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PREFACE

The English-language journal of the Deák Ferenc Faculty of Law of Széchenyi István University has reached its 10th year.

A decade is an excellent opportunity to take stock and set goals. The journal publishes articles, reviews, conference papers and short analyses in English and in German twice a year. It has been awarded a category *C* classification in the list of journals of the Hungarian Academy of Sciences, which is a good opportunity for publishing the writings of young academics, doctoral students and talented students. The articles accepted by the editorial team come from different fields of social science. We publish primarily the results of legal research, but also articles from sociology, political science and other fields related to law, in line with the trends of inter- and multidisciplinarity.

Of course, national (faculty) authors do not only compose a foreign language journal. The 2014-2023 editions published a good number of contributions from Central European universities. This is also an important indicator of the development of our faculty's international (network) relations. The main contributors were Polish, Slovakian and Czech academics and researchers, but we would like to extend this to other European universities in the future.

Issues and problems in science are now discussed at international level. There can be no authentic scientific career without publications in foreign languages and international contacts. The publication is central to the activity of the scientific community, and consequently, to scientific progress. We need to provide international space both for finding research topics and for communicating results. An English language journal is a great help in this challenge.

The *Studia Juridica et Politica Jaurinensia* (Studia in short) aims to join the ranks of English-language journals with a renewed design, format and typography. The new appearance is mainly due to the need for an independent website. The website – https://studia.sze.hu/ – will provide prospective authors with precise instructions for preparing a publication and for the tutors/researchers who will be proofreading the papers to prepare their peer reviews. At the same time, our previous issues will also be available on the new website. The appearance of the journal reflects the colours of our university, thus matching the image of Széchenyi István University.

By facilitating communication between individuals *Studia* also contributed to the development of a scientific community. To help in this task, members of the law faculty, some of whom are department heads, support the journal's editorial board and others are external professors and scholars. Our ambition is that our authors will rank our English-language journal higher, and foreign academics will think it is worth publishing. Our ambition is that our authors will rank our English-language journal higher, and foreign academics will think it is worth publishing.

EDITOR IN CHIEF

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SZÉCHENYI EGYETEM
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THE GROWING VULNERABILITY OF WORKERS, REFLECTIONS AT THE FIRST HUNGARIAN PLATFORM CASE

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ABSTRACT

In the first part of the paper, the authors analyse a case involving an electronic platform intermediary in a food delivery - delivery service case, in which the Supreme Court ruled that the deliverer was a contractor/agent and not an employee, as the board qualified it. However, the authors argue that the position of the Court of Appeal could also be accepted, which would allow for a classification as dependent self-employment arising from a formal self-employment. The second part of the paper analyses the contractual framework of traditional employment relationships, pointing out the increasing vulnerability of the related processes. The blurring of both platform work and traditional employment leads the authors to the conclusion that labour law instruments must be provided to protect the vulnerable worker.

KEYWORDS Dependent work, irregular work, long-term self-employment, electronic platform contract, self-employment

1. Introduction – platform work in Europe

Platform-based work is defined by the European Council as a form of employment in which organisations or individuals use online platforms to interact with other organisations or individuals with the aim of solving specific problems or providing specific services in return for payment (European Commission, 2024). This definition captures a growing problem for the European labour market somewhat broadly. The growing emphasis on this issue is justified by the increasing number of people working on digital platforms. In the European Union there are around 28 million people who can be considered platform workers. Their rights and employment status are often unclear, both nationally and internationally. The EU Commission has therefore proposed an

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EU directive to ensure fair working conditions for all those who earn their living by working in online services (Haufe Online Redaktion, 2024). On 12 March 2024, the European Parliament and the Council of the European Union agreed on a directive that also addresses the employment status of platform workers. The directive establishes a presumption, making it easier to reclassify platform workers, tens of millions of whom work for a platform across Europe, as employees. The presumption may be rebutted by employer providing counterevidence on the part of the digital platform, but persons working through digital platforms, their representatives or national authorities may invoke this legal presumption and claim that the person working was wrongly classified. The presumption lists five indicators, of which if two are met in the context of a given employment, then the relationship with the platform will be an employment relationship for the platform worker. Among these indicators are a cap on the amount of money the worker can earn, supervision of the worker's work, control over the allocation and distribution of tasks, control over the worker's working conditions, including restrictions on the choice of working hours, and restrictions on the worker's freedom to organise his work, including restrictions on the worker's appearance and behaviour. An important difference between national rules may be that Member States may add additional indicators to the list of five based on national law.

This uniform presumption is particularly needed because countries in Western Europe categorise these global platforms differently, leading to chaotic relationship qualification results across the EU. In related status litigation, several judgments have been handed down, which classify the same employment circumstances differently, sometimes as employment and sometimes as self-employment. Hießl concludes that it is difficult to draw general conclusions on the prevailing patterns in existing national case law - in particular the heterogeneity of platforms and the systematic reform of their structure and working methods, the lack of case law on certain types of platforms and the inconsistency of judicial assessment in many countries. This is particularly problematic for our country, as there has been no platform case law in Central and Eastern Europe, apart from the case presented below. Taking the Western European examples as a starting point, some issues seem to be more country specific; others are (almost) general, such as how to deal with the absence of an obligation to work. In this context, there are notable innovations in the enforcement of the law, particularly in countries that have so far taken a very strict approach to the minimum hours' criterion, such as Germany. In Spain, the key to the recognition of employment status has been a reassessment of the concept of the most appropriate means of production for economic activity - an issue of much less importance in other countries. However, this is only one manifestation of a more general trend towards greater emphasis on elements of

organisational integration, which can also be observed in countries such as France, Germany, Ireland, Italy, the Netherlands, Switzerland and the UK (Hießl, 2024, pp. 77–85).

2. The first Hungarian (and Central and Eastern European) platform case

In Hungary, platforms employ platform workers in a contractor relationship, like foreign examples. Foreign jurisprudence classifies platform workers as employees or entrepreneurs based on their greater or lesser dependence on the platform, ignoring the platform's relationship with the compulsory social security of platform workers. This was also the case in the first Hungarian platform case, a lawsuit brought by a platform worker against the defendant digital food delivery platform "Netpincér", where the platform worker sought a declaration that his legal relationship was not a long-term business relationship but an employment relationship. At first instance, the General Court classified the disputed working relationship as an entrepreneurial relationship, classifying it as a more liberal legal relationship. At the second instance, upholding the claimant's appeal, the Court of Appeal classified the claimant's activity as a caterer for the defendant as an employment relationship, holding that it was a close and continuing obligation. The defendant then applied to the Supreme Court, in the context of a review procedure, for the judgment of the Court of Appeal to be altered and for it to be held that the contract was a long-term contract of employment. The Supreme Court upheld the defendant's position and classified the legal relationship as a contract of an entrepreneur.

It is worth briefly summarising the main details of the case. Between 18 October 2019 and 15 January 2020, the applicant carried out courier services (Mf.I.50.063/2022/7., 2023), worked on a platform basis for the defendant as a self-employed person under a civil law relationship. The applicant carried out the activity by signing up one week in advance on Wednesday of each week for a period when he wished to carry out courier duties and then logging on to the Roadrunner application during the periods he undertook.

The applicant carried out his courier duties by logging in at the beginning of the agreed period and the automated system sent him a number sequence, which was the first step of the delivery, which he had to accept. The application then displayed the restaurant from which the food was to be delivered, the applicant picked up the parcel at the restaurant with the identification corresponding to the number line and when this was recorded in the application, he was then given the address to which the food was to be delivered to the customer. Several restaurants in the city have also contracted with the Roadrunner electronic platform for food delivery services, by delivering food to their customers using

their own platform workers, so presumably many of the couriers are doing platform work for a living for this company under the same conditions. The Roadrunner platform thus enters framework contracts with several young people to provide food delivery courier services, during a free period of 2-4-6 or 8 hours per day, called 'active periods', which they specify for a week, and gives them individual orders via the Roadrunner app to deliver food from which restaurant to which customer address. After the app assigns which restaurant to deliver the food to which customer address, the courier must deliver the food from the restaurant to the customer address via the app in the "warm bag" provided by the platform, which also ensures the quality of the food to be delivered. In addition, the courier must keep the GPS that he has purchased switched on during the delivery of the food to show the route and to communicate with the app. The vehicle (motorbike, scooter or bicycle) and the clothing advertising the app must be provided by the courier and worn by him. The agreed availability period is 1000 HUF per hour, on top of which the deliverer is entitled to a delivery fee for each delivery. The deliverers who undertake to provide 8 hours of courier service per day shall be granted 30 minutes of rest time, calculated at half the hourly rate.

The Courts addressed all the elements of employment, but it is worth noting that the Court of Appeal stressed that platform working is still a phenomenon that lacks specific legal regulation, with only one draft directive in the European Union at the time of the judgment. Pending its adoption and the establishment of legal harmonisation, the courts applying the law have no other instrument at their disposal than to examine the specific content of the legal relationship in question in the context of the existing legal provisions, i.e. the binary model (civil law-based work - employment relationship). Without a further category, the labour relationship can only be classified as a civil or employment relationship under the binary model based on the extent to which the platform has a strong right of command and control over the platform worker to carry out the task and whether the platform contributes to the social security of the platform workers. The evolution of these two factors will determine whether this form of work should be kept within the framework of civil law or labour law. The courts have only examined whether a job title was established, the way in which remuneration was paid and the employment obligation. However, it should be stressed that the Court of Appeal and the Supreme Court reached different conclusions on the assessment of the facts in the review proceedings.

