also useful to define the meaning of the local level. Is there an internationally agreed, uniform definition of local government? If not, how can we determine which bodies are considered to be local government? This will be examined in the second part of this paper.

In the third part of the research, I present and typify the digital government benchmarking reports. In the typification, I define the scope of the reports to be examined.

In the fourth part, I examine the existence of local government indices and the major changes in the indices identified.

Based on these analyses, I attempt to confirm or refute my preliminary hypotheses. In the concluding part of my study, I present my research findings and outline possible directions for future research.

4. The concept of digital government and its interpretative framework

4.1. The reasons for the difficulties in defining

Electronic government, electronic governance or electronic (public) administration. All of these terms are used regularly, but defining their meaning is far from easy. The scope of electronic public administration is constantly evolving and nowadays, from a procedural point of view, it can include all procedural provisions thar involve the use of advanced technology to make the performance of the procedural act to be carried our by the parties concerned more efficient[1].

Nor is it helped by the fact that the range of phenomena that can be linked to electronic (or digital-) government is expanding day by day as technology develops. Digitalisation is a dominant phenomenon of our time, with the consequence that many areas of community life are being restructured around electronic communication and media infrastructures.[2] In the age of digitalisation, the understanding of concepts related to eGovernment poses many difficulties for practitioners and researchers alike.

Despite all these difficulties, in my paper I will outline a possible interpretative framework, but underlining that this framework is certainly not the only possible way to decipher the meaning behind the phenomena.

4.2. Distinguishing between electronic government and electronic administration

The term 'electronic government' is probably the oldest term for the use ICT in public administration. It should be approached from the perspective of the legal institutions of Anglo-Saxon public administration. In the United States, the term 'government' covers all public authorities, therefore the term should be understood as public administration in the European legal scientific literature and legislation.[3]

---

*PhD candidate, assistant lecturer, Károli Gáspár University of the Reformed Church. Supervisor: Gyula Balázs Csáki-Hatalavics, PhD. E-mail: molnar.peter@kre.hu

[1] CSÁKI-HATALOVICS Gy. B.: *Új trendek Európában az elektronikus közigazgatás területén.* In: Glossa Iuridica, IV. évfolyam, 3-4. szám, 2018, pp. 73-74.

[2] TILSON, D., LYYTINEN, K., & SØRENSEN, C.: *Research commentary—Digital infrastructures: The missing IS research agenda. Information systems research*, 2010/4, pp. 748-759.

[3] Osborn – Gaebler, 1994.

One of the oldest and perhaps most frequently cited definitions of electronic government (or eGovernment) is that of the OECD, which was adopted in 2003. It defines eGovernment as the use of information and communications technologies. (ICTs), and particularly the Internet, to achieve better government.[4]

In its international comparative report on eGovernment, published just a year earlier in 2002[5], the United Nations included all the ICT tools, platforms and applications used by public administrations under the umbrella of eGovernment. The fundamental merit of the document is that it distinguishes eGovernment from eGovernance and eAdministration. Within the narrow definition of eGovernment, the report has included the following activities:

(1) policy coordination, ensuring online access to services;

(2) developing citizen-centred programmes;

(3) encouraging citizen participation;

(4) improving online services, measuring effectiveness and efficiency; and

(5) portals, testing and evaluation.[6]

According to the World Bank,[7] eGovernment is defined as the use by public administrations of information technologies that can transform the way government interacts with citizens and businesses, as well as with each other.

Generally speaking, eGovernment can be considered as a generic term focusing on the use of new technologies within public administrations. In other words, eGovernment can be understood as the interaction between administrative activities and ICT tools and technologies.[8]

The term "governance" is best understood as a set of governmental activities. In the UN's understanding, governance does not necessarily refer to the activities of a government in the public law sense, but rather to a process.[9] Its fundamental objective is to provide citizens with improved services, more reliable information, broader knowledge and knowledge that facilitates access to governance processes and broadens citizen participation, using the most innovative information communication technologies. Thus, eGovernnance is not tool-centric, but activity-centric, as opposed to eGovernment.

---

[4] OECD: *The E-government imperative, OECD E-Government Studies.* Paris, 2003

[5] United Nations, 2002. 1.

[6] United Nations (2002). Benchmarking E-government: *A Global Perspective. New York, United Nations – DPEPA*, p. 45.

[7] The World Bank: *E-government, 2015.*, 2015, https://www.worldbank.org/en/topic/digitaldevelopment/brief/e-government

[8] CSÁKI-HATALOVICS, Gy. B.: *A digitális közigazgatás* in: Miskolci Jogi Szemle, 16. évfolyam 1. különszám, 2021, pp. 56.

[9] United Nations: *ibid*, pp. 53-54

The definition of eAdministration can be problematic, as the grammatical meaning of the term does not necessarily imply that the phenomenon can be understood only in the context of public administration. Is eAdministration also the use of online banking services or online shopping? Some authors consider eGovernment as a set of tools aimed at achieving the ideal of a paperless office. A widely used definition of eGovernment is that it refers to a mechanism that transforms traditional paper-based office processes into electronic processes, i.e. ICT tools that aim to improve the efficiency and performance of different organisations[10].

We may not be wrong to define the essence of eAdministration in our public administration researches as a specific interaction between public authorities and their customers, typically in paperless or digital form, and typically aimed at producing legal effects. However, it should be underlined that there is another undersranding of eAdminsitration, which focuses on the inrernal processes of the organisation. In this sense, e-government refers to the process whereby paper-based administration (e.g. construction) within an organisation becomes electronic.[11]

4.3. From eGovernment to digital government

Since the mid-2010s, we have witnessed a particular phenomenon. In the literature, the prefix 'electronic' has increasingly been replaced by the more established but less pronounced term 'digital', so thar insread of electronic government or electronic governance, we now often speak of digital government (or dGovernment) or digital governance (or dGovernance).

At this point, the question arises as to whether we can identify any distinction between the concepts defined by the two different prefixes. On the surface, the terms appear to be identical and have been used synonymously in the past[12] while others, especially more recently, have come to understand digital government and digital governance as qualitatively different and more complex.

The OECD, which has developed perhaps the most widely used definition of eGovernment mentioned above, issued its Recommendation on Digital Government Strategies in 2014.[13] The document clearly states that e-government and digital government are coexisting and coextensive concepts. Digital Government refers to the use of digital technologies, as an integrated part of governments' modernisation strategies, to create public value. It relies on a digital government ecosystem comprised of government actors, non-

[10] KHOROW-POUR, M. (Ed): *Encyclopedia of Information Science and Technology, Third Edition*, IGI Global, Hershey, 2015, p. 5301

[11] ZSOM, B.: *Az elektronikus közigazgatás és a területi kutatások kapcsolatáról* in: Tér és Társadalom 2014/3.

[12] CHEN, Y.: *E-Government for Current and Future Senior Citizens. In: Christopher G. Reddick (Ed.). Handbook of Research on Strategies for Local E-Government Adoption and Implementation: Comparative Studies. Hershey, Information Science Reference,* 2009

[13] OECD: *Recommendation of the Council on Digital Government Strategies,* 2014, https://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf

governmental organisations, businesses, citizens' associations and individuals which supports the production of and access to data, services and content through interactions with the government.[14]

In the Recommendation, the OECD calls for the development and adaptation of government digital public administration strategies that address the following key objectives:

(1) ensuring greater transparency, openness and inclusiveness of government processes and operations;

(2) encouraging engagemenr and participation of public, privare and civil society stakeholders in policy making and public service design and delivery;

(3) creating a data-driven culture in the public sector;

(4) reflecting a risk management approach to addressing digital security and privacy issues, and include the adoption of effective and appropriate securiry measures;

(5) ensuring coherent use of digital technologies across policy areas and levels of government;

(6) establishing effective organisational and governance frameworks to co-ordinate the implementation of the digital strategy within and across levels of government;

(7) ensuring that general and sector-specific legal and regulatory frameworks allow digital opportunities to be seized.[15]

Taking the above together, we can see that digital government, like electronic government, also starts from the application of modern technologies in government, with the aim of creating some value, but that digital solutions are already seen as an integral part of government strategies.

4.4. Conclusion

The terms 'eGovernment' , 'dGovernment' and the definitions of the phenomena they cover are difficult to grasp. Throughout this paper, where I do not specifically indicate this, I will accordingly apply the terms eGovernment and dGovernment to the same set of phenomena (the various manifestations of the use of modern technologies in government and public administration). By eAdminitration I mean a narrower set of phenomena than those described above, primarily the interactions outlined in 4.2.

5. What do we mean by local government?

[14] OECD, *ibid*, p. 6.

[15] OECD, *ibid pp.* 6-8.

For every citizen, the meaning of local government seems obvious, but if we were to grasp its essence with scientific rigour, we would have a difficult task. This is mainly due to the diversity of organisational and legal arrangements. It is therefore unnecessary to look for a specific legal definition, since the legal rules governing the status of local authorities vary from country to country. In the following, I will therefore describe in detail the concepts of a few leading international organisations.

5.1. Local governments in the European Union

Eurostat uses the following, relatively general and easy to apply definition of local gvernments: „Local government consists of all types of public administration whose responsibility covers only a local part of the economic territory, apart from local agencies of social security funds[16]". A key element of the wording is the geographical limitation of responsibility. According to the definition „the local government consists of government units having a local sphere of competence (with the possible exception of social security units). Local governments typically provide a wide range of services to local residents, some of which may be financed out of grants from higher levels of government."

The ESA 2010 defines the local governments as: „The local government (excluding social security) subsector (S.1313) consists of government units having a local sphere of competence (with the possible exception of social security units). Local governments typically provide a wide range of services to local residents, some of which may be financed out of grants from higher levels of government. Statistics for local government cover a wide variety of governmental units, such as counties, municipalities, cities, towns, townships, boroughs, school districts, and water or sanitation districts.[17]" The core elements of the concept, beyond the limited geographical operation, are the typically wide range of services to be provided to local residents. The definition also specifies that municipalities may be associated with several units of government, so that a municipality may be considered a unit of local government, but may also be a region or counry in whose territory the municipality is located.

Studies of local government in the European Union tend to highlight two additional features: democratic participation, decentralisation and subsidiarity, which are typical features of local government[18]. The European Charter of Local Self-Government[19] sets out these principles for local authorities. These requirements are in fact standards which describe the essential elements of the European concept of local

[16] Eurostat: *Glossary European system of national and regional accounts* (ESA 2010), 2023 https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:European_system_of_national_and_regional_accounts_(ESA_2010)

[17] Eurostat: *Statistics Explained. Glossary: Local Government, 2023* https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Local_government

[18] KARAYIĞIT, M. T.: *The EU and Local Governments. Strategic Public Management Journal* (SPMJ), 2016/4., November 2016,

[19] European Charter of Local Self-Government Strasbourg, 15.X.1985

government.[20] The Charter's basic principles of local self-government set out the aspirations for the role of local governments in the organisation of the state:

a) self-governments should have a democratically elected decision-making body should be elected by their elected representatives,

b) have a wide range of responsibilities and powers to take decisions affecting the local community,

c) which have a significant degree of autonomy; and

(d) have adequate financial resources and revenue.

5.2. Local governments as understood by the UN

According to one UN definition „local government is a result of decentralization, a process of transferring political, fiscal, and administrative powers from the central government to sub-national units of government to regulate and/or run certain government functions or public services, on their own, in the administrative-territorial areas of a country."[21]

Local government consists of local government units, defined in the SNA as "institutional units whose fiscal, legislative and executive authority extends over the smallest geographical areas distinguished for administrative and political purposes" What constitutes the local government of a given country is defined by that country's national legal framework, including national constitutions and local government acts or equivalent legislation.

5.3. The World Bank's attempt at conceptualisation

In 2008, the World Bank and United Cities and Local Governments jointly published a unique global volume, Decentralization and local Democracy in the world. Although this initiative did not result in a unified concept, the research concluded with the conviction that the democratic model of self-governance is now commonplace and that decentralisation is well established in most places in the world. Despite some surviving customs, the general trend is towards the election of local government bodies and to the development of instituted forms of popular participation.

5.4. Common characteristics of local governments

In the absence of a single definition, I shall confine myself to identifying the common points of the definitions described above. Local authorities are essentially representative bodies established in the spirit of decentralisation, with public responsibilities in a defined geographical area.

[20] SZENTE, Z. (2014). *Az Európai Önkormányzati Charta értelmezése az Európa Tanács gyakorlatában* in: Új Magyar Közigazgatás 2014/1. szám, pp. 24–34.

[21] UN System of National Account Metadata. https://unstats.un.org/sdgs/metadata/files/Metadata-05-05-01b.pdf (Retrived: 11/07/2023).

6. About digital government benchmarking report in general

6.1. The role of the benchmarking reports

International reports on eGovernment, and often the associated rankings of the eGovernment development of the individual countries in the survey on which the report is based, emerged in the early 2000s. Those Benchmarks of eGovernment tend to consist of a combination of broad macro-factors (e.g. internet infrastructure, levels of education in the population, quality of webpages and online services, etc.), and besides being called benchmarks they can also be referred to as surveys, readiness and/or maturity indexes.[22]

It is therefore not surprising that the number of organisations producing and publishing reports has increased dramatically over the last two decades. This is due to several factors. If one accepts Heeks' definition of eGovernment reports[23] as a performance measurement of the subject matter of each nation, it is easy to determine their significance. By publishing their findings, the organisations that produce the reports are in the spotlight and their professional prestige is clearly enhanced. Perhaps even more important, however, is the fact that the governments of the countries concerned have also achieved a positive rating in an international comparison, thus demonstrating that the reports have the potential to influence not only the academic discourse but also the direction of concrete government investment in eGovernment.[24] However, it is not sufficient for widespread dissemination if only issuing organisations are interested in publishing reports on a regular basis. Although benchmarking reports were originally designed to identify best practices, it became clear early on that the reports could be used to improve the relevant practices of the countries involved. This process was named "Benchlearning" by Freytag and Hollensen.[25]

Perhaps this is why a study have already identified 16 organisations that have published at least one international comparative analysis on electronic public administration by 2017.[26] Since the scope of this study is in itself too narrow to examine in depth all the reports thar have been published over the years, I must necessarily narrow down the scope of the study by selecting those documents that may be of particular relevance to the basic purpose of my writing.

To this end, in my previous research in 2018, I typed the reports according to four criteria. Firstly, I identified the organisations that produce them, then I looked at the regularity and timeliness of the publication of the reports, their geographical coverage, the number of countries covered by the report and

---

[22] SKARGREN, F.: *What is the point of benchmarking e-government? An integrative and critical literature review on the phenomenon of benchmarking e-government* in: Information Polity, 2020/25, pp. 67-89. DOI: 10.3233/IP-190131

[23] HEEKS, R.: *Benchmarking eGovernment: Improving the National and International Measurement, Evaluation and Comparison of eGovernment*, 2006, p.2.

[24] LNĚNIČKA, M.: (2015). *E-government Development Index and its Comparsion in the EU Member States, Scientific Papers of the University of Pardubice. Series D, Faculty of Eco- nomics & Administration.* 2015/22, p. 75.

[25] FREYTAG, P.V., HOLLENSEN, S.: *The process of benchmarking, benchlearning and benchaction.* in: The TQM Magazine, 2001

[26] APYONLUOGLU, M. – ALKAR A. Z.: *Comparison and Evaluation of International e-Government Benchmarking Studies*, 2017

finally the subject of the reports. On the basis of the above criteria, I have selected those organisations whose reports seem to be the most suitable for a more comprehensive international comparative study of the relationship between local government and digital government.

6.2. Typification of international comparative reports

As I noted earlier, the first reports (UN, EU, Brown University, Accenture, World Economic Forum) were published around the turn of the millennium. By the mid-2000s, the list had grown: Waseda University published its first report in 2005, while the OECD published its own in 2006. In the years since then, other organisations (e.g. Deloitte, Asian Development Bank) have joined the ranks.

It can be seen that the issuers of the reports include or have included international organisations (UN, OCED), universities (Brown University, Rutgers University), non-profit organisations (World Economic Forum), international consultancies (Accenture, Deloitte) and even media companies (The Economist Intelligence Unit).

The frequency of publicarion of reports varies considerably between rhe organisations surveyed. Some organisations (UN, Waseda University, OECD, Deloitte, World Economic Forum) publish their results on an annual or biannual basis, while others publish less frequently or only occasionally. It is worth noting that several formerly regular publishers have ceased or at least suspended this type of activity over the years (e.g. Brown University, Asian Development Bank, and from 2019 Rurgers University no longer publishes this type of report, focusing exclusively on the US).

As with the frequency, the range of countries covered varies widely. The UN report has the widest coverage (193 countries). The World Economic Forum compares digital government in 143 countries, the Waseda University's latest report covers 64 countries (previously 65) and the OECD studies 38 countries.

The reports published by these organisations cover several continents, regardless of the number of countries covered, unlike some organisations operating at regional level. By contrast, the annual reports of other organisations, such as the European Union, are by definition regional in nature. In other words, reports can be divided into macro, meso and micro levels according to their scope. Macro-level reports cover countries from the whole world, meso-level reports cover a continent or a federation of states, while micro-level reports compare different bodies within a country or homogeneous types of bodies (e.g. ministries or local governments of a given state).

The vast majority of reports - such as the UN, Waseda University, Brown University or the European Union publications mentioned above - are specifically on digital government, while other reports only touch on the field. The latter includes the OECD's Government at a Glance, which does not focus primarily on digital government issues, but has a more general aim: to develop indicators on how governments work in

OECD member countries, thus making it possible to compare Member States and to evaluate the performance of national governments. The OECD reports nevertheless illustrate the interconnectedness of digital government with other areas of government performance, given the inclusion of eGovernment indicators in several chapters over the years. The same is true for the European Union's Digital Economy and Society Index, which was developed in 2017. The index assesses the digital performance of the EU and its Member States along five main dimensions. Although the DESI includes indicators on digital public administration, it is not specifically a digital public administration index.

Since both the range of technologies used by eGovernment and the role of local governments in public administration, as well as the range of public tasks they perform, can vary from state to state over the years, I have excluded organisations that have not issued reports in recent years or have not issued them regularly, for reasons of timeliness.

Given that municipalities may show different characteristics from one contexr to another, it seemed appropriate to limit the research to macro-level reports.

The selection criteria for the reports to be examined were thus:

(1) come from an active, regularly publishing organisation,

(2) compare eGovernment across several continents, and

(3) be exclusively or predominantly on digital government.

In my 2018 study, I was able to identify four such reports, which have been reduced to two by 2023. The general trend is that by the 2020s, the range of electronic administrative reports that can really shape public policy in each state will have crystallised. As an indication of this, in 2019 the Rutgers University Global E-Government Survey was discontinued and in 2016 the World Economic Forum Global Information Technology Report was discontinued.

Accordingly, I was able to examine two reports: the UN eGovernment Survey and the WASEDA-IAC Digital Government Ranking.