The Supreme Court (Mf.I.50.063/2022/7., 2023, par. 72-73) found that the applicant was required to make continuous food deliveries in accordance with the orders under the framework contract, which the Court classified as a commission. This is an obligation to produce results arising from a continuing

business which is governed by civil law. In the Court's view (Mf.I.50.063/2022/7., 2023, par. 77), the defendant was not under an employment obligation because it had no interest in employing the applicant on a permanent basis. His only commercial interest was to have enough contractors to ensure that there were always enough couriers available for periods of their own volition to ensure that the food delivery service was adequately supplied. Therefore, the defendant did not undertake any obligation to open an active period of sufficient number and nature to meet the applicant's needs during the term of the contract and to provide the service during the active periods confirmed by the applicant. The applicant was not under any obligation to be available under Article 52 of the LC, since he was not obliged to be available on any day of the year under the framework contract. He could choose not to report for any active period, even for weeks or months (Mf.I.50.063/2022/7., 2023, par. 78). However, the defendant had created a competition between couriers to promote its own efficiency and customer satisfaction and therefore grouped couriers according to the length and frequency of the active periods they undertook. The deliverers were not, however, disadvantaged by the downgrading. Their remuneration was set equally, by the app and, despite the downgrading; all deliverers were allowed to apply for an active period (Mf.I.50.063/2022/7., 2023, par. 79-80). As regards remuneration, although the hourly rate for the period of provision undertaken within an active period is in principle a basic wage, while the title wage can be considered as a wage supplement, it is also a wage for the performance of a commission or assignment contract. The plumber or electrician also charges the cost of repairing the pipes because of the work in hours worked, plus the cost of the work on the spot. In the same way, in our view, a lawyer charges based on the lawyer's fee schedule for court time, document preparation time and counsel time. The Supreme Court also takes a similar view but does not illustrate this in the text of the judgment (Mf.I.50.063/2022/7., 2023, par. 73-81 & 119). There are no compulsory working hours in the legal relationship under examination. According to the Supreme Court (Mf.I.50.063/2022/7., 2023, par. 74), the applicant was able to decide, depending on his personal needs and pace of life, to notify the defendant that he wished to be available only on days and at times and for periods convenient to him. The applicant therefore had the exclusive right to organise his own work, as, for example, a tailor who orders clothes, if he must go out on site, the time is fixed by mutual agreement between the client and the contractor based on their schedules. It must be seen that these circumstances in the case clearly pointed in the direction of self-employment, since, even reflecting only on the latter circumstance, Hungarian labour law does not recognise any form of employment, even in atypical employment relationships, where the employee himself can determine how much and when

he wishes to work and when he is available. Moreover, the food delivery worker was entitled to terminate his on-call status at any time (Sziládi et al., 2024).

For platform workers, economic dependence on a single platform is often the case, as it was in this instance. Here it should be seen that for the purposes of establishing subordination and dependence, it is irrelevant whether the service provider is economically subordinate. Even an employment relationship providing a low, insignificant income can be considered an employment relationship, provided that other conditions are met. What is relevant in this context is that the employer must have the right to give instructions and the right to control the place, time and manner of work (Sziládi et al., 2024). In the opinion of the Supreme Court, a subordination like that of employment relations did not exist between the applicant and the defendant, since the indication via the defendant's app of who is to deliver what from whom to whom and where to where is a customer communication that exists in all undertakings and contracts (Mf.I.50.063/2022/7., 2023, par. 82). According to the Supreme Court (Mf.I.50.063/2022/7., 2023, par. 83), the requirement to use GPS does not confer a right of control on the defendant. The mandatory use of GPS was not intended to monitor the plaintiff's performance of its work, but to check whether the food deliveries had been carried out in accordance with the contract. Here, we must briefly mention the complexity of the verification by GPS use from a qualification point of view. However, the international comparative studies show that GPS monitoring is an employment element in the context of platforms which some of the courts assessing it consider that, as it is necessary for the operation of the platform, it cannot be a relevant element in the question of whether there was a subordination relationship. Presumably, the Hungarian final decision falls into this category. However, most foreign decisions clearly commit that it does not matter that there was another main reason for this form of control, since it has the effect of controlling employees. This latter position is also taken by Belgian, French, Spanish, Finnish, Dutch and English jurisprudence. However, in the Portimão case, for example, the Portuguese court recently categorised transporters as self-employed for this very reason (Hießl, 2024, p. 37). Therefore, looking at the assessment of the individual elements at EU level, it appears that most of the traditional qualification elements constitute a precarious category overall, which requires legislative development at international, EU level, especially given the international presence of platform employers and the scale of the problem.

Returning to the Hungarian case, the Supreme Court also argued against subordination on the grounds that the place of availability was not fixed. The deliverer could have been anywhere (Mf.I.50.063/2022/7., 2023, par. 86). The vehicle, mobile phone and GPS needed to provide courier services were not

provided by the defendant, as is the general rule in an employment relationship, but by the courier as a contractor (Mf.I.50.063/2022/7., 2023, par. 87). It should be noted that in the case of an employment relationship, there is also a clause whereby the employee provides the work equipment. The use of a box to keep food warm is based on a legal obligation for reasons of food safety (Mf.I.50.063/2022/7., 2023, par. 89). The fact that the defendant required the applicants to display the name and specific logo of the defendant company on their food boxes and clothing as advertising does not imply that there is an employment relationship, since it is an extension of the courier service business by means of a franchise (right to lease) contract which can be linked to the contract of employment (CIV, § 6:380). Finally, according to the Court of Appeal, the fact that the applicant was not integrated into the defendant's work organisation, that the invoicing was done in the applicant's own name and on his own behalf and that the statement of account issued in this respect cannot be regarded as a payroll (Mf.I.50.063/2022/7., 2023, par. 84) clearly indicates a civil law background.

Overall, it can therefore be seen that, both from an international perspective and assessed at the national level[3] that there is a complex, immature, case-by-case, case-by-case, and even within a case, between different levels of court, and difficult to follow system for the work mediated by the platforms. The new directive, which will take years to transpose into national law, may provide a point of reference for future platform workers, who are still in a very vulnerable position (given the Hungarian example and the international situation). But behind this vulnerability lies a longer process which has affected the labour market. The following lines highlight this dogmatic process.

3. Increased vulnerability of workers through the evolution of labour contracts

Two main forms of labour contracts have developed in the economic sector to date. The first is traditional economic work, one type of which is the employment contract, and the second is the long-term contract of entrepreneurship and assignment, or a combination of the two. This second form may also take the form of a formal contract of entrepreneurship or a contract of assignment but is similar in content to an employment contract. The other main form within a work contract differs from the traditional form in that the employers use an electronic tool, a digital platform, to create and monitor the contract. This is the so-called "gig economy", which is legally divided into the two types in the same way as the traditional one. Only whereas the economic and sociological starting

[3] In the Hungarian literature, there are clearly positions in favour of the employment status of this legal relationship, see Nádas & Zaccaria (2024) p. 283.

point for traditional permanent forms of work is the more binding nature of the work contract, the reverse is true for electronic employment, where the more liberal nature of the work contract is the primary form. Having described above the platform nature of the gig-work world, which is currently dominated by platform work, and one type of problem it poses (the question of the qualification of the legal relationship), we will now focus on traditional labour, evaluating it from this perspective.

Regarding traditional forms of labour, it can be stated that the typical content of an employment contract is the engagement of the employee to perform so-called contingent work, which is usually carried out under the direction, instruction and control of the employer, usually on the employer's premises. However, in contrast to this initial basic type, the employer's company gives the employee more freedom of movement in the form of flexible work, which is more important for the operation of the company from a professional or managerial point of view, and which is less subordinate to the employer's business and more like a contractor's assignment, tending towards subcontracting. This can make the relationship like that of a permanent contractor and/or subcontractor. At the same time, in the case of a permanent contract of service and a contract of assignment, or a combination of the two, the worker, although dependent on the contractor, i.e. the long-term client or principal, has much greater flexibility and autonomy. The contractor does not directly instruct or control the worker, but entrusts him with the performance of tasks, which the long-term entrepreneur or agent (trustee) reports periodically to his regular client or customer. Hence, the legal-dogmatic boundary between an informal relationship of a more entrepreneurial or agency nature and a long-term contract of entrepreneurship or agency may become relative and the two may slip into each other, especially when the worker or the long-term contractor or agent is a natural person. Generally, the worker may be a natural person in the case of an employment contract, whereas in the case of a long-term contract of entrepreneurship and/or assignment, the contracting party may be a legal person. From a historical point of view, it should be added that, at the same time, it is not a legal person but a civil law partnership that may conclude a service contract. In agriculture, this is the case of threshing and harvesting groups, where the group leader concludes the labour contract with the employer on behalf of the group based on the mandate of the group members (Juhász & Prugberger, 1987; Prugberger & Siendler,1988). There have also been cases where tenanted houses have a single-family caretaker contract, where the caretaker's duties are contracted by the landlord to the head of the household on behalf of the family, and the landlord does not employ a separate “caretaker” (Prugberger, 2015, pp. 92-93).

It seems that the distinction between employment and long-term self-employment is easy to draw when the long-term worker is a contractor or a commissioned legal person. Formally, this is certainly the case, but in substance, there may be a conflation of a long-term contract of self-employment where a legal person works as a long-term subcontractor to a main contractor. Although formally not an employee, in substance it may become like an employment relationship, because the general contractor exercises direction, supervision and control over its subcontractor, which in practice makes the subcontracting relationship like an employment relationship. If the subcontractor is a sole proprietorship or a legal entity and works on a permanent basis as a subcontractor for general contractors, their economic vulnerability increases and, to blunt the other party's dominant position, they seek protection either through a small business association or a trade union safety net, similar to collective labour law, which ensures the protection of workers' existential and social interests. In the case of long-term subcontracting, however, where the self-employed is a natural person, his vulnerable position vis-à-vis the main contractor in the old EU Member States could be protected "ex lege" by the self-employment rule, which was based on the now repealed European Economic Community (EEC) Directive 86/613.

The self-employment relationship established on the basis of this Directive is characterised by the fact that it is subject to a person who, in addition to the limited number of days and hours per week laid down in the Directive, performs contingent work for his contractor for more than two months, similar to a normal employment relationship (in German law, for example, an employee-like person), not in an employment relationship but in a formal long-term contract and/or work relationship with the contractor. This requires that the worker has neither a company nor an employee but is "self-employed". In this case, he is considered "de iure" as a permanent contractor and/or agent and not as an employee (Gyulavári, 2014, pp. 133-136; Kiss, 2020, p. 180; Prugberger, 2021. pp. 2-6.; Solymosi-Szekeres, 2021). Therefore, unlike under employment law, he or she must bear the costs of compulsory social security (Schulin, 1989, p. 10).[4] In the case of employment, European law still provides for compulsory social security based on the Bismarckian principle, under which the employer shared the cost of contributions to the employee sickness and pension insurance co-insurance schemes, which were set up in public and private mines and public mints, with the employees, in most cases, sharing the cost of contributions in half (Csízmadia et al. 1972, p. 278). This system of employer contribution to cover has been inherited from both the Bismarckian (Germanic and Francophone-Latin) and the Beveridge model (United Kingdom) up to the present day. This

[4] See Prugberger (2008) for a comprehensive overview of Western Europe.

practice was developed in Western Europe to avoid employers having to contribute to the compulsory social security cover of employees, and to pass it on in full to the employees. This has been adopted by the individual States, confirmed by the Directive, whereby, if the above conditions are met, the employer may establish a formal long-term service relationship with his worker instead of an employment relationship and may therefore be exempted from contributing to the worker's compulsory social security costs ex lege, but must apply the provisions of labour law protecting the worker (Schulin,1989, pp. 130-169; Prugberger, 2008, Chapters IV.-V.).