6.3. The UN and the eGovernment Survey

In March 2001, the third International Forum on New Foundations for Governance, which was held under the auspices of the United Nations and attended by 122 countries, was held with the specific objective of sharing good practices and ideas on eGovernment. [27]Based on the experience of the Forum, the United

[27] ROCHE, E. M.: *Evaluation of the UN E-Government Survey for the period 2003-2016*, 2017, Online: http://workspace.unpan.org/sites/Internet/Documents/UNPAN97454.pdf

Nations Department of Economic and Social Affairs (UNDESA) has for the first time carried out a comparative analysis of the eGovernment readiness of Member States[28].

The first publication was typically followed by others every year or two, with the latest report,[29] 2022, being the twelfth in a row. The main indicator used in the UN reports is the E-Government Development Index ("EGDI"), which is mathematically a weighted average of normalised figures from the Online Services Index ("OSI"), the Telecommunications Infrastructure Index ("TII") and the Human Capital Index ("HCI"), representing the level of online service provision. The main indicators of the OSI are the national portal, the e-government portal, the e-reporting portal and the websites of some priority ministries. The TII is defined as personal computers, internet users, telephone trunk lines, mobile phone lines and broadband internet subscriptions per 100 inhabitants. HCI indicators represent the literacy rate of the population aged 15 and over, the school enrolment rate and the expected and actual time spent in education.

In addition to the EGDI, the e-Participation Index (EPI) is a complementary indicator whose primary function is to measure the actual take-up of e-Public Services.[30] The EPI is based on three secondary indices: indicators representing the availability of online information (e-information), the opportunities to express opinions online (e-consultation) and the involvement of citizens in decision-making – e-decision making.[31]

By their very nature, the above indicators have been used by the UN for the past almost two decades to benchmark the performance of individual states, but the 2016 report already highlighted the need to establish a set of indicators to measure eGovernment at the local government level in order to better understand the impact of eGovernment as a whole on sustainable development.

The Local Online Services Index ("LOSI") was included for the first time in a report published in summer 2018. The LOSI's assessment methodology focused on the official website of the municipality concerned as the primary interface for publishing information on administration and local public services. The survey covered all UN geopolitical regions. A total of 40 metropolitan websites (7 African, 6 American, 13 Asian, 12 European and 2 Oceanian) were selected and evaluated.

The websites are assessed using 60 indicators grouped into four categories (technology, content delivery, service delivery, participation).

By 2020, the report will have assessed 100 cities across 80 indicators.

[28] United Nations, 2001.
[29] UN E-Government Survey 2022 - The Future of Digital Government
[30] Tózsa, 2012. 8.
[31] United Nations 2016, 6.

The 2022 LOSI also analyses the most populous cities in each Member State (100 cities in total), now in five categories: institutional network, content provision, services provision, participation and engagement, technology.

Although the indicator system has been changed, the starting point remains the city government websites and the information they contain or the opportunities for interaction through them.

6.4. The WASEDA-IAC Digital Government Rankings

Waseda University published its first report in 2005, making the latest from 2022, the seventeenth in a row. The report uses a relatively broad spectrum of indicators, assessing not only readiness but also other specific factors that are beyond the scope of other organisations' analysis. However, there is no separate indicator and indicator system for digital government at local level in this report. Thus, eGovernment issues in relation to local government are only touched upon in the report, including in the context of smart cities as one of the five new trends in digital governance.[32]

7. Testing the hypotheses

My preliminary hypotheses were defined as follows:

H1: As the recent COVID-19 pandemic has highlighted the importance of digital public administration tools for local governments, I expect more and more reports and benchmarking methods to explore and analyse the use of digital government at the local level to identify good practices.

The hypothesis has been disproved. The number of global benchmarking reports has decreased over the last five years, and the UN eGovernment Survey remains the only report included in the study with a distinctly local government indicator.

H2: I expect that the local government specific benchmarking frameworks, and in their absence the general digital government ranking indicators for local governments, have undergone significant changes compared to the 2018 indexes, as the pandemic has changed the requirements and expectations for digital public administration at the local level.

The hypothesis has been disproved. In the case of the only framework with indicators for local government, there has been no major change in the indicators, and the report is still limited to an analysis of the websites of the largest cities in the Member States, which in itself does not provide sufficient information to assess the use of digital technologies in local government. It is particularly problematic that there are still no indicators that go beyond C2G or C2G relations, the existing ones focus on

[32] WASEDA-IAC, 2017 35-43.

eAdministration, and no information at all on back-office processes (e.g. the use of new, innovative management systems).

8. Conclusion - a dead end?

Five years ago I started studying international comparative reports with high hopes. Studying the reports, I found that there was a growing need to develop a system of indicators for each municipality.

However, I must point out that the mere fact that a study does not fulfil the hoped-for results does not mean that the research has been useless. I have identified a trend towards a steady decline in the number of international comparative reports and little change in the methodology of the most popular reports.

This suggests that best practices are being summarised in other documents. Recently, a number of macro- and meso-level programmes have emerged with a strong focus on the objectives of responding to the challenges facing local and regional authorities. These are the basis for the development of national strategies, which are also gaining in importance.

The inconclusive nature of my research may also be an indication of the lack of a global comparative analysis, due to the diversity of local authorities outlined above and the lack of a coherent framework. It may be that the right way forward is to explore the need to set up a theoretical model based on the common characteristics of municipalities in the longer term to ensure comparability.

The future may hold many things, but it is likely that today it is not advisable to start from benchmarking reports alone when looking at the level of digital development in local governments.

DATA PROTETCTION AS DATA SECURITY, - THE ECOSYSTEM OF DIGITAL MARKETS

MOZSONYI, Norbert*

One of the most dramatic processes of our times is the information explosion and the dramatic social transformation that is taking place in its wake.[1] Digital footprints allow us to reconstruct previously hidden structures and relationships, and to change the tools, methodologies and results of cognition[2].

The essence of technology is to be as versatile as possible, using more and more data of different categories and timings, with new solutions and operations evolving on a complex daily basis. This does not make privacy "dead", as many people think[3] - it is simply that the focus may be on the rules for managing personal data rather than protecting it. In order to harness and reap the benefits of mobile devices, artificial intelligence-based big data technology[4] and hybrid cloud services[5], we need to facilitate data sharing and we need regulation that allows this to happen while maintaining the confidentiality of the data with the data controller. The first part of the chapter provides an overview of the approach to the protection of fundamental rights and the definition of the conceptual issues of regulation. The second part argues that our current general contract practice is convenient but not right, given the extent to which we need to enforce our fundamental constitutional rights. The third part outlines the framework of a real contractual relationship for data management. The final part offers some preliminary thoughts on the possible obligations of dominant digital platforms. Accordingly, the regulatory presumption that individuals can control the flow of their personal data should be overcome.

---

*Legal Counsel, Print Brokers Team Ltd.

[1] Cukier and Mayer-Schönberger, 2013 Big data: A revolution that will transform how we live, work, and think. Houghton Mifflin Harcou

[2] Csepeli Gy., Dessewffy, T. (2015): Big Data. A technological change that will fulfil sociology, Review of Sociology

[3] Here are the titles of some articles: "Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms" by Kate Crawford and Jason Schultz, published in the Boston College Law Review in the 1st issue in 2014, pages 93-128 (Crawford-Schultz, 11th page); "Privacy in the Age of Big Data: A Time for Big Decisions" by Omer Tene and Jules Polonetsky, published in the Stanford Law Review Online in February 2012, pages 63-69 (Tene-Polonetsky, footnote 4).

[4] Dessewffy and Láng define Big Data as "the collective emergence of qualitatively new social practices and modes of understanding due to the explosive growth in the quantity of digital data." According to the authors, this new paradigm of knowledge formation did not only arise from the increased volume of data in the 21st century but was also significantly shaped by the widespread adoption of digital recordings. Dessewffy Tibor and Láng László (2015): "Big Data and the Accidental Encounter with the Social Sciences on the Operating Table." Replika (92-93): 157-170.

[5] IoT devices, big data processing, as well as data transmission and storage structures, all presuppose artificial intelligence. Conversely, it is also true that artificial intelligence cannot function without a robust quantity of data and adequate data transmission, storage, and computational capacity, which collectively form a particularly complex information technology system.Furthermore, for online platforms that reach the level of qualified data controllers, as defined in the draft regulation on digital services, access to the service provided in relation to them is an essential service subject to a contractual obligation, the subject of a legal relationship that constitutes a real act of data processing based on objective responsibility. The public interest in control of the digital world and accountability of data controllers is clearly articulated, but (unfortunately) very difficult to enforce, and getting harder every day. The regulation of these systems should not be a regulation of technology that respects the business interests of lobbying technology companies, but should be designed and operated as a system of norms based on the fundamental values of human dignity and democratic social order.

Introduction

Nowadays, it is evident that in the information society, almost everything leaves a digital trail, which is analysed through big data technology[6] based on artificial intelligence. This technology facilitates the identification of previously undiscovered relationships and networks, rendering them visible and amenable to research. As technology advances, increasingly more aspects of our lives can be analysed using well-organised data sets, which can be manipulated and utilised in various ways by constantly evolving digital tools and networks.[7]. There has been a significant increase in the volume of digital information. This data is no longer solely personal data that is intentionally transferred, but is increasingly becoming personal or even special data through big data technology.[8] As a result, it is subject to personal data processing.

We cannot avoid having a digital footprint, and we cannot avoid it being processed in different structures, because[9] this is the basis of the service, this is the engine of the service. The possession of personalised information left behind in the digital architecture creates a particularly significant power relationship on a wide scale. This asymmetry of power and information needs to be counterbalanced by the contractual relationship. The regulation of AI-based[10] data management, which is part of our everyday life, cannot be based on a contractual relationship unilaterally established by online service providers. In our view, the regulatory presumption that individuals can control the flow of their personal data should be abandoned.

[6] In a fundamental rights-based perspective, data protection seeks to safeguard the freedom of the private sphere, where a key concept is the protection of personal data. According to the arguments of Neil M. Richards and Jonathan H. King, we have witnessed changes of significant importance in the past half-century, similar to the industrial revolution, which are reshaping our society and our lives. The latest phase of this information revolution, the big data revolution, promises even more substantial transformation – or threatens it – at an increasingly accelerated pace. They argue that the stake of the big data revolution is that big data analysis influences or threatens all sorts of human activities and decisions, from dating to shopping, from healthcare to education, from law enforcement to the fight against terrorism, to democratic elections. Neil M. Richards and Jonathan H. King: "Big Data Ethics." Wake Forest Law Review, 49 (2014), 2, 393–432.

[7] For example, at the Psychometrics Centre of the University of Cambridge, an extremely efficient and fast method has been developed to accurately analyse the characteristics of an individual or a group of individuals from various data sources. Kosinski, M., Stillwell, D., Graepel T. (2013). Private traits and attributes are predictable from digital records of human behaviour. http://www.pnas.org/content/pnas/110/15/5802.full.pdf Published on 2022-03-10. DOI: 10.1073/pnas.1218772110.

[8] The term "big data" refers to the vast amount of information and processing generated by companies, individual users, and networked digital devices, which is then analysed by computers. As a result, our digital footprints are transformed into personal data, and even sensitive data, which are stored and processed in computational clouds on a systemic level.

[9] The analysis of the vast amount of data coming from billions of IoT devices is not well manageable with traditional relational databases. The phenomenon of big data is rooted in the fact that in the information society, almost everything leaves a digital trace in real-time, leading to an immeasurable amount of data generated day by day. However, it's not just the size that matters; it's the unlimited growth potential and data analysis. Unlike statistics, big data doesn't ask the individual; it monitors their behaviour without influencing the system or understanding why things happen. Big Data connects generated datasets, opening the door to conclusions and predictions that can provide insights into people's innermost thoughts. Predictive data analysis creates profiles, allowing extremely accurate forecasts about the individual's future decisions. In other words, an individual's digital footprint is pre-constructed, and they know in advance what they will do because their future actions are predictable. (Zsolt Ződi, "Privacy and Big Data," page 19. [http://fundamentum.hu/sites/default/ files]) fundamentum-17-1-2-02.pdf.

[10] The employment of AI-based technologies augments the possibility of personal data being misused by public authorities and in private-party legal relationships. Artificial intelligence has the potentiality to process extensive sets of data and to classify and scrutinize assorted data pertaining to individuals, thereby deriving conclusions concerning them.

The fundamental rights approach

As fundamental rights, human rights are among the most basic values of the constitutional order of individual states and of the international community, as well as the core values of constitutional democracy. Constitutional law is a system of vertical[11] norms that regulate the relationship between the public authority and the citizen. In recent decades, European legal development has moved beyond this clear formula and, recognising that the state is by no means the only authority that can have a decisive influence on our lives and the exercise of our rights has gone beyond the vertical scope of law in respect of certain fundamental rights. In comparison, the term 'horizontal scope' of fundamental rights refers to the situation where a citizen can assert their constitutional rights against a private party, rather than solely against the state. It is undeniable that corporations with substantial monetary power, as well as smaller businesses and individuals, may exercise their rights in ways that do not align with international human rights principles. Nowadays, the power dynamics have shifted significantly and any natural or legal person can be a potential infringer, so I see no reason to believe that the protection of our human rights should or can only be asserted against the state.[12]

Building upon a foundation of excellence and trust, the White Paper prioritises safeguarding the EU's core values, including fundamental rights, as a central requirement for the development, use and regulation of AI. Consequently, the development and use of AI is therefore not (or cannot be) an end in itself, but must be seen and regulated solely as a technological tool for the realisation and fulfilment of universal human values and fundamental rights. AI-based data processing, which is ubiquitous in daily life, must not be regulated through a contract unilaterally established by a qualified data controller. Such regulation benefits human well-being only if it promotes the fulfilment of human freedoms and the proper functioning of the constitutional institutions that guarantee such freedoms. Otherwise, we may be falling into Aldous Huxley's freedom paradox trap, a seductively comfortable, desirable and beautiful new world[13] where we willingly sacrifice not only our freedom but also the basic conditions of our humanity, including dignity, on the altar of consumer welfare and material comfort.

Giant platforms

[11] Modern constitutions were created with the aim of clearly defining the framework within which state authority operates, thereby ensuring, above all, the exercise of fundamental rights. Due to this purpose, the rules of the constitution bind the state and its organs: they specify how they should act, the limits of their public power, and what they must do to ensure the adequate guarantee of human rights. In these legal relationships, individuals stand on the side of rights holders, from which they can expect the state to adhere to its operational requirements and respect their privacy and civil rights.

[12] Andrew Z. Drzemczewski: "European Human Rights Convention in Domestic Law. A Comparative Study," Oxford, Clarendon Press, 1983. Chapter 8, pages 373-377. https://www.corteidh.or.cr/tablas/a11660.pdf.

[13] Aldous Huxley: *Szép új világ* ("Brave New World.") Budapest, Kozmosz, 1982.

The processing of personal data by data controllers with a significant digital presence[14], also known as qualified data controllers, should move away from data controller-centric regulation towards a regulation based on contractual agreements that establish objective liability, enabling individuals to effectively assert their fundamental rights. These intermediary service providers[15] are social platform providers and their services include the ranking (e.g. search engine ranking, social platform ranking) or moderation of a large amount of content. For this filtering and ranking activity, large amounts of meta[16] and personal data[17] are processed. And they are increasingly using complex technologies based on artificial intelligence[18] to filter, rank and moderate content, which is essential for personalization.[19] Today's qualified data management utilises a combination of big data technology based on artificial intelligence, wireless communication infrastructure, and hybrid cloud services[20] . In addition to the paramount importance of data, digitalisation,

[14] Due to the characteristics of the digital economy, some influential "gatekeeper" platforms have acquired invulnerable positions, enabling them to control the development directions of digital economic ecosystems. At the same time, the beneficial effects of competition have become limited. A significant milestone in the qualification of the concept of platforms to the level of qualified data controllers is the draft regulation on digital markets (DMA) and the regulation on digital services (DSA). Within platform services, these regulations create two new platform categories: one based on functionality, termed "core platform services," and the other based on size, further narrowing it down to the largest, the "gatekeepers," imposing additional obligations on them.

[15] Compare: The European Parliament and Council Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive), Section 4: Liability of intermediary service providers.

[16] Artificial intelligence-based systems can be considered a particular type of existing metadata organizing search engines (such as Eur-Lex, suitable for searching legal sources and case law). Their feasibility and further development have greatly contributed to the introduction of the European Case Law Identifier (ECLI) in Europe's legal landscape (InfoCuria). Concerning Eur-Lex, the objective is to enhance the website and improve user experience through website development and search engine enhancement. During this data processing, the extensive information generated can potentially be transformed into personal data when analyzed and assessed in conjunction with other datasets and databases. (European Case Law Identifier - A program for searching the European Case Law Identifier (ECLI).)

[17] In the 21st-century digital economy, platforms and their associated business models play a highly significant role, with a central focus on data, especially personal data. For a long time, the emphasis has been on regulations that ensure the protection of data, particularly personal data. With the help of automated systems (algorithms) integrated into their infrastructure, platform operators can more easily interpret user behaviour patterns and usage trends. Based on this, they can provide personalized content and make other decisions that significantly impact users. These decisions are made by platforms automatically, relying on personal data related to the user. The General Data Protection Regulation (EU) 2016/679 of the European Parliament and the Council, dated April 27, 2016, concerns the protection of natural persons regarding the processing of personal data, the free movement of such data, and the repeal of Directive 95/46/EC (General Data Protection Regulation).

[18] The concept of artificial intelligence is used in various ways by many people. According to the definition provided by the European Commission: "Artificial intelligence refers to systems that exhibit intelligent behaviour by analysing their environment and taking autonomous steps to achieve specific goals." The European Commission describes artificial intelligence as a system that, through the analysis of its environment, exhibits intelligent behaviour and is capable of performing various tasks with a certain degree of autonomy in order to achieve specific objectives. This definition is sourced from "European Commission: A Definition of AI: Main Capabilities and Scientific Disciplines (April 8, 2019)." You can also refer to definitive approaches in Jan De Bruyne and Cedric Vanleenhove's "Artificial Intelligence and the Law" (Cambridge, Intersentia, 2021) and Thomas Wischmeyer and Timo Rademacher's "Regulating Artificial Intelligence" (Cham, Springer, 2020).

[19] IoT devices, big data processing, as well as data transmission and storage infrastructure all presuppose artificial intelligence, and conversely, artificial intelligence also requires robust data, appropriate data transmission, storage, and computing capacity. This forms a particularly complex information technology system. The interdependence of all these standalone technologies underlines the importance of intellectual property protection. The transparency and accountability of this complex technological system face significant challenges, thereby making it nearly impossible to exercise physical control over personal data.

[20] Complex systems become interesting due to the emergence of the synergy phenomenon, which means that as a result of the interaction between their parts, the behaviour of the parts changes in such a way that the entire system exhibits qualitatively new behavioural patterns and new regularities different from the properties of the parts. Therefore, the impact of individual technologies comprising the system on our fundamental rights cannot be separately examined. In my opinion, real progress is primarily

through the processes described above, is creating new platforms for social and economic activity and communication that are an integral part of our daily lives, which other authors have called online platforms[21] with a significant· digital presence.