In the post-communist Central and Eastern European countries, the burden of compulsory pension and health insurance for employees is still borne to a much greater extent by the employer than in Western European countries, a situation which Hungary is not exempt from either. This is why foreign companies that bought a large proportion of state-owned companies during privatisation after they were converted into joint-stock companies have sought to convert not only more flexible employment relationships, but also those involving dependent work, into self-employment. In many cases, this has taken the form of abuse of rights to the detriment of workers. Hungary was not exempt from this. Following the sale of the State Insurance Institute to Dutch insurance companies after it had been split up into several joint stock companies, the employment relationships of the salesmen working for the State Insurance Institute in the form of casual employment were converted into long-term contracts by the Dutch insurance companies taking over. They continued to work for the new company, as they had done for the State Insurance Company, going door-to-door in their respective districts to conclude insurance contracts with their customers and to maintain the contracts already concluded to stabilise them. Once a week, they had to go to the head office to report to the contracting department on what they had done that week and were given the following week's tasks. In addition, if a contractor working such a casual shift was required to work 'extra' on-call duty outside working hours, or on a weekly rest day or public holiday, he was entitled to overtime and extraordinary work allowances. The Dutch insurance companies regularly used their workers who had been reclassified as long-term contractors for the same on-call work, rather than their regular employees, on the basis that as contractors they could work when they wanted and were therefore not subject to working time limits or to overtime and extraordinary work allowances. On this basis, they were denied paid holidays and two days' pay for a weekly rest day, which they only received at their basic rate of pay without any additional pay if they were on call. Hungarian employers have done the same when they have terminated the employment of a succession of legal advisers and converted their continued employment into permanent legal assignments, only to avoid having to contribute to the

compulsory employee social security costs of the employment relationship (Prugberger, 2006, pp. 64-65; Prugberger, 2003, pp. 8-9). For these reasons, when the government led by Viktor Orbán doubled the minimum wage during the first FIDESZ-KDNP coalition government, employers, to avoid having to double the social security contributions they pay for their employees, reduced the time they employed employees to four hours a day, i.e. by half. At the same time, their work for the other four hours was classified as permanent self-employment, even though they continued to work the same contingent work for the second four hours as they had done for the first four hours (Prugberger, 2006, p. 57). For this reason, forced self-employment has been a central theme in the Hungarian literature. The phenomenon of forced self-employment has been described above, how this process took place in Hungary after the regime change, but it is not only a bad memory of the past, which is still being implemented by internet-based labour exchange. In this system, workers are not integrated into the employer's organisation through the conclusion of a contract of employment but are linked to it by a loose chain of civil law. This chain can be cut at any time by the company using the worker, unlike in an employment relationship, so that the chain loosely embraces the client/contracting company. At the other end of the chain is the worker who is clinging to it, typically tied to a firm that keeps him economically dependent, since his livelihood depends on this single link. There is no safety net behind him to protect him if the client breaks this chain by stepping over the simple bulwarks of civil law. If we look only at the case of termination, we can see a few negatives, as there is no protection against dismissal, no severance pays, and no recourse to the system of grounds for termination, in contrast to the strict rules of labour law which sanction wrongful termination.

The possibility of forced self-employment is assisted by the legal concept of contractual freedom. Labour law is characterised by a specific, indirect type requirement (Kiss, 2007, p. 7): the parties are free to choose between employment contracts, contracts of agency, contracts for services and other types of contracts. However, an employment contract is not to be judged by its name but by its actual content (Gyulavári, 2010, p. 341). If, for example, the nature of the activity in the working relationship indicates a subordination between the parties, there must be an employment relationship between them (Kiss, 2006, p. 269). This qualification activity is typically governed by the now repealed Directive 7001/2005 FMM-PM, the relevant provisions of the LC and the general principles of jurisprudence (Mfv.II.10.214/2012/5., 2013). This Directive uses primary and secondary ratings. Primary qualifiers include, for example, job definition, personal work responsibilities or subordination. In this context, the Directive emphasises the hierarchical relationship, especially at the level of personal subordination.

Hungarian labour law is characterised by the instability of the demarcation criteria (Kiss, 2007, p. 7), which is also the case in current judicial practice. Initially, Hungarian judicial practice classified formally permanent self-employment relationships as civil law contracts according to the title of the contract until the labour inspectorate reclassified the fully dependent work-type relationships as employment contracts with a fine. Then a turning point appeared, in which the contract was not classified as an invalid contract unlawfully disguising an employment relationship, based on Article 207. par. 6. of the former CIV (Handó, 2003). At the same time, research by Tamás Prugberger, András Fabók and Zsuzsa Somogyi has shown that the Hungarian establishments of the same Western European countries that apply self-employment rules in their own countries and treat those who are self-employed in their own countries as workers in a permanent agency relationship in their own countries are applying double standards. To allow insurance companies to continue this practice, they have, as it has become clear, obliged their workers working in this way to form a limited partnership with family members, since they are then no longer performing their duties as natural persons but as a company (Prugberger & Fabók, 2000; Somogyi, 2006).

Following the accession of the Central European countries to the European Union, this was a clear double standard, which became untenable because of EU directives prohibiting discrimination and stating the application of the principle of equal treatment. However, this double standard was still sought to be applied by multinational companies in such a way that it would be legal for self-employment provisions like those that such formal companies were obliged to apply to workers in their parent companies in their own country not to apply to their branches in the new Member States when they concluded employment contracts. To this end, the employers' federations of the old Member States have repealed the self-employment Directive 86/613 with the European Parliament by means of EU Directive 2010/41, which allows the parent companies of the old Member States to continue to use formal permanent self-employment like the work relationship in their own country if they do not wish to employ their workers in a freer and more informal atypical employment relationship. They can do this despite the fact that, although the self-employment directive has been repealed, this does not mean that Member States should repeal legislation allowing for protected self-employment. In fact, in Central European countries, including Hungary, they can invoke the repeal of the Directive without any further need to apply the permanent contracting/assignment to avoid having to contribute to compulsory social security for employees without having to apply labour law provisions protecting workers' rights and interests resulting from self-employment.

4. Conclusion

In our study, we introduced the complex world of platform issues, with a special emphasis on the first platform case in Central and Eastern Europe. Highlighting several critical points, we found that there is an uncertain system for the qualification of legal relationships, but this is not only true for platform work. In this assessment, we looked at the evolution of labour relations. We have concluded that, while giving in to pressure from employers to assert their interests in traditional forms, the EU has critically excluded self-employment, which is protected by labour law, it is right to introduce it for digital platform employment in the form of a European Union directive. The directive therefore pushes these digital platform contracts in the direction of employment relationship, but at the same time, since there are also economically dependent self-employed outside the platform, the principle of equal treatment could be infringed. Therefore, de lege ferenda, in addition to the developments in the EU, György Kiss's proposal in the preamble of the first draft of the 2012 LC should be included in the preamble of the LC, according to which if self-employment is similar to employment and the self-employed person is existentially and economically dependent on the employer, the formal undertaking should be treated as an employment relationship in terms of its content, extending certain labour law protection instruments to it. This could be done by Hungarian legislation independently of the EU Directive or by building on the text of the Directive. Therefore, if the work contract is of a long-term contractor or agency nature, but the economic dependence exists, disputes arising from the legal relationship could be treated as self-employment with a status like that of an employee under the LC.

In addition, it would be essential to standardise the approach of the judiciary in view of the growing problem, which would include an international assessment of the platform work, highlighting the experience accumulated in other jurisdictions, which could be put to good use in the application of domestic law in similar cases. The decisive character of the judicial approach is undisputed in the case of self-employment, which is economically dependent and therefore difficult to categorise, and is also emphasised in the German literature. In German law, the labour courts have jurisdiction in labour law disputes arising from the employment relationship of persons with a legal status like that of employees, even though they are not employees but have a special, intermediate status. Debald considers this legal consequence important because it is the judge, who is sensitive to social law values, who must decide in cases of self-employed persons who, although not employees, are economically dependent on the client and therefore have a social protection claim (Debald, 2005, p. 139). In our view, economically dependent self-employment (i.e. not

freelancers in general, but the economically dependent working class), whether platform-based, as in the present case, or traditional, non-digital employment, requires protection under labour law because it embodies a specific subordinate employment, in which the need for social (including labour law) protection is felt, as it is taken as the basis for the protection of the intermediate status in German literature.

For the time being, the general extension of the category of employee to platform work is also difficult, as the EU picture shows, and until the EU directive is transposed, it is useful to examine international research findings and use the results to support the judicial approach. The key role of this has already been demonstrated in the German literature. Indeed, until the protected self-employed status is "created" in any form, the need for protection under labour law is indisputable, and only uniform application of the law can provide a reassuring temporary answer.

It is the legislator's responsibility to find a satisfactory solution to this issue, as we can agree with the international demand that labour law should open to new forms of employment in the platform economy (Klebe, 2017, p. 3). The final judgment emphasises that *"[the] Curia did not take a position on a general question of legal policy or legislation in the present case, but on the specific case in question, on the basis of the legislation on which the application is based"* (Mfv.10.091/2023/7., 2023, para. 110). It can be seen from this that, at the time of the decision, the court was aware of the underlying vulnerability which stigmatises the fate of the modern platform worker. Unfortunately, this vulnerability is terribly exacerbated by the "wheel of fortune" illustrated by the present case, i.e. the total uncertainty as to the classification of the worker's legal relationship in the event of litigation. This is also because, as in the case discussed above, none of the courts was interested in whether the platform would contribute to the compulsory social security of platform workers. In this case, it was clear that this was not the case, as indicated by the platform's internal rules, which explicitly stated that it employed platform workers as contractors. It would therefore be appropriate to clarify these issues, including the question of the evolution of compulsory social security, to standardise the approach of the courts.

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THE RELATIONSHIP BETWEEN RESTORATIVE AND CONSENSUAL PROCEDURES

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ABSTRACT

The paper shows how restorative justice fits in with consensual procedures satisfied with procedural justice based on confession of guilt. In our view, the protection of the interests of victims, the establishment of truthful facts and the enforcement of social justice are all objectives that must guide the legislation and the application of law in the 21st century. Although the Hungarian Code of Criminal Procedure has considerably broadened the combinability of consensual procedures, the dangers of the eclipse of material justice cannot be ignored. More specifically, the contradiction that the more effective restorative justice is, the more pressure is put on the defendant to participate in it, trading the possibility of total victory for the certainty of avoiding total defeat. And although the institutions of the plea agreement and the confession in the preparatory session may compete with the mediation procedure, the latter is the one that can provide the most complete reparation for the victim.