These platforms typically work with large data sets and algorithmic decisions[22]. Due to their significant market power and capability to manage the digital ecosystem whilst accumulating data assets, they have positioned themselves into a monopoly or oligopoly.[23]. As they function as digital service platforms[24], they pose a significant challenge to regulate and maintain accountability. Merger control has been "under-enforced" by competition authorities in the technology sector[25], resulting in the emergence of this market power. Between 2008 and 2018, Google, Apple, Amazon, Facebook (Meta) and Microsoft collectively acquired more than 400 entities, which were not impeded[26]. This practice is commonplace in the technology industry, where major corporations buy innovative start- ups - that do not possess significant market power or share - to prevent them from becoming a significant competitor.[27] In this manner, a potential business solution or idea is integrated into the acquiring company prior to its ability to exercise any tangible competitive force, solely expanding the portfolio of the larger technology corporation.[28] The operation of large platforms gives rise to concerns regarding competition, data protection, consumer protection, and

characterized not by the resource-intensive innovation of individual techniques and technologies but by the interconnection of these techniques and technologies in many areas, forming complex technological systems that complement each other. The challenges in information security of complex systems, such as artificial intelligence, are discussed in "Challenges in Information Security of Complex Systems (2019)" on pages 66-67. https://bdi.uni-obuda.hu/sites/default/files/oldal/csatolmany/kiadvany-2019.pdf

[21] Regarding the Compare: Margrethe Vestager's speech on the regulatory power and antitrust implications of algorithms, titled "Algorithm and Competition," which was delivered at the Bundeskartellamt conference on March 16, 2017.

[22] Compare with Margrethe Vestager's speech titled "Algorithm and competition," delivered at the Bundeskartellamt conference on March 16, 2017, discussing the regulatory power and competition-related aspects of algorithms.

[23] The common goal of copyright and industrial property protection is to grant intellectual products various, but in every case, exclusive, monopolistic, absolute protection in proportion to their significance, whether of a financial or other nature, for their right holders and, in a broader sense, for society. Intellectual property rights in the broader sense hold significant importance in the modern market economy, as in a knowledge-based society, information often holds greater value than physically tangible objects.

[24] The legislator aims to maintain a high level of protection by enacting criminal and misdemeanour offences in cases of intellectual property rights violations, alongside the imposition of stringent sanctions for such violations. The aim of protecting intellectual property is to grant creators of intellectual works complete rights, including the ability to exclusively use or authorize use of their work, or transfer rights or the right to use it, with some exceptions, in exchange for compensation.

[25] Mike Walker: Competition Policy and Digital Platforms: Six Uncontroversial Propositions. *European Competition Journal*, 16. (2020), 1. 4. https://doi.org/10.1080/17441056.2020.1730063

[26] Mike Walker: Competition Policy and Digital Platforms: Six Uncontroversial Propositions. *European Competition Journal*, 16. (2020), i.m.5. https://doi.org/10.1080/17441056.2020.1730063

[27] Pünkösty András Merre tart az európai szintű platformszabályozás? – Áttekintés a platformok szabályozásának versenyjogi ösztönzőiről, valamint a fúziókontroll lehetséges fejlesztéséről https://www.ekonyv.hu/api/get_ebook.php?shop=301&order=37079488&ebook=74859&format=pdf&time=1683213343&check=ed2cc0feaf3095d111910d15288 7 fc3d (András Pünkösty Where is platform regulation at European level heading? - An overview of competition law incentives for regulating platforms and the possible development of merger control (pages 183-185), April 10, 2023)

[28] The FTC, in a lawsuit filed against the tech giant at a later date, objected to Facebook's acquisition of companies that could have posed a threat to its market positions, rather than engaging in competitive behaviour. This applies to the acquisition of Instagram, which was on the rise at the time of the widespread adoption of smartphones and was based on image sharing, as well as the purchase of WhatsApp, which was nearing a tipping point in the market. For the original lawsuit, see Federal Trade Commission v. Facebook, INC. Case No.: 1:20-cv-03590, January 13, 2021

privacy, prompting the question of whether enforcement will be capable of responding adequately to the evaluation of activities at the intersection of these areas.[29] Additionally, it remains unclear whether the situation will favour platforms, given that the evaluation of their intricate activities, which unavoidably involve several jurisdictions' approaches simultaneously, must conform to a narrower narrative due to jurisdictional limitations.[30]

Data management - algorithmic decision making as a new technology

Data processing has expanded far beyond our basic personal information such as date of birth, mother's name, address, and ID number. Nowadays, terabytes of digital footprints[31] are processed on a daily basis. To provide a comprehensive overview without limiting the scope, algorithms are now able to perform various tasks such as spam filtering from emails[32], facilitating online shopping[33], drafting conrracts, assessing loan applications, making medical diagnoses, driving vehicles, guarding borders, selecting job candidates, and even aiding criminal judges in determining whether to deprive one's liberty. The range of sectors and societal impacts is extensive, encompassing ICT, finance, HR decisions, healthcare, insurance, law enforcement, and numerous other areas of daily life. It is important to emphasise that our digital footprints[34], in the form of metadata, can be transformed into personal data, and in some cases this personal data can even be classified as sensitive data[35] after processing.

[29] Intersection of Competition, Consumer Protection, and Privacy. International Competition Network. www.internationalcompetitionnetwork.org/news-events/intersection-sept2021/ March 15, 2022

[30] ibidem

[31] Among the characteristics describable with the 6 Vs of Big Data, this is the "Variety" – the sum of both online and offline activities enhances an individual's digital footprint (e.g., monitoring online activities, CCTV, GPS, IoT [Internet of Things], banking transactions, etc.).

[32] Thiago S. Guzella – Walmir M. Caminhas: A review of machine learning approaches to Spam filtering. Expert Systems With Applications, 36. (2009), 10206.

[33] Mikella Hurley – Julius Adebayo: Credit scoring in the era of big data. The Yale Journal of Law and Technology, 18. (2016), 1. 148.

[34] These emerged as a result of deliberate human actions, rather than passive observation or academic intent. Their genesis lies in the utilization of services provided on digital platforms. Hitherto concealed structures and relationships can be reconstructed from digital footprints. (Dessewffy Tibor and Láng László, 2015: The Chance Encounter of Big Data and the Social Sciences on the Operating Table. Replika, (92-93), p. 158.)

[35] In the context of big data technology, the juxtaposition of data sets allows for the construction of sensitive data from the underlying data, to which data protection regulations have afforded enhanced safeguards, proving highly effective at the time (35 Data Protection ACt 3. § (2), EU Directive Article 8, Privacy Act 5. § (2), GDPR Article 9. § (1)-(2)). Through automatic data processing, personally identifiable information can be stored without technical limitations and can be seamlessly linked to create a comprehensive profile, without the data subject being able to adequately verify its accuracy and use. Consequently, this also results in unrestricted access to sensitive data, as even data that is individually insignificant can acquire new value. The level of information sensitivity should no longer depend solely on the fact that they pertain to be stored without technical limitations and can be seamlessly linked to create a comprehensive profile, without the data subject being able to adequately verify its accuracy and use. Consequently, this also results in unrestricted access to sensitive data, as even data that is individually insignificant can acquire new value. The level of information sensitivity should no longer depend solely on the fact that they pertain to confidential events. Mező István Személyes adatok védelme az Európai Unió jogában és Magyarországon. (2009). Deák Ferenc Állam-és Jogtudományi Doktori Iskola 132-134.o (István Mező, The Protection of Personal Data in European Union Law and Hungary, 2009, Deák Ferenc School of Law and Political Sciences, pp. 132-134.). http://midra.uni-miskolc.hu/document/5522/1411.pdf.

The industry of collecting, linking, marketing and analysing digital footprints is rapidly evolving. Satellites, Wi-Fi and mobile networks track the daily routines, movements, communication habits, social contacts and web searches of hundreds of millions of people. Unfortunately, there seems to be no alternative[36] as we have no choice but to accept it. It is impossible to continuously monitor the processing of personal data by an online platform provider, who is also known as a qualified data controller[37].

Digital ecosystem - a new world dominated by digital platforms

In the context of big data, certain fundamental data protection principles may lose their relevance, and notions like personal data, purpose limitation requirement[38], or informed and voluntary consent may become irrelevant. It is difficult to achieve transparency in practice and monitoring the digital operations of even the largest platforms is a challenge, making accountability and oversighr more difficulr[39]. The processing of data by online service providers is usually based on the data subject's consent. However, in this scenario, service providers place users in a "take it or leave it" position, as they unilaterally determine their processing and its conditions beforehand. In addition, the privacy notice is merely a component of the controller's general contractual conditions, with data subjects having little control over its specifics. It is common for established online services to have a cumulative[40] advantage, as greater data leads to improved

[36] In the formation of today's concept of a platform, Gillespie identifies a specific turning point, namely, the moment when Google acquired YouTube in 2006. According to Gillespie, these corporate giants seek to create an advantageous environment for themselves not only through political influence, lobbying, and subtle shaping of the regulatory framework but also through "discursive work." As part of this discursive work and conscious framing, Google consistently began referring to YouTube as a "platform" in its post-acquisition marketing communication, gradually replacing the terms "website," "service," "forum," and "community" with the uniform use of the word "platform.".

[37] Online giant platforms pose a significant risk in terms of the dissemination of illicit content and societal harm. Special regulations apply to those platforms that reach at least 10% of the 450 million consumers living in Europe. The Digital Services Act, Regulation (EU) 2022/2065 of the European Parliament and of the Council (October 19, 2022) on the internal market for digital services and amending Directive 2000/31/EC (the Digital Services Regulation) addresses this issue. [Link to the regulation: https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:32022R2065, retrieved on February 16, 2021.]

[38] Not everyone is part of the network, but even for those excluded from the network, their relationship with the network is determinant. This is how the so-called fourth world emerges as a result of the impact of information development. The fourth world represents all those who are not participants in value-producing exchange networks but are instead excluded from them. In every society, to varying degrees, the excluded are present, including long-term unemployed individuals, the "disconnected," and the marginalized. For them, global network development signifies nothing more than a new form of capitalist exploitation. (Manuel Castells, 1998: The End of the Millennium, The Information Age: Economy, Society and Culture. Volume III. Hoboken, Wiley-Blackwell. In Hungarian: Castells, Manuel (2007). Az évezred vége. Translated by Berényi Gábor, Rohonyi András. Budapest, Gondolat–Infonia.

[39] A The decision of the German competition authority, known as the Facebook Decision, concluded that Facebook abuses its dominant position when it essentially forces its business partners (users) to accept terms that allow almost unlimited data collection and are also legally objectionable from a data protection perspective. Bundeskartellamt, Case B6-22/16, Facebook Case, paragraphs 526-527. The unique German approach is perhaps most noticeable in a paragraph of the Facebook Decision where the authority derives from a previous case that if one party, due to its dominant position, imposes contractual terms on the other party that restrict fundamental constitutional rights, such as the right to informational self-determination and the protection of personal data, then intervention under competition law is necessary and justified. Bundeskartellamt, Case B6-22/16, Facebook Case, paragraphs 527-529.

[40] Szőke Gergely László: Az európai adatvédelmi jog megújítása. Tendenciák és lehetőségek az önszabályozás területén, Pécs, 2014, Pécsi Tudományegyetem Állam-és Jogtudományi Kar, Doktori Iskola (Gergely László Szőke: The Renewal of European Data

service provision, increased user uptake, higher expenditure on development, and reduced market entry for competitors. The acquisition of personal data by online services contributes to market power or leverage, as highlighted in a March 2014 paper[41] by the EDPS. With the increasing proportion of free services in specific sectors, it is evident that these services have amassed immense power through the possession of users' data.

There can frequently be a noticeable power imbalance between the controller and the data subject, resulting in a potential significant impact on the data subject's rights. Additionally, the contract may not be considered valid, as it is improbable to be voluntary[42]. According to the Article 29 Working Parry, the existence of a choice cannot be justified by the fact that the data subject has the possibility to choose between the service of the controller, i.e. the service requesting consent for the use of personal data, and an equivalent service offered by another controller. Indeed, in such a case, the freedom of choice is not determined by the controller: it depends on what a market actor independent from the controller does and on whether the data subject considers the competitor's service as equivalent. If this "choice" were accepted as a situation of voluntary consent, it would also mean that the controller would be obliged to modify its own service in line with the market behaviour of its competitors in order to ensure the continued validity of the consent. Therefore, consent based on such an argument would not comply with the General Data Protection Regulation[43]. As the reader knows, we have no choice about whether we participate in this digital environment or whether we use these digital services. There is little real room for manoeuvre for the user, where Richterich is concerned not so much about the opaque data management practices of the platforms, but rather that people do not have the freedom to choose whether or not to use these platforms. He sees this as practically inescapable for certain social status or expectations of living standards. It raises the question of what bargaining power the person concerned has beyond leaving the platform. Let us be under no illusions that the right to information self-determination as a fundamental right, a legal protection tool in the hands of the individual, may no longer be adequate in today's technological ecosystem.

Summary

The processing of personal data in the traditional sense - such as the drawing up of a contract or the disclosure of your personal data in the minutes of a general meeting - is different from the processing of too

Protection Law. Trends and Opportunities in the Field of Self-Regulation, Pécs, 2014, University of Pécs Faculty of Law, Doctoral School, pages 60-61. February 27, 2023.)

[41] Veronica Moro: Privacy and competitiveness in the age of big data. European Data Protection Supervisor.

[42] See: The GDPR, especially its Article 6, and in particular, paragraphs (1)(c) and (e),

[43] See: Working Party 29's guidance on consent under Article 29, WP259 rev.01, regarding Regulation (EU) 2016/679, specifically in section 3.1.2. Dated February 27, 2023. https://naih.hu/files/wp259-rev-0_1_HU.PDF

much digital data with today's big data technology, just as the functioning of online markets is different[44] from that of traditional "tangible" markets. In the big data technology environment, it is primarily the processing of data that is directly generated, but not consciously transmitted, during the life and activity of natural persons that leads to outstanding economic results, and constantly improved convenience services provided at a high level without any financial reward. The resultant datasets document and monitor traces of human conduct, facilitating the simulation of natural and social phenomena on a previously inconceivable scale and intricacy[45]. Even though they are typically mere by-products of our daily routine, these data qualify as personal data under the General Data Protection Regulation. An enormous volume of automatic and intellectual metadata[46] about individuals is processed every day without their awareness, which makes it an opaque process. According to Tene and Polonetzky and Crawford and Schultz[47], in the era of big data, nearly all aspects of traditional data protection are being challenged and altered. Personal data, proportionality, purpose limitation, and the significance of consent are all assuming new significance. As an illustration of the initial issue, various cases have recently demonstrated that when depending on big data analytics, the separation between an individual and the data may be remedied. This can be achieved, for instance, by the use of formerly unprotected metadata. It is worth noting that while big data is often not classified as personal data (at most it can be re-identified in new ways), evidence suggests that it can cause information overload, particularly when allowing for conclusions to be drawn from it and predictions[48] to be made. The predictive capabilities of technology are integral to most studies for good reason. Those who know the future possess a form of power that gives them an almost divine power[49]. Technology-driven decision-making challenges substantive investigation and accountability, which are fundamental prerequisites for a fair process within

[44] Rob Frieden: Challenges to the Conventional Wisdom About Mergers and Consumer Welfare in a Converging Internet Marketplace. The 48th Research Conference on Communication, Information and Internet Policy, 2020.
[45] Csepeli György (2015): A szociológia és a Big Data. (Sociology and Big Data) *Replika* (92–93): 171–177.
[46] Metadata can be generated automatically or intellectually. A single metadata may encompass a multitude of information that may not be immediately evident. Some metadata is inherently available and easily accessible, while others require a few steps to become accessible. To illustrate with a simple example, when taking a digital photograph with a digital camera, a variety of digital information is generated at the moment of capture. This can include file type, size, capture timestamp, or image resolution. In the example provided, these details constitute automatically generated metadata (URL3). In our everyday activities, we inadvertently create metadata, such as when we organize our saved documents on a computer, group them into folders, or rename them. In such cases, we are dealing with intellectually generated metadata. Gyaraki R. (2018). A számítógépes bűnözés nyomozásának problémái. Doktori értekezés. Pécsi Tudományegyetem. (Challenges in Investigating Computer Crime. Doctoral Dissertation. University of Pécs.)
[47] Kate Crawford and Jason Schultz: "Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms" in the Boston College Law Review, 2014/1, pp. 93–128, p. 94.
[48] Big Data: Seizing Opportunities, Preserving Values" (Page 3) 50, or Phil Simon: "Big Data Lessons from Netflix," available at www.wired.com/insights/2014/03/big-data-lessons-netflix/. The discussion concerns profiling and highly personalized advertising.
[49] Regarding its predictive capabilities in general: Eric Siegel, "Predictive Analytics: The Power to Predict Who Will Click, Buy, Lie, or Die" (New Jersey: Wiley 2013). Concerning purchasing habits: Veronica McGregor, Sophia Helena Calderon, and Roberta Tonelli, "Big Data and Consumer Financial Information," Business Law Today 2013/11, 1–4. In the context of police work: Andrew Guthrie Ferguson, "Big Data and Predictive Reasonable Suspicion," University of Pennsylvania Law Review 2015/2, 327–410, or Jin-ho Jeon and Seung-Ryul Jeong, "Designing a Crime-Prevention System by Converging Big Data and IoT," Journal of Internet Computing and Services 2016/3, 115–128.

the legal framework[50]. This challenge extends beyond mere difficulty in accountability, as in many instances, these entities operate from a monopolistic position, leaving affected parties with limited alternatives for similar services. Furthermore, qualified data controllers, such as online service providers, establish contractual relationships based on their own terms, thereby placing data subjects in a vulnerable position regarding the contractual content. Essentially, they can decide only whether to accept or reject the offered terms without meaningful negotiation. Defining the substantive elements of data processing contracts in a non-negotiable manner does not conflict with the fundamental principles of contract law. This approach ensures the fullest realization of the parties' autonomy in data processing relationships. While contractual relationships in contract law are inherently two-sided in nature, data processing relationships should be similarly characterised. In order for contractual freedom to prevail, it is essential for the legislator to establish a balanced position in favour of the weaker party, essentially restoring and reinforcing the foundation of the contractual principle. The familiar spaces and constraints, along with guiding and coordinating mechanisms that were once present in everyday life and the offline computer world, have weakened or, in some cases, entirely lost their significance. This includes, among other things, the process of personal data management, where informed consent that comprehensively covers the entire data processing procedure has become essential. Information asymmetry, power imbalances between parties, a lack of genuine competition, and the distorting effects of network effects[51] are all factors that, in unregulated market conditions, we consider to be unfair and inequitable in the case of any product. Hence, we empower the legislator to intervene and assist the "invisible hand" in its insufficient work.[52]

[50] Ari Ezra Waldman: Power, process, and automated decision-making symposium. Rise of the machines. Artificial intelligence, robotics, and the reprogramming of law. *Fordham Law Review*, 88. (2019), 2. 613–632.