KEYWORDS Restorative justice, consensual procedures, mediation procedure, plea agreement, confession in the preparatory session

1. Introduction

The second book of Moses says that *"if a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep"* (King James Bible, n.d., Exodus, Chapter 22 Verse 1). This ancient law shows that the idea of restorative justice has long been present in legislation. Restorative justice aims at reparation, which may in certain cases take precedence over or replace

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retributive sanctions. The question is to what extent are legislators and practitioners today able to apply this approach?

In 1927, Ferenc Finkey, a prominent authority on Hungarian criminal law, wrote: *"For thousands of years [...] the aim of criminal procedure has always and everywhere been explicitly and emphatically the search for justice and the enforcement of justice"* (Finkey, 1927, p. 1). These ideas have now been pushed into the background, as legal solutions to avoid punishment and criminal liability often override the legislative and judicial objectives of material justice. Finkey also stressed that *"[the] more educated a society is, the more general […] is its conception of the purpose of criminal procedure in the pursuit of justice"* (Finkey, 1927, p. 4). However, legislation has nowadays moved towards simplification and acceleration, which in most cases results in satisfaction with the truth of the procedure rather than the establishment of true facts.

In modern criminal procedure, however, the interests of the victim should not be overlooked.

Although victim redress has received increasing attention in the second half of the 20th century thanks to the international victim movements (Barabás, 2017, p. 74), it is only in the last decade that the victim has become a focus of criminal proceedings (Sántha, 2020, p. 39). However, sometimes it may be more important to compensate the victim than to impose retributive consequences. In what follows therefore, we will show how restorative justice fits in with consensual procedures satisfied with procedural justice based on confession of guilt. In doing so, we won't lose sight of the fact that the scale of Justitia has two pans, which must always find the balance at the intersection of several interests. Finding a balance between restorative justice and modern criminal procedure is, in our view, key. The protection of the interests of victims, the establishment of truthful facts and the enforcement of social justice are all objectives that must guide the legislation and the application of law in the 21st century.

2. The goal of restorative and retributive justice

Putting the idea of restorative and retributive justice in the pans of Justitia's scale, the question arises: how can these be balanced, and which should take precedence? Is it conceivable that, given the diversity of the crimes and their defendants, both can coexist?

Restorative justice seeks to restore, not only the rule of law, but also the harm to the victim and the community, and to reintegrate the offender, creating an opportunity for the victim and the offender to reconcile and for the offender to avoid criminal prosecution (Barabás, 2020, p. 40). This approach emphasises dialogue and reconciliation between victims and perpetrators, creating

opportunities for acceptance of responsibility, apology and restoration of community relations, thereby reducing re-offending (Kelly, 2021, pp. 244-246). Pursuant to Act XC of 2017 on the Code of Criminal Procedure (hereinafter referred to as "CCP"), this can be achieved through the mediation procedure within the framework of Act C of 2012 on the Criminal Code (hereinafter referred to as "CC"). According to the explanatory memorandum of the CCP, the aim is to reach an agreement and reconciliation with the voluntary participation of the suspect and the victim, which will facilitate the suspect's future law-abiding behaviour.[3] According to Klára Kerezsi, this is a "win-win situation" where both the perpetrator and the victim can be satisfied (Kerezsi, 2006).

The aim of retributive justice is to repair the damage to the rule of law caused by the crime through retributive punishment. This approach emphasises the infliction of the same amount of pain on the offender as on the victim, thereby doubling the suffering through the punishment imposed on the offender (Sümegi, 2019, p. 66). The drawbacks of retributive justice include that it leads to excessive and harmful punishments, stigmatises and excludes convicts, ignores social and psychological factors, reduces empathy for offenders and perpetuates social injustice (Kelly, 2021, pp. 238-240 & 247).

The fundamental difference between the two approaches is therefore in their goals: restorative justice seeks to redress grievances, while retributive justice seeks to restore law and order. According to Barabás (2020), mediation is:

> *"[...] a voluntary agreement between the victim and the perpetrator of a crime that the perpetrator will make reparation to the victim in a form and to a degree agreed by both parties, and as a result, the perpetrator will be partially or fully exempted from the consequences of the liability that is otherwise customary in the society in question."* (p.42.)

While the benefits of restorative justice can be significant, the dangers of the marginalisation of material justice cannot be ignored. In this way, legislators and practitioners must strike a balance between protecting the interests of victims, establishing the truth of the facts and ensuring social justice.

3. The dangers of the eclipse of material justice

By placing material and procedural justice in the pans of Justitia's scale, the need to establish the truth of the facts is nowadays considered "easy" to simplify and accelerate criminal proceedings.

Finkey claimed that *"[for] us criminal trial lawyers, justice is the highest and only measure of value. [...] The criminal judge must always determine ex officio the true,*

[3] See the explanatory memorandum to § 412 of the CCP.

the historically certain facts [...]" (Finkey, 1927, pp. 17-18). While these statements may now be debatable and ironclad, our experience is that it is never wrong to condemn the person who has committed the crime and to condemn them for what they have done. However, discarding the main blocks of the pavement leading to material justice is undoubtedly difficult for practising judges with decades of judicial experience. At the same time, we must be aware that traditional principles do not always apply in today's legislative and judicial context, and their content needs to be updated (Csák & Czebe, 2023a, p. 218). Tibor Király also pointed out that *"[...] absolute truth does not belong to the truths of criminal judgment"* (Király, 1972, p. 175).

By procedural justice, we must accept the truth of a judgment without proof, recognizing that sometimes we cannot reach a different result by a full evidentiary process. According to Ákos Farkas, *"[c]riminal justice is rational if it is useful, efficient and at the same time legitimate [...] The most appropriate means of its realization is the simplification and acceleration of the procedure within reasonable limits"* (Farkas, 2002, p. 98). In many criminal proceedings with full evidentiary procedures, we see that the court often runs in vain after the material justice (Csák & Czebe, 2023b, p. 27). A further problem is whether consensual procedures based on the confession of the defendant compete with mediation procedures? The CCP has considerably broadened the combinability of consensual procedures (Vida, 2020, p. 13).

Since the legislator encourages the defendant to confess by offering a lighter penalty, it may be more attractive for the offender to accept a quick conclusion and a lighter penalty than the mediation procedure itself. Defendants without sufficient liquidity are likely to have interests in this direction. However, if the possibility of avoiding court proceedings and the disadvantages associated with a criminal record are also taken into account, there will be a greater interest on the part of the offender in mediation and compensation for the victim. It could be said that the more effective restorative justice is, the more pressure is put on the defendant to participate and agree to the proposed restorative requirements (Lanni, 2021, p. 656). Although there is a greater risk of non-execution in consensual procedures, these procedures also ensure reparation for the victim's prejudice.

4. Mediation procedures

The thought of apostle Paul in his letter to the Ephesians that *"[r]edeeming the time[...]"* (King James Bible, n.d., Ephesians, Chapter 5 Verse 16) is an apt motto for the evaluation of the legal institution of mediation. If the defendant recognises the importance of this and the victim supports it, the compensation

for the damage may be a diversion, which may even lead to a lack of prosecution and re-offending, reducing the burden of justice.

Restorative justice, in the context of diversion, gives the victim and the offender an active role in resolving the conflict. On the one hand, it gives the victim the opportunity to voice their experiences and influence the outcome of the conflict. This process can help the victim deal with the trauma and regain control over their life. On the other hand, the perpetrator can face the consequences of his actions and understand the suffering of the victim. This understanding is key on the road to repentance and reparation (van Ness & Strong, 2015, p. 47).

The basic conditions of the mediation procedure are regulated by the provisions of the CC on active repentance. Mediation is only possible in the case of listed offences (against life, physical integrity and health, human freedom, human dignity and certain fundamental rights, property or intellectual property, or traffic-related). For misdemeanours or felonies punishable by not more than three years of imprisonment, the proceedings may be terminated, while for offences punishable by not more than five years of imprisonment, the punishment may be reduced without limitation. This requires a confession of the offence before being indicted and reparation for the harm caused in a manner and to the extent accepted by the aggrieved party during a mediation procedure. In cases outside the scope of the above offences, the defendant can only use other consensual procedures, while the aggrieved party can pursue his or her civil claim (CC, § 29).

The question is whether the admission is sufficient to cover the facts of the case, or must it also cover the confession of guilt? For our part, we take the latter view, because it is pointless to talk about restorative justice without the confession of guilt. Otherwise, the mediation process would become a civil dispute focused on litigation prevention (Schmidt, 2020, pp. 315-316). This position is also supported by the ministerial explanatory memorandum of the Act amending the active repentance legislation, which states that the confession must also include a confession of guilt, because a factual admission does not in itself express the offender's sincere regret.[4] If the perpetrator is unwilling to honestly acknowledge his or her actions and the harm caused, the victim will not be able to process the trauma and move on. This can lead to greater frustration, anger and fear, which can increase the victim's vulnerability and risk of re-victimisation (Umbreit & Hansen, 2017, p. 101).

The basic aim of mediation is to restore the situation before the offence, divert the person from the judicial process and resolve the conflict through communication (Garai, 2022, p. 129). The framework of the procedure is

[4] See the explanatory memorandum to § 6 of Act LXXX. of 2009.

established by the CCP, according to which the mediation procedure is a procedure facilitating the conclusion of an agreement between the suspect and the aggrieved party, the reparation of the consequences of the criminal offence, and the future law abiding conduct of the suspect, which may be conducted upon the motion by the suspect or the aggrieved party, or with their voluntary consent (CCP, § 412 para. 1). Hungarian legislation in this context has evolved along the lines of the European Council Framework Decision 2001/220/JHA and Directive 2012/29/EU.

The mediation procedure complements or partially replaces the traditional criminal justice system, providing alternative solutions, while maintaining the enforcement of the state's criminal claim for more serious offences. In the words of Herke (2023), the mediation procedure is a procedure for handling disputes arising from a criminal offence, the aim of which is:

> *"[...] to reach a written agreement, independent of the court (prosecutor), involving a third party (mediator), to resolve the conflict between the aggrieved party and the defendant, to make reparation for the consequences of the offence and to promote the future law-abiding behaviour of the defendant."* (p. 21)

Statistics show that the mediation procedure is successful: between 2007 and 2023, a total of 85.807 cases were mediated and 80-85% of the completed cases reached an agreement, with 85-90% of the cases being fulfilled (Fővárosi és Vármegyei Kormányhivatalok, n.d.). Nevertheless, the disadvantages of mediation and the possibility of its failure should not be overlooked. The goals of restorative justice can be in conflict, especially if the defendants do not admit their responsibility while confessing. Renáta Garai pointed out that the failure of mediation procedures is often due to the failure to reach an agreement or to non-fulfilment. Nevertheless, mediation can be considered a success story, because *"[...] although it does not guarantee an agreement between the parties, it can help suspects to comply with the law in the future"* (Garai, 2022, p. 147).