[51] The so-called network effect is a feature of services where users are compelled to use the services of a company with a certain monopoly, as the value of those services is derived from others also using them. The more users on a platform, the more attractive it becomes for others to join, and developers can leverage the accumulated data more effectively in product development with greater amounts of data at their disposal. Consequently, both service providers and users benefit from network effects. Network effects also occur when a corporate group develops and offers multiple services and devices to individuals, allowing them to process data of different content, timing, and structure in order to enhance cross- development. As a result of network effects, rejecting the service imposes a form of cost – the cost of exclusion – on the user, which many users often cannot bear or afford. Consequently, the real choice is questionable, ultimately raising doubts about the voluntariness of consent.

[52] Chase, Daniel: "Who owns the data – an argument for a property rights approach to transatlantic data protection." In: Medium, 2018, May 22. Part VI. https://medium.com/@Daniel_Chase_/who-owns-the-data-an-argument-for-a-property- rights-approach-to-transatlantic-data-protection-ddc5cc8fc212.

THE HISTORY OF THE UNIFICATION MOVEMENT OF HUNGARY FROM A LEGAL PESPECTIVE

ZALAHEGYI, Zoltán*

There is currently only partial religious freedom in Hungary. One side it is violation of the freedom and equality of religions, the Act CCVI of 2011 openly denies the separation of religious and political institutions. According to this law, the vote of the political parties sitting in Parliament will decide on the recognition of incorporated churches in the future. On the other hand, the Unification Movement, along with many other small churches, can regain its church status if it can present the signatures of at least 1,000 members to the court registration process based on the new modified Act CCVI of 2011 which went into effect since 15 April 2019.

This publication outlines the legal development of religious freedom in Hungary from 1990 to the present by reviewing, as an example, the changes in the legal situation of the Unification Movement in Hungary. It looks at the past, present and future of the Movement, mainly from a legal perspective and, to a lesser extent, political and economic.

The movement was first registered as an association in Hungary in 1990, and later it was officially registered as a church in 1992. Based on these facts, this treatise will primarily show how this post-Protestant, new religious movement[1] lost its church status in Hungary and what happened after that.

To better understand the issues raised in this essay, a brief introduction of this worldwide movement is given first in general, and then a chronological expose of the specific branch in Hungary is presented from a legal point of view.

1. Short Introduction of the worldwide Unification Movement

Murray Rubinstein, Professor of History at Baruch College, has stated that "the largest quasi-Christian new religion is Sun-Myung Moon's Unification Church"[2] in Korea. Basically this new religious movement founded in Pusan, South Korea, by the Dr. Reverend Sun Myung Moon in 1954 is known worldwide for its mass weddings, based on his wedding with the co-founder Dr. Hak Ja Han Moon.

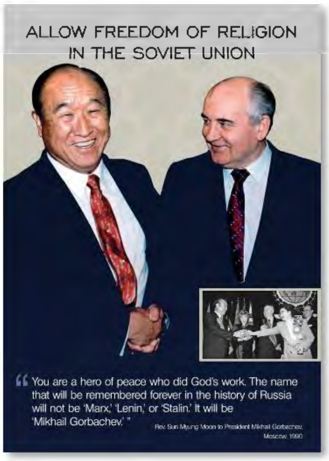
From its inception, this movement has devoted itself to the cause of religious freedom on an international level.[3]

* PhD Student, Széchenyi István University, Postgraduate Doctoral School of Law and Political Sciences, zolizalahegyi@yahoo.co.uk

[1] Encyclopedia Britannica, In. www.britannica.com/topic/new-religious-movement/India, (2019 October 15.)

[2] https://www.britannica.com/topic/new-religious-movement/India, (2020 October 3.)

[3] https://www.thelegacyoflove.org/multilingual-posters/, (2021 January 1.)



For instance, this was the core of their message when the co-founders visited Moscow to meet with Mikhail Gorbachev in 1990.

J. Gordon Melton, Distinguished Professor of American Religious History, Institute for Studies in Religion at Baylor University states this about the latter history of this religious movement:

"The Unification Church emerged in the 1990s with an expansive international program. The church has a presence in more than 100 countries[4], though exact membership figures are difficult to estimate. Its influence is extended by a variety of organizations that embody Moon's ideals, such as the Professor's World Peace Academy and the International Conference on the Unity of the Sciences. In 1994, on the 40th anniversary of the founding of the church, Moon announced the formation of the International Federation for World Peace, which assumed many of the functions formerly performed by the church."[5]

Melton's observations correctly indicate that there is a spiritual foundation underlying the many organizations founded by the Reverend Sun Myung Moon and Hak Ja Han Moon. Hence, even though the many activities are considered as part of a larger Unification Movement, it can still be considered a church due to its spiritual underpinnings. As such, it is important to recognize that all organizations and activities founded, owned and supported by the Unification Movement and its members, including business, educational, political, and the like, are all part of a larger spiritual movement which deserves recognition as such in Hungary.

2. Financial perspectives and political prejudice in Hungary

Understanding the financial foundation of the Unification Church in Hungary is important since this is directly connected to the political and legal perspectives which have often created a prejudiced view of this new religious movement.

First of all, it is important to note that the main income of the church comes from donations and tithes of church membership, and people who are sympathetic to its programs and activities.

---

[4] Today, there is an organization for this movement in every country all around the world. (Author's comment)

[5] https://www.britannica.com/topic/Unification-Church, (2020 October 2.)

As for political bias, "in 1993 Hungarian Parliament debated whether or not every registered religion seeking state support was worthy of it. State support was refused to three among them (the Unification Church, the Church of Scientology and the Jehovah's Witnesses)."[6]

In 1998, the Hungarian Parliament created a law stating that "citizens were able to offer 2 percent of their tax, the first 1 percent to a church, the second 1 percent to a nonprofit organization."[7] This law was valid from 1998 to 2011, after which time it was repealed only to be reinstated again in 2020. Because of this, the movement made the most use of this opportunity in 2011[8], when 98 people offered more than half a million forints. One of the consequences of this decision was that the Unification Movement lost all direct financial state support. The purpose of repealing this law in 2012 was to eliminate many small churches, not only through financial discrimination, but also by restricting their administrative practices. This article argues that, with the recent reinstatement of this law, the Unification Movement should re-acquire its status as a church and enjoy the same benefits and recognition as any other church in the country.

3. Legal perspectives of the Unification Movement in Hungary

This section lays out the chronological process from 1992 to the present outlining how this movement first gained and then lost its church status as a new religious movement in Hungary.

1992-2010

Prior to 2011, many religious communities in Hungary were registered and recognized in accordance with a 1990 law which treated all groups equally, allowing religious freedom for all people in Hungary regardless of affiliation.

Under the leadership of Martin Putz,[9] the Unification Movement "registered as an association in (April 10th) 1990"[10] under its official name: Holy Spirit Association for the Unification of World Christianity[11] based on the Right of Association Act of 1989 in Hungary. After that it was officially registered "as a church in 1992"[12] based on the Freedom of Conscience and Religious Freedom Act of 1990. According to that law

---

[6] MERDJANOVA Ina: *Religious Liberty, New Religious Movements and Traditional Christian Churches in Eastern Europe*, p.1, In. http://www1.geo.ntnu.edu.tw/~moise/Data/Books/Social/01%20religion/religious%20liberty%20new%20religious%20movements%20and%20tradional%20christian%20churches%20in%20eastern%20europe.pdf, (2019 October 15.)

[7] DOBSZAI János: *Állam, Egyházak Magyarországon*, 1989-2004, pp.18-19.

[8] The National Tax and Customs Administration Statement on the tax provisions of 1% of the 2010 PIT for 2011 for churches with a technical number valid for the year 2011.

[9] PUTZ Martin was born on 11th November 1953 in Horitschon, an Austrian village close to the border with Hungary. Having attended Technical High School, he joined the Unification Church in 1977. Martin was blessed with Renate Loecker in 1982 (6,000 Couples). He was National Leader of the Movement in Hungary up until 1993 when he went to Korea for two years to study at Sun Moon University Since that time he has returned to Austria.
He died in October 19 2019 in Horitschon (Austria) and 35 Hungarian member attended in his funeral ceremony. Chung Hwan Kwak, Christa Segato Stadler and Barbara Grabner: Mission Butterfly Pioneers Behind the Iron Curtain, 2006, Family Federation for Word Peace and Unification International, p. 153.

[10] http://publicatio.bibl.u-szeged.hu/6439/1/Vallasossag-valtozatok.pdf, (2019 November 1.)

[11] In Hungarian: Szentlélek Társasága a Világ Kereszténységének Egyesítéséért (Author's comment)

[12] http://publicatio.bibl.u-szeged.hu/6439/1/Vallasossag-valtozatok.pdf, (2019 November 1.)

all denominations seeking official recognition in Hungary only had to demonstrate that they had in excess of 100 members, which was recognized as a bonified religious movement.

This law provided an appropriate framework for the Unification Movement to carry out numerous outreach projects, activities and programs that served the greater good of the Hungarian people. This should have been more clearly acknowledged and assessed by the Hungarian legislature in order to recognize the Movement in a more positive light. Instead, there was a great deal of influence by the media and other groups that fueled controversy and hostility towards the Movement likely causing many in government to be suspicious of its status and activities.

Over time, the criteria of this law provided an opportunity for some people to misuse it for their personal gain. As a result, the government decided to modify the Act to such an extent that it discriminated against the Unification Movement, among others, by taking away its church status.