5. Confession in the preparatory session

Another success story – and perhaps the most exciting innovation in the CCP – is the introduction of the "prosecutor's measured motion", which aims to encourage the defendant to confess to the charges in the indictment. If the defendant waives his right to a trial and his confession is accepted by the court, the proceedings can end immediately with a conviction, avoiding a lengthy evidentiary procedure (Horgos, 2022, pp. 16-17). This legal instrument is therefore a means of simplifying and speeding up criminal proceedings, which is duly borne out by the statistics.

The jurisprudence-analysis of the Curia of Hungary (Kúria Büntető Kollégiuma, 2023) shows that between July 2018 and July 2021, 73-82% of cases resulted in a successful prosecution motion. In such cases, the court is bound by the prosecutor's motion, which makes the expected sanction more predictable for the defendant (Szomora, 2021, p. 401) and the court often acts as a "quasi-notary" to authenticate the agreement between the prosecution and the defence. During the period under review, 79-80% of the defendants confessed at the preparatory session, and the acceptance rate was 91.8%.

Although the rights and reparation claim of the victim deserve special attention in the proceedings, there is no possibility of a settlement between the victim and the defendant: only a civil claim can be filed (CCP, § 55, para. 3; CCP, § 56, para. 1 sub-para. a & b). The court notifies the aggrieved party about the date of the preparatory session (CCP, § 500 para. 3), who can ask the defendant questions regarding the civil claim, but this not constitute an agreement (CCP, § 502 para. 6). If the court accepts the defendant's confession and immediately sentences him or her, it will also consider the aggrieved party's civil claim, which is subject to appeal (CCP, § 583 para. 2) and may result in a delay in the proceedings. The civil claim can be satisfied voluntarily or by judicial enforcement, i.e. not under criminal substantive and procedural rules (CCP, § 555 para. 1).

Accepting a confession can present many difficulties and challenges, especially if there are reasonable doubts about the confession. Refusal to admit may be justified, for example, if the explanation given for changing the confession is not admissible, if further evidence is needed to clarify criminal liability, if the legal classification requires further proof, or if the defendant has not waived his or her right to trial. Several errors can also arise from the unlawful admission of a confession, for example if the confession is unclear, if the defendant did not admit guilt as charged, if there was a substantive defence at the preparatory hearing, or if the defence's motion for evidence cast doubt on the confession (Csák, 2023). These mistakes illustrate the responsibility involved in making a judgment based on the admission of a confession and in adjudicating the civil claim of the aggrieved party.

It can be problematic if there are several defendants in the criminal proceedings. These situations often have to be resolved by judicial interpretation, because the legislator is unfortunately unable to get rid of the rigid concept of adapting the criminal procedure law to the acts of a single defendant. Of course, in the case of many defendants, the acceptance of a confession is not excluded for some defendants, while a trial is held for those who deny it (Polt & Bodony, 2021, p. 395). However, it can be particularly difficult for the defence of the denying defendant if a final and binding conclusive decision is made against the

confessing joint offender. In such cases, the defence lawyer must represent the defendant on the basis that there is already a final conviction for the offence, which "indirectly" applies to the denying defendant's act. Of course, this may still result in an acquittal decision (ground for retrial), but the burden of proof may be made more difficult by the changed procedural position of the confessing defendant (witness) (Gellér & Bárányos, 2019, pp. 307-308). The legal solution is of course to separate the cases of those defendants whose confessions have been accepted by the court. The aggrieved party's position can also be secured by a civil claim, although it may be difficult to seek satisfaction only against the defendant convicted based on the confession, while the universal obligation can often only be enforced after the conviction of the other defendants.

The role of the prosecutor in the preparatory session is a "mind-influencing factor", since the facts of the charge and the motion for the sanction have a significant impact on the defendant's decision to confess. However, the role of the judiciary is relegated to the background, because the court is essentially exercising "judicial oversight" in the procedure in question (Fantoly, 2021a, p. 79). In addition to the optimistic overtones, attention should therefore also be paid to the risk of procedural violations. A confession accepted in the preparatory session without the legal conditions is now an absolute procedural violation, i.e. a procedural violation leading to an automatic setting aside, which can also be challenged in a review procedure.

As outlined above, the acceptance of a confession and the underlying procedures present several challenges that require careful application of the law and a thorough assessment of the evidence to ensure a fair judgement (Németh, 2022, p. 51). A judgment based on a confession made at the preparatory session, with the trial being abandoned, may be a counter-trigger to the mediation procedure if the interests or financial means of the defendant require a quicker conclusion of the proceedings. However, the Hungarian procedural system allows for a quick compensation decision if the prosecutor does not agree to mediation. The legislator has therefore ensured the victim's right to compensation in this procedure as well, albeit with considerably fewer guarantees than in the case of mediation.

6. Plea agreement

The plea agreement is a consensus-based legal instrument of Anglo-Saxon origin that simplifies and speeds up criminal proceedings, similar to the confession made in the preparatory session. Namely, the prosecution service and the defendant, before the indictment, may enter into an agreement on the confession and consequences of guilt regarding the criminal offence committed

by the defendant, including compensation for the aggrieved party's damages (CCP, § 407 para. 1).

According to the explanatory memorandum of the CCP, the plea agreement enhances the cooperation of the accused, as the procedure benefits both parties: the state saves time and money, the accused can expect lighter sanctions, the victim receives certain reparation and society can be sure that the perpetrator of the crime will be held accountable.[5] The question is, however, to what extent can victim reparation prevail compared to mediation? After all, the victim is not the initiating party in this procedure either (CCP, § 407 para. 2).

The advantages of a plea agreement include the fact that it can be used for any crime, that it is a quick and efficient way to enforce the state's criminal claim (Polt, 2020, pp. 432-433), that it increases the rights of the defendant and his or her defence (Fantoly, 2020, p. 83) and that it provides faster compensation for the victim (Gulyásné–Pápai-Tarr, 2019). However, this legal instrument has its drawbacks. A plea agreement is not the same as an Anglo-Saxon plea bargain, as only the sanction can be bargained for. The facts and the classification of the offence are determined by the prosecution. Since the defendant can only decide to admit these, it is not negotiable what is to be included in the indictment (Fantoly, 2021b, p. 102). If a plea agreement is successfully reached during the investigation phase, the court may still refuse to accept it after the indictment (CCP, § 734 para. 1).

If the plea agreement process is unsuccessful, a swift compensation of the aggrieved party is only possible if the admission made at the preparatory meeting is accepted. If this is not successful, the court can decide on the civil claim after a full trial with evidentiary procedure. Possible elements of the plea agreement may include the fulfilment of other obligations undertaken by the defendant (CCP, § 411 para. 1 sub-para. e), such as compensation for the victim's damages (CCP, § 411 para. 5 sub-para. b). In such cases, the main safeguard for the victim is that the court cannot reject the civil claim if the plea agreement is accepted (CCP, § 736 para. 4). If the court refuses to approve the plea agreement or subsequently sets it aside, the plea agreement is no longer binding on the prosecution or the defendant (CCP, § 737 para. 3 sub-para. a). If the defendant fails to perform his obligations in the plea agreement, for example by not compensating the aggrieved party, the court can refuse to approve the plea agreement (CCP, § 734 para. 1 sub-para. d). In the plea agreement, the defendant may also agree to participate in mediation procedure, failing which he or she will face similar consequences (CCP, § 411 para. 5 sub-para. c).

[5] See the explanatory memorandum to § 407 of the CCP.

Comparing the plea agreement with the mediation procedure, it can be concluded that victim reparation is guaranteed and strongly regulated in both legal institutions. In addition, the plea agreement also ensures the enforcement of the interests of the aggrieved party, or more precisely the completion of compensation as a condition for the successful conclusion of the proceedings.

Finkey once described as "anachronistic" the fact that in Anglo-Saxon proceedings, the judge is obliged to give a guilty verdict without consulting the jury in the event of a confession (Finkey, 1927, p. 18). Today, we live with this, and we only hope that the fears of the American defendants will not take root in the minds of the Hungarian defendants. According to The National Registry of Exonerations, 48% of subsequently exonerated defendants plead guilty and enter plea bargains in the United States primarily to avoid the possibility of a more severe sentence (The National Registry of Exonerations, 2023, p. 11). In other words, the defendant exchanges the possibility of total victory for the certainty of avoiding total defeat (Jolly & Prescott, 2021, p. 1059). In Hungary, this is almost certainly avoided by a legal solution that makes it the task of the prosecution service to determine the facts of the case and the classification of the charges, thus excluding the possibility of an actual plea bargain. While there will always be dangers and procedural irregularities, one thing is certain: the enforcement of consensual legal institutions is unbroken in Hungarian criminal procedure.

7. Conclusion

According to Solomon's proverbs, *"[s]mite a scorner, and the simple will beware: and reprove one that hath understanding, and he will understand knowledge."* (King James Bible, n.d., Proverbs, Chapter 19 Verse 25). This quote highlights that, while punishment is important and often unavoidable in order to enforce the state's criminal claims, there are cases where a confession of guilt, the rehabilitation of the offender and compensation for the victim's damages may be sufficient to achieve the objectives of criminal law.

To protect the interests of the aggrieved party, the victim's claim for damages must be recognised, and it may be important to satisfy it before the full criminal proceedings have taken place. Based on the overview of the above legal institutions, it can be concluded that the mediation procedure is the most fully capable of ensuring victim reparation, but the legislator has also created the possibility for this in consensual, accelerated and simplified procedures, albeit with fewer guarantees and influenced by the will of the defendant. As a result, the chances of actual compensation may be lower and may also be delayed in time.

However, even in a trial with a full evidentiary procedure, the aggrieved party may still enforce a civil claim. To this end, the CCP ensures that the victim can enforce a civil claim in the court procedure as a civil party and can declare his or her intention to do so during the investigation, as well as declare the pecuniary loss at any time (CCP, § 51 para. 1 sub-para. h; CCP, § 51 para. 2). The aggrieved party can also request the sequestration of the defendant's assets to secure his or her civil claim (CCP, § 324 para. 1; CCP, § 324 para. 3 sub-para. b; CCP, § 325 para. 1). On the whole, therefore, other consensual procedures are not necessarily in competition with mediation, especially in criminal cases where mediation is not possible anyway. After all, the legislator has decided when retributive and restorative justice is appropriate.

The need to accelerate the procedure and to balance the principles and the needs of the victim with the social expectations of punishment are important considerations. According to Tóth (2022):

> *"[...] with the new rules of the plea agreement and the measured motion we have made a rather big concession in principle in order to create predictability and guarantee for the defendant with the encouraged confession."* (p. 136)

However, in order to accelerate and simplify the procedure, the legislator has overwritten a number of fundamental principles, such as the principle of immediacy and the division of procedural tasks, which may make the application of the law more arbitrary. In fact, the judge only has a veto on the merits in the case of a plea agreement if the case file does not provide a basis for the defendant's confession. Szabó has aptly pointed out that *"[...] restorative techniques may even delay victim compensation, despite their purpose"* (Szabó, 2020), which may be especially true if the criminal proceedings lead to a faster verdict than the mediation process.

In the view of the Hungarian Constitutional Court, encouraging confessions may serve a constitutional purpose, since:

> *"The waiver of trial [...] in addition to the rules ensuring a fair trial, is a suitable means to contribute to the adjudication of the state's criminal claim within a reasonable time and to the proper and efficient administration of justice, not only in individual cases, but also on a societal scale."* (422/B/1999. ABH, Chapter III. Point 3.2.)

The European Court of Human Rights – comparing the normative practice of the Council of Europe member states – has held that two conditions must necessarily be met in order to ensure the legality of a waiver: On the one hand, the waiver must be completely voluntary, with full knowledge of all the facts of the case and the legal consequences. Second, the content of the waiver and the

fairness of the agreement between the parties must be subject to appropriate judicial review (Natsvlishvili and Togonidze v. Georgia, 2014, § 62-75; Kisekka, 2020, p. 19).

In summary, the legislative instruments expressing the will of the legislator to simplify and accelerate the criminal procedure have proved to be workable. In these proceedings, material justice is replaced by procedural justice, and if not evolution, a kind of reformation has taken place in the role of the participants in the proceedings. The following lines by Finkey (1927) may also serve as a guideline for the acceptance of procedural justice:

> *"The criminal judge should never approach the conduct of a criminal trial with the despondent thought that he will not be able to achieve justice, so it is enough to approximate it. Here, too, a strong will is more certain to triumph than hesitation or compromise."* (p. 24)

Or as we can read in the third book of Moses:

> *"Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honour the person of the mighty: but in righteousness shalt thou judge thy neighbour."* (King James Bible, n.d., Leviticus, Chapter 19 Verse 15)

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CHARACTERISTICS OF PROPERTY RIGHTS IN INTERNATIONAL LAW

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ABSTRACT

The paper deals with the protection of property rights as a fundamental human right. I present the system of international legal protection of property rights through the major international conventions and in the community of the European Union. The instruments of property protection are also analysed. The second half of the paper deals with compensation for damage to property, including the specific rules of compensation. I conclude with a related case law.

KEYWORDS Protection of property rights, universal international instruments, fundamental right restriction, compensation

1. Introduction

Numerous universal and regional regulation on property rights available at international level. Regulation has developed at two levels. On one hand, in conventions where the right to property is defined as a fundamental human right the content of the right to property as a fundamental right differs from the concept of property rights in the civil law (Andorkó, 2018). On the other hand, it is regulated in conventions in specific fields where certain types of property right are internationally recognised and protected (e.g. intellectual property rights, trademarks, patents, etc.).

2. Property rights as a fundamental right and their protection

Fundamental rights can be divided into two broad categories. Personal rights, which relate exclusively to individual and where no one or nothing else is involved. These include the right to life and freedom of expression and the right not to be tortured. The other group includes connected rights, which can only

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exist in connection with certain persons or things. The right to property falls into the second group.

Another interesting aspect is the question of whether it is a fundamental human right to own or possess property or not. The degree of socio-economic development has a great influence on the importance and recognition of this right. Only the most developed countries tend to guarantee by law that everyone has access to at least a minimum level of income or property.

Beyond the abstract notion of property rights, it is worth examining the property elements in which the right to property as a fundamental right is manifested.

Firstly, the property needs to promote privacy. This is essentially the core of the property right. States, in their capacity as public authorities, are not entitled to infringe the private property that is necessary for the individual to maintain and improve his or her own life. If we think of Maslow's pyramid scheme, it is essentially the subsistence and security needs at the bottom of the pyramid that fall into this category. What is socially dependent, however, is the extent to which property is necessary to promote privacy. The term 'necessary' is in any case a subjective element, since it is always a function of the minimum level of inviolable private property recognised by the social order. This type of property right is usually in the form of things that can usually be relatively easily substituted (e.g. food, housing, health care, tools of labour). In this case, it is not the possession of property that is the value, but its usage.

The second group includes income and savings from work. This type of property should also be protected, since if a person saves part of his income from work, he is entitled to access it later. In a broader sense, earned income also serves the subsistence of the individual, and only the earner can be entitled to spend it or use the income earned from work. The protection of savings has significant importance if a state has only private pension schemes for older people, or when social care systems rely heavily on self-sufficiency.

The third group includes capital income and capital savings. These forms of property are not directly linked to work, so many consider it an affront to social justice to interpret this type of income as a basic human right. The clear rejectionist positions have been modified somewhat and now only apply when such income exceeds a defined minimum value. However, the development of international law, through the establishment of a system of investment protection, is undoubtedly bringing it more and more within the scope of the rights that should be protected.

Sharing the views expressed in the article by Levente Hörömpöli-Tóth cited above, there is no justification for protecting inheritance as a property element under fundamental rights (Hörömpöli-Tóth, 2002).

The definition of property rights can also be based on judicial practice. The Strasbourg Court, interpreting the provisions of Additional Protocol No 1 to the European Convention on Human Rights, has held that the concept of "property" is not limited to physical objects, so that benefits or rights with a specific property value under the Additional Protocol may also be considered as property (Gasus Dosier- und Fördertechnik GmbH v. The Netherlands, 1995).

In this way, the Strasbourg Court extended the protection of property right to both rights in rem and rights in personam. Accordingly, the Court has included within the concept of "property", for example, fishing and hunting rights, shares, enforceable claims, patents, goodwill, building permits in principle, rights to claim replacement property, claims for damages, and the rights of members of funded pension schemes. Licences to engage in certain economic activities may also benefit from the protection of Additional Protocol 1 to the Convention (Téglási, 2010, p. 43).

3. Protection of property rights in international law

If property right is considered as fundamental right, it is appropriate to examine the framework within which they are protected under international law. The protection of fundamental rights in the twenty-first century can be best understood in a three-axis coordinate system, one axis is national law, with reference to the constitutions of individual countries, the second axis is Strasbourg human rights practice in the Council of Europe, and the third axis is the mechanism for the protection of fundamental rights under European Union law. At the intersection of these three legal systems is the individual - who is entitled to fundamental rights protection. These three legal systems do not correspond perfectly to each other, but they overlap (intersect) at several points (Szalayné, 2009).

For core human rights, the possibility and conditions for international intervention must be created, and moral obligation is to ensure protection of rights (the protection of life and human dignity) arises at international level. Most elements of property rights are not covered, only those elements that are strictly related to personal rights (e.g. the protection of property left behind in the event of persecution).

Most property rights fall outside the scope of direct protection. They deserve international attention, but not all types of international action are justified. International codification of these property rights can serve as a guideline for

the states. Owners whose rights have been violated may have recourse to certain instruments (for example, the Human Rights Court), which may also involve political pressure. Several exceptions allow states to intervene in property matters, obviating the need for strong unified international action.

Some property rights do not deserve international protection, although they are protected at a national or regional level. In such cases, these are rights that are conferred by a specific cultural or economic context, such as rights connected to property rights derived from capital or large landowners' property.

Lastly, there are property rights which do not have any international legal protection because they conflict with other, more powerful human rights or with the general rules of criminal law. Property rights related to slavery or drugs fall into this category (Hörömpöli-Tóth, 2002).

4. The emergence of the right to property in universal international instruments

The Universal Declaration of Human Rights (UDHR), established under the auspices of the United Nations and adopted in 1948, states that everyone, individually and in community has the right to property and that the arbitrary taking of property is prohibited (UDHR, art. 17). Hungary adopted this convention when it joined the international organisation in 1955.

It is worth mentioning, that the definition property right as a fundamental human right in the Universal Declaration was very novel, as it had not been included in previous Conventions (Kardos, 1998, p. 8).

The Universal Declaration has had a significant influence on the development of international law, but as a UN General Assembly resolution it is not binding. The protection of the right to property also appears later in other human rights conventions adopted by the UN:

- The UN Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to guarantee "equal rights to both spouses to the ownership, acquisition, management, administration, enjoyment and disposition of property, whether or not in fee or in restitution" (CEDAW, art. 16 para. h).
- The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families guarantees migrant workers and members of their families the right to property and provides for appropriate compensation to the State in the event of expropriation (CMW, art. 15).

The importance of property right can be seen in later UN practice. Like when the United States submitted a draft resolution to the 41st session of the General

Assembly. The final resolution avoided defining the exact content of the right to property and stressed that private, community and state property are all capable of achieving development and justice (A/RES/41/132, 1986).

Conventions on property rights have always been closely linked to the protection of property rights and to the declaration that deprivation of property is possible only in the case of sufficient compensation.

Property right is included in all regional human rights conventions, such as Article 21 of the ACHR (1969) and Article 14 of the Banjul Charter (1981), Article 26 of the CIS (1995) and Article 31 of the ArabCHR (2004).

Compared to the UDHR, the Inter-ACHR (1978) is relatively detailed on the right to property. It recognises that everyone has the right to use and enjoy his property, but that such use and enjoyment may be subordinated by law to the interests of society. It makes the expropriation of property subject to appropriate compensation (Orosz & Sonnevend, 2023).

5. European human rights law and the right to property

The European Convention on Human Rights (ECHR) originally did not include a rule on the right to property, as the States Parties could not agree on the draft text. Thus, this fundamental right was formulated in the text of the First Additional Protocol to the ECHR, which was annexed in 1952. The final version, signed on 20 March 1952, was placed in Article 1 of the First Additional Protocol and read as follows:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

In Article 1 of the First Additional Protocol, although the text is intended to give international protection to property, it also contains another term. It refers to the importance of respecting possessions or, if you like, peaceful enjoyment, and prohibits the deprivation of possessions; the word "property" is used only in the context of control of property usage (Hörömpöli-Tóth, 2002).

Article 1 of the First Additional Protocol indicates that property may be taken in case of public interest, under conditions defined by law and in accordance with

the general principles of international law and allows the restriction of property for public interest and for the payment of taxes, other public charges and fines.