2011-2020

The law was changed in 2011, which greatly influenced the legal status of Hungarian Unification Church. A first draft was passed in 2011[13], but through a highly irregular parliamentary procedure, the proposed law went too far as it drastically impacted upon a number of recognized churches in the country. Transitional provisions in the draft of a proposed law would strip all but only 14 churches among 300 of their legal status. From that moment on, the Unification Church basically lost its ecclesiastical status in Hungary in the sense of law, and this is still the case today. As a result, Hungary's Constitutional Court dismissed the law in its entirety in December 2011.[14]

The second draft of the proposed law was passed as Act CCVI of 2011 and went into effect January 1, 2012. The official name of the legislation was The Right of Freedom of Conscience and Religion, and on the Legal Status of Churches Religious Communities. This new law regarding religion, however, abolished the previous practice and replaced it with two-tiered system of recognition for religious communities that distinguishes between "incorporated churches," which receive numerous rights and privileges, and "organizations conducting religious activity" which receive different and fewer rights and privileges. The Act CCVI of 2011 revoked legal status of approximately 200 religious groups which were previously recognized as churches according to the law of 1990.

Amoung these 300 churches was the Hungarian Unification Church which lost its legal church status although it had been working for more than 20 years for the greater good of the Hungarian society[15]. This

[13] Act C of 2011
https://mkogy.jogtar.hu/jogszabaly?docid=a1100100.TV, (2021. January 1)
[14] 164/2011. (XII. 20.) decisions of the Hungarian Constitutional Court
http://public.mkab.hu/dev/dontesek.nsf/0/C74D232250CD2086C1257ADA0052ACC9?OpenDocument, January 1, 2021.
[15] ZALAHEGYI Zoltán: *History of the Unification Movement in Hungary Part B*, pp.32-38.

fact is actually one of the main criteria of Act CCVI of 2011 to allow status as a bonified, "incorporated church".

Baer H. David criticised the criteria regarding registration as provided by this new law[16] using the Unification Church as an example in the following way:

"Condition (c) provides for member churches of a world church… However, other groups which clearly meet this condition are excluded… For example, the Unification Church, which is present in Hungary and which was deregistered, would qualify under this condition. Admittedly, the Unification Church is not 100 years old, but as we have seen, this did not seem to matter in the case of the Methodist church."[17]

International legal problems of the Act CCVI of 2011

Although Hungary had been a long-time member of the European Convention of Human Rights[18], it was determined by the convention that Act CCVI passed by the Hungarian government was in violation of such rights. In April 2014, the European Court on Human Rights (ECtHR) found that Hungary's religious law was in breach of article 9 (protecting freedom of religion), and article 11 (protecting freedom of association) of the European Convention of Human Rights[19]. This was determined in the case of Magyar Kereszteny Mennonita Egyház and others v. Hungary.[20] In the view of the ECtHR, the law's deregistration procedure, its re-registration procedure, and the tiered classification system itself violated the state's obligation to remain neutral toward religious communities.

It must be pointed out that, since 2012 the Hungarian Unification Church has been singled out as the only religious association whose status caused problems according Baer H. David which he stated that:

---

[16] Condition (1) requires a religious community to have been operating internationally for at least 100 years. The law stipulates further that a religious community must demonstrate international operation by meeting one of three, additional conditions. It must (a) provide "a certificate issued by churches that have church status in at least two countries and have the same confession;" or it must (b) provide' "a certificate of membership in an association issued by churches, church associations that operate in at: least two countries and have the same confession;" or it must (c) provide "a certificate issued by a world church that has member churches in at least two countries.

[16] BAER H. David: *Essays in Defence of Religious Freedom* p.182.

[17] *idibem*

[18] The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter: the Convention), shall apply to Hungary from 5 November 1992.
The Convention, and several of its Additional Protocols, are annexed to Annex XXXI of 1993. promulgated by law in Hungary. (Note from the author)

[19] European Convention of Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf, January 1, 2021.

[20] https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-142196%22]}, 2020 October 23.
Numbers of the cases: 70945/11 23611/12 26998/12 41150/12 41155/12 41463/12 41553/12 54977/12 56581/12.
The Hungarian government paid the ECHR ordered total of $569,000. The government and Mennonita Testvéri Közösség (MET) - one type of Methodist church - failed to reach a final settlement after the ECHR gave them another six months to reach an agreement.
On June 16 2017 the MET submitted its compensation claim of 450 million forints ($1.53 million) to the government for its losses in 2015 of the unpaid 1 percent personal income tax allocation for incorporated churches, the supplementary state subsidies for its social welfare and educational institutions, and the wage supplement for its staff working in its institutes. (Note from the author)

"The right of religious freedom consists of an essential minimum that is protected by Hungarian law, but extending rights and privileges that go beyond the basic minimum is a matter for political discretion [for example: parliament 2/3 decision]. If the state wants to distinguish between churches and religious organizations, it can do so provided this differential treatment does not: impinge upon the essential minimum guaranteed by the right of religious freedom. In Hungary, the argument goes, religious organizations enjoy the essential minimum, and established churches enjoy privileges that go beyond the essential minimum."[21]

The government was forced, under international pressure, to change the Act of religious freedom, which forms the basis to discuss the future possibilities of the Unification Movement.

4. Future perspective of the Unification Movement in Hungary based on the new modified Act CCVI of 2011

I am convinced, given the current laws in Hungary and the wide range of religious, humanitarian and educational programs sponsored by the Unification Movement, that it should assertively present a case before parliament to have its church registration status re-instated.

The new, modified Act CCVI of 2011, which went into effect April 15, 2019 has updated the qualifications for becoming a Registered Church. The amended law replaces the previous two-tier system of "incorporated churches" and "religious organizations" with a four-tier system of, in descending order, "established (or incorporated) churches," "registered churches" (also called "registered II"), "listed churches" (also called "registered I"), and "religious associations." "[22]

According to section 9/D. § (2), "a religious association shall, upon request, be registered as a church even if:

(a) has at least 1000 registered members residing or staying in Hungary,

(b) has been a religious association for at least 5 years, and

(c) declare that, for its religious or public activities, it will not receive a grant, upon application, from any sub-system of public finance, European Union funds or programs financed under an international agreement, by application or through a system of tendering procedures."[23]

First of all, the minimum required membership of 1000 could easily be achieved if one considers core members of the church, their families and people associated with all of its satellite organisation. Also, it is conceivable that the number of core membership could reach 1000 by the year 2023 given the fact that new

[21] BAER: *ibid*, p.175.

[22] International Religious Freedom Report about HUNGARY for 2019 United States Department of State https://www.state.gov/reports/2019-report-on-international-religious-freedom/hungary/, (2020 October 2.)

[23] Act CCVI of 2011, http://njt.hu/cgi_bin/njt_doc.cgi?docid=143091.245146, (2020 September 2.)

Unification Church centers could be established in Miskolc, Nyiregyháza and Kecskemét, all of which have populations exceeding 100,000. This goal can be easily achieved with the help of Hungarian HARP[24](2014) and YSP[25](2020) which are designed to give new hope to younger generations in the country.

Secondly, these witnessing activities could support not only the recent but also the future translations of books, literature and internet outreach, such as the translation of the memoirs of co-founder Dr. Hak Ja Han Moon enritled, "Mother of Peace", and the website of "Legacy of Love" celebrating Rev. Moon's centenary.

According to the amended law, established, registered, and listed churches may perform pastoral services in military facilities, prisons, and hospitals. Other laws indicate religious associations may also have the right to provide services at these facilities which also can help to achieve this great goal this new religious movement. "As economical a benefit of this amended law all of religious entities will be eligible to receive state funding and member donations from income tax beginning in 2020."[26] This would include the Hungarian Unification Movement.

In speaking about the future growth and positive influence of the Unification Movement in Hungary, the religious scholar, Péter Török notes that

"Although the number of the Unifying Church in Hungary is small, we are likely to continue to hear about them in the future because of the international significance of this religious community and its economic and social activity."[27]

Such observations and predictions reinforce the likelihood that it is only a matter of time when the spiritual iron curtain will collapse now that the physical one has fallen, as Rev. and Mrs. Moon's focus on true family values become more ingrained in Hungarian society.

Summary

This document has attempted to outline the legal development of the religious religion in Hungary from 1990 to the present day by pointing out the changes in Hungarian law that has affected the legal status of the Unification Movement.

At first, from 1990 to 2010, freedom of religion in Hungary was regulated in an acceptable way, which was also in accordance with the view of international legal systems.

[24] High School Association for the Research of Principle (HARP) founded in Hungary 2014 (Author's comment)

[25] Youth and Students for Peace founded in Hungary 2020.
(More information from internet: http://ysphungary.hu/) (Author's comment)

[26] International Religious Freedom Report about HUNGARY for 2019 United States Department of State https://www.state.gov/reports/2019-report-on-international-religious-freedom/hungary/, (2020 October 2.)

[27] http://publicatio.bibl.u-szeged.hu/6439/1/Vallasossag-valtozatok.pdf, (2019 November 1.)

However, the 2011 CCVI. law changed the rules of church registration and maked it impossible to practice religion freely in Hungary. This regulation prompted the Hungarian Unification Movement to continue to operate as a religious organization.

Recently, this law has been amended moving it in positive direction when it came into effect as of 15 April 2019. This amendment was prompted mainly on the basis of the judgment of the European Court of Human Rights and the decisions of the Hungarian Constirurional Court. With this change in the law, the Movement can now regain its church status if it can present the signatures of at least 1,000 members to the court registration process.

In conclusion, the main problem was that the 2011 law did not guarantee equal treatment of churches by the state or eliminate distinctions between religious communities, and that granting established status still remained in the purview of parliament.