The text does not include an obligation to pay compensation for the deprivation of property, as the European Court of Human Rights (ECtHR) has finally ruled in its case law. This practice was later incorporated into the Charter of Fundamental Rights of the European Union (Charter).

This formulation of the right to property offers broader protection than property in the technical sense under civil law. These rules of the Convention, which are mainly of a framework nature, have subsequently been fleshed out by the European Court of Human Rights, whose interpretation of the law has led to the development of the Strasbourg case-law.

The protection of the right to property appeared in ECtHR decisions on the protection of fundamental rights prior to the adoption of the Charter of Fundamental Rights of the European Union. Property right was firstly recognised by the ECJ in the Hauer case (Liselotte Hauer v Land Rheinland-Pfalz, 1979), in which a German vineyard owner introduced a regulation that prohibits planting vineyards on the grounds that are the provision infringed his property.

The next step in the interpretation of the fundamental right to property was the Wachauf case. In this case, the Court summarised its previous practice and introduced the principle of the social function of property. The background to the case was Council Regulation (EC) No 857/84, which had imposed a minimum level of were compensated if they did not produce milk for six months after receiving the aid. If the aid applicant was only a tenant of the land, the aid also required the landlord's consent. On this basis, the aid application of a German farmer, Mr Wachauf, was refused because the owner of the land he had rented withdrew his consent.

In this judgment, the Court of Justice expressis verbis that:

> "[…] fundamental rights are not absolute but must be considered in relation to their social function. Consequently, the restrictions may be placed on the exercise of fundamental rights, particularly in the context of common market, provided that such restrictions are in accordance with the general interest objectives pursued by the Community and do not constitute, in relation to the objective pursued, a disproportionate and unjustified interference would jeopardise the very substance of the rights".[2]

[2] *„The fundamental rights recognized by the Court are not absolute, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim*

A new element in the reasoning of the judgment is that fundamental rights are not absolute rights and that each fundamental right, including the right to property, must be considered in relation to its social function. These two elements have not yet appeared in previous rulings of the European Court of Justice on the right to property and can be seen as a new stage in the doctrinal development of the institution of property right (Téglási, 2010, p. 43).

The Charter has become a new milestone in the protection of property rights. It was signed in Nice on 7 December 2000. Article 17(1) of the Charter contains a provision on the right to property. It states:

> "Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest."

The protection of intellectual property as a form of right to property is already explicitly mentioned in the Charter, in paragraph 2, in view of its growing importance and secondary as a form of Community law. Intellectual property includes not only literary and artistic property but also, inter alia, patent and trademark rights and neighbouring rights. The safeguards set out in paragraph 1 shall apply mutatis mutandis to intellectual property (2007/C 303/02). Hungary provided for the proclamation of the Charter and the related explanations in Article 4 of Act CLXVIII of 2007.

6. Restriction of property rights and compensation

The right of ownership may be restricted in certain cases and under certain conditions, subject to a reasonable amount of compensation.

The wording of Article 1 of the First Additional Protocol and the relevant case-law, in so far as it provides for the possibility of depriving property of its possessions in the public interest or of restricting the use of property in the public interest in a broad sense, are the basis for the ECtHR's analysis of the restriction of property. The ECtHR has traditionally examined the restriction of property according to three formally distinct rules and has established a hierarchy between them:

The first sentence of the first paragraph contains the first rule, which states the requirement of respect for and peaceful enjoyment of property.

pursued, a disproportionate and intolerable interference, impairing the very substance of those rights." Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft (1989) p. 2609; see also Kjell Karlsson and Others (2000) p. 2737.

The second rule is set out in the second sentence of the first paragraph, which states that the confiscation of property may be justified in the public interest, subject to the conditions laid down by law and the general principles of international law.

The third rule is found in the second paragraph, which recognises that states have the power to regulate the use of property in the public interest in such way to make such laws effective as the states deem necessary and to secure the payment of public charges, taxes and fines (Sporrong and Lönnroth v. Sweden, 1982).

The distinction between the three rules is, however, a formal one, because the ECtHR focuses on the proportionality requirement. It examines whether, despite the property restriction, the right balance has been struck between the restriction and the public interest objective is pursued. Although the ECtHR can classify the challenged interference as a measure restricting the peaceful enjoyment of property (first rule) or as a restriction on the public interest (third rule), the focus is really on whether the interference imposes an excessive burden on the rightholder. In its more recent case-law, the ECtHR no longer draws formal distinction but refers to the fact that the question of lawfulness of the restriction is decided based on an assessment of proportionality (Orosz & Sonnevend, 2023).

The Strasbourg Court has developed a five-step test for investigating complaints based on violations of the property right to. The Court examines the followings: 1. Has the interference complained affected the complainant's "property"? 2. Is the interference in accordance with the requirements of national law? 3. Is the interference occurred in accordance with the public interest? 4. Was the interference carried out in accordance with the requirement of a fair balance between the private interest and the public interest in the exercise of fundamental rights? (Schutte, 2004, p. 35)

If the Court finds it proven that the complained state interfered with the "property" of the applicant (first two points), the State will only be exempted from liability if it can prove that during the intervention it respected the criteria set out in the last three points of the five-step test. The burden of proof shifts once the first two points have been verified: the complained state must "exculpate itself" by arguing that it intervened in the exercise of the complainant's property rights in accordance with the rules of national law, in the public interest and respecting the requirement of fair balance (Téglási, 2010, p. 43).

The principles defined in the international conventions are also reflected in the practice of the Hungarian Constitutional Court. The proportionality test for

property restrictions depends essentially on the specific circumstances of each case. It can be decided on a case-by-case basis what constitutes a proportionate or disproportionate restriction. Since they do not constitute expropriation, the guarantee of value is not a condition for the proportionality requirement, in other words, the absence of compensation cannot entail a violation of the constitutional rule on expropriation. However, the existence of compensation may render an otherwise disproportionate restriction of property proportional.

7. Summary

The protection of property rights under fundamental and international law has become an inescapable legal institution. International conventions provide for this protection in almost identical terms and judicial practice consistently reinforces it. In addition to conventions, international courts and other dispute settlement mechanisms play an important role in the protection of property rights, helping to resolve disputes between individuals and states. The protection of property rights is key to promoting economic development and ensuring social stability. Legal certainty and respect for property rights contribute to sustainable development and peaceful international relations. Therefore, special attention must be paid to the effective and equal protection of property rights in the international arena.

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JOHN CALVIN THE REFORMER OF GENEVA AND THE MICHAEL SERVET'S LEGAL ACTION (1531-1553)

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ABSTRACT

In 1554, Sebastian Castellio (1515-1563) published his „De haereticis an sint persequindi", a work based on the trial and execution of Servetus. He became known as a defender of religious tolerance in Western European countries. He advocated persecution of heretics and religious freedom and interpreted religious tolerance. Sebastian Castellio, in his treatise "On Heresy", addressed the problem of religious freedom and the persecution of religious tolerance. In the work, he proclaimed that heresy should not be punished with either ecclesiastical or civil penalties. Faith and religious beliefs are free and should not be coerced. In making this statement, he referred to the Servet trial and its consequence. Who was right: Castellion or Calvin? Castellio was right, given the terrible jurisprudence. No one should have been condemned for the free expression of thought and opinion. As far as the teaching of the Church was concerned, Calvin was right. Michael Servetus was wrong in his opposition to biblical and ecclesiastical teaching. In the spirit of the 16th century, the spreading of his false teaching had to be stopped at all costs, and he had to be sentenced to death according to the legal custom of the time and the ecclesiastical laws.

KEYWORDS Religion freedom, persecution, inquisition, legal action, conviction and execution

1. Introduction

Polyhistor Michael Servet[2] fled Spain to France to escape the Inquisition, where he studied law. After completing his legal studies, he went to Switzerland. After

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[2] Miguel Serveto was born in Villanueva, Spain, on 29 September 1511. He used his name in the humanist customary form Michael Servetus. In my study, I use the form of Servetus Mihály, which is common in Hungarian academic circles. He began his academic career as a Protestant physician, studying medicine in Zaragoza (Spain) and law in Toulouse (France). He also visited Italy as secretary to J. Quintana. As was the custom of the time, he became acquainted with the doctrines of the Reformation, which he disapproved of. He began to study the theological teachings with the conviction that Christian doctrine had been misinterpreted and that he was called upon to restore it to its original purity. In 1530 he became involved in a trinitarian controversy with Ecolampadius. His theological view

a few months in Basel, he settled in Strasbourg, where he wrote his De trinitatis erroribus (Servetus, 1531) in 1531. The work forced him to leave Strasbourg. His second independent work was the Dialogorum de Trinitate libri duo (Servetus, 1532). This work was published in 1532 in the town of Hagenau. His third major work was Christianismi Restitutio (Servetus, 1553), published in 1553 in Vienne.

He had a thorough knowledge of rabbinic and cabalistic literature. He was also a naturalist. In Paris, he studied natural sciences and lectured in natural sciences at the university. One of his greatest discoveries was the description of the workings of the kidneys and the establishment of the small blood circle. He was convinced that blood does not stand still but circulates in the body (Kováts, 1911, p. 40).

Michael Servet came up with a well-developed theological theory for the Christian faith, which provoked stiff opposition from the Geneva reformer John Calvin (1509-1564) and his fellow theologians. Michael Servetus participated in the theological conference held in 1530, at which Ulrich Zwingli, Oecolampadius, Capito and Martin Bucer expounded their theological views. Organét did not consider them as equal, debating opponents, so he wrote to John Calvin, the reformer from Geneva.

The parties to the debate chose Paris as the venue. However, the scientific debate convened in 1534 did not take place due to the absence of Michael Servetus. During the period 1534-1545, Calvin corresponded intensively with Servetus. During this correspondence, he became acquainted with his doctrine and his intransigent nature. In his letters to Calvin, Servet called the Trinity of Father, Son and Holy Spirit the "three-headed Cerberus".

Like John Calvin, the theologians Martin Bucer and Oecolampadius believed it was impossible to reason with Servet, who sent to Calvin his manuscript of Christianismi Restitutio (Servetus, 1553). He also included in the manuscript his thirty letters to Calvin and Calvin's Institutio (Calvinus, 1536)[3] with critical appendices (Németh, 2022, pp. 103-104). Calvin was astonished by Servet's action and his attitude towards his criticism.[4] He was not welcome in Geneva. In a letter to the French reformer William Farel (1489 - 1565), he criticized Servet harshly: *"You would gladly come here if I agreed. But I can in no way vouch for his safety: if he were to come here, I could not allow him to leave alive, provided my*

was an antitrinitarian doctrine akin to that of Sabelios. In opposition to the official Christian Church teachings, he was prosecuted in the cities of Vienne and Geneva. In Switzerland, he was sentenced to death for heresy on 26 October 1553 and burnt at the stake one day later on 27 October 2023 (Magyar Katolikus Lexikon, n.d.b).

[3] This was the first major theological work in which Calvin systematized his doctrine.

[4] *"If I wasn't used to your fever dreams, I wouldn't know what you want. Forgive me, but I must speak like this. I don't hate you, I don't despise you, and I don't want to persecute you more ruthlessly than I should, but I should be made of iron if I didn't shudder when I see how insolently you are violating sound doctrine [...]."* (Kováts, 1911, pp. 33-34.)

authority weighed anything against it." (van't Spijker, 2003, p. 86.; Németh, 2022, p. 116.)

Around the 1547-48, Michael Servet tried to recover the manuscript of the Christianismi Restitutio sent to Calvin. After unsuccessful attempts, he published a revised version of his work in 1552 in Vienne, together with 30 letters to Calvin. Because of the printed work, the Inquisition opened an investigation against Michael Servetus, who was accused of heresy. The Viennese Inquisition investigation was assisted by William Trie, a Huguenot refugee from France, who had obtained the Servet's letters from Calvin in Switzerland (Balázs, 2009).

The evidence sent to the confessor and inquisitor of the Holy See, Matthew Ory, was sent to the Inquisition. Based on the documents thus collected, charges were brought against Michael Servet and on 5 April 1553 he was arrested and imprisoned until the verdict was given (Cadier, 1994, p. 150). On that day, the interrogation of Michael Servet began. The first hearing took place on 5 April 1553.

The second and third interrogations took place in the morning and afternoon of 6 April 1553 (Gyenge, 1909, p. 24). Two days after his arrest, Servet escaped from Vienna prison and fled to Switzerland (Kónya, 1979, p. 150). The Inquisition continued its investigation in his absence. On 2 May 1553 it was discovered that the book Christianismi Restitutio had been printed in one of Arnoullet's houses. Eight days later, the Inquisitor took extracts from the work and delivered his verdict. On 17 June 1553, the Court of Vienne held a trial against him based on a charge by the French royal prosecutor (Kovács, 2003, p. 178). In his absence, Servet was sentenced to death at the stake "in effigie" and total confiscation of his property.[5]

2. The arrest and the indictment of Michael Servet

The arrival of Michael Servetus in Geneva on July 17, 1553, marked a pivotal moment in his contentious relationship with John Calvin, as he sought to exploit the city's political turmoil to challenge his rival and propagate his controversial theological views:

> *"He arrived in Geneva on 17 July 1553, where he planned to stop for a few days on his way to Italy. The reason for cancelling his trip was that he had become aware of the conflict between Calvin and the libertines. The predominantly*

[5] Judgment of the Court of Vienne: *"[...] we sentence him, and also to pay a fine of 1,000 livres Tours to the Royal Crown Prince, and that, if arrested, he be taken with his books, on a trolley, during the fair, from the gate of the Crown Palace, through the crossroads and the busy places, to the market-place of the present city centre, and thence to the square called Chaernéve, and there be burnt alive in a small fire, so that his body may be reduced to ashes. The present sentence is to be carried out on his effigy for the time being, and at the same time his books are to be burnt."* (Gyenge, 1909, p. 24; Huszár, 2009, p. 103; Kováts, 1911, p. 70.)

> *Libertine party, having gained the leading positions in Geneva, wanted to banish Calvin and his associates from the city. Servet saw the right opportunity to strike back at Calvin for the insults he had caused him. This is proved by a letter to Musculus from a pastor in Bern. Servetus has gone to Geneva to be consumed by the chief men who are the wicked enemies of Calvin. He thinks that there he will find a hut from which he can harass other churches. He has already begun to sow his seeds […].*" (Gyenge, 1909, p. 27)

While at liberty in Geneva, he was recognised at a church service on 13 August 1553 and reported to Calvin. Because of his attacks on the Church, Calvin decided to have Michael Servet arrested.[6] What motivated Calvin to arrest Servet? In Michael Servet, who had appeared during a period of struggle against the libertines, he discovered one of his most dangerous and greatest enemies. Calvin feared that Servet, who had emerged in Geneva, would ally himself with the Libertines and increase their power and influence in the city council.[7] The political power of the libertines in Geneva was growing stronger by the day.

In contrast to Calvin and his followers, who represented the conservative line, the libertines became the majority in the city's governing and judicial bodies. Calvin and his fellow clergymen were excluded from the council of bicentennialists, who played an important role in the city's political life. Calvin and his followers were deprived of the right to bear arms and to participate in the General Council. They also claimed for themselves the right of excommunication from the church, the right of "excomunicatio".[8] The city took full control of the judiciary. This right emphasised the power of the city magistrate and the independence of the city.

[6] *"Part of the minutes of the Society of Ministers concerning the arrest of Servet and the opening of the trial. Foncenay 1553. Servet. The syndics of this year are present: Amy Perrin, Stephen Chapeaurouge, Domokos Darlod, Perrins des Fosses. Judge: P. Tissot. On 13 August of the present year, some of the brothers having recognised Michael Servet, they thought it good to imprison him, lest he should continue to torment the world with his blasphemies and heresies, and having found him utterly incorrigible and without hope. Someone was found who brought a criminal charge against him, and presented a summary of Servet's most striking errors. A few days later, the council ordered us to be present at his interrogation. This ended with his arrogance and insolence becoming even more obvious. He professed as a matter of principle that the name Trinity had been used only since the Council of Nicea, before which none of the scholars or martyrs had known of its existence. Then, when all the evident proofs of Justin Martyr, Irenaeus, Tertullian, Origines, and others were brought before him, he was ashamed, for he burst into all sorts of absurd invectives and insults. At last the Lords, seeing that the quarrel would never end unless some way could be found to shorten it, ordered that an abstract of the erroneous and heretical doctrines contained in his books should be made, and we replied to him in writing: we would show briefly the untenability of his opinions, and then send the whole to the neighbouring churches for their opinion."* (Kováts, 1909, pp. 5-6)

[7] *"Calvin's most difficult year was 1553. The year 1553 was filled with such great turmoil, through the unbridled fury of the rebels, that not only the Church but the Republic was in a state of peril, and the evil ones had everything in their power, and one thought that they would now carry through their long-cherished plan."* (Servetus, 1553, p. 25)

[8] In the legal tradition of the Church, excommunication or "excomunicatio" meant exclusion from the ecclesial community, from church life and the prohibition to partake of the sacraments. In the Calvinist movement, it included a ban from sharing communion.

The city's leadership was very careful not to let the judiciary fall under the influence of any foreign power or person. The Messieurs de Geneve[9], who played an important role in the city's political life, kept a close watch on the city's life and made sure that no foreign person held important positions or gained greater influence. This was also the case with Calvin. He was a simple "habitant".[10] He was not a full citizen of Geneva and was therefore completely excluded from the civil and criminal justice system (McGrath, 1996. p. 127). His sole jurisdiction was in disciplinary matters of the parish. He played an important role in the interdiction and punishment of church members accused of disciplinary offences. However, this did not absolve him from the charge of intolerance towards other theological views.

And from an ecclesiastical point of view, he was convinced that he took Servetus because to let him go unpunished would have meant betraying the cause of God and the Church without a fight. From the third point of view, if he were to let Servetus go free, he would be in public solidarity with him.

He informed the council and was arrested by order of one of the syndics and then taken to the bishop's residence. In accordance with the laws of Geneva, the same day he forwarded the case to the examining magistrate Peter Tissot, who initiated proceedings against and prosecuted Michael Servetus under the provisions of the 1542 Act.

3. Michael Servet's legal action in front of the Small Council of Geneva

According to the penal code of the German-Roman Emperor Charles V (1530-1558), Calvin, as the accuser, should have been detained together with the accused.[11] The code provided that a criminal investigation could only be initiated against anyone if a private accuser also appeared before the public prosecutor within twenty-four hours. Like the accused, he should be detained and held in custody until the end of the trial. If the accused is found guilty at trial, the private accuser could be released. Otherwise, the sentence that would have been imposed on the accused would have been imposed on the private accuser for false accusation.

The law also stated that if the guilt of the accused was proven in advance during the trial, the private accuser could be released. The private accuser had to remain

[9] The council of Geneva.

[10] In Geneva they called him a refugee. He had no citizenship.

[11] See Constitutio Criminalis Carolina, the penal code adopted under Emperor Charles V at the Imperial Diet of Regensburg in 1532 (A Pallas nagy lexikona, n.d.).

at the disposal of the court and was not allowed to leave the city. Calvin was replaced by his secretary as the private accuser.

On 14 August 1553, Nicolas de la Fontaine submitted a 38-point theological indictment to the examining magistrate Peter Tissot. Based on the indictment submitted, the examining magistrate summoned Servetus for a preliminary hearing at the first hearing (Kováts, 1909, pp. 7-11). The remaining charges, based on the original record, were formulated on the basis of questions from Nicolas De la Fontaine and answers from Michael Servet (Gyenge, 1909, pp. 35-36).

During his trial, the fact that the accused polyhistor acted as an accuser during his interrogation and made Calvin appear as the accused became apparent. At the beginning of the trial, he accepted the charges with a calm spirit, because he had the support of the sympathetic prosecuting judges and the libertine camp. He denied some of the theological teachings attributed to him and admitted others. De la Fontaine, the private accuser, asked the examining magistrate to accept only 'yes' and 'no' answers from Organ during the preliminary hearing, to avoid unnecessary argument. He was asked to answer questions under Article 31 of the indictment, which he refused to answer.

After the theological issues were discussed, the personal grievances followed. Servet was asked the question: *"[...] is it true that in the person of the pastor of the Church of Geneva he has desecrated the faith which he preaches by his book, pointing out every injustice and blasphemy that can be invented?"* (Kováts, 1909, p. 37) In reply, Servet blamed Calvin for the situation. He accused him of personal offence. The last question concerned his book published in Vienne.

They wanted to find out the circumstances of the book's publication. Servet reported on the printing of his book and his acquaintance with the printer William Guerolt in Geneva. However, he denied everything during the next day's interrogation. De la Fontaine gave evidence to the examining magistrate to refute Servet's denial. One was a printed copy of the Restitutio Christianismi (Restoration of Christianity), the other a manuscript version. The other two were copies of Ptolemy's annotated geography book and the Latin Bible of Servet. He acknowledged the authorship of the evidence provided.

The Servet case was referred to the small council. Judge Berthelier presided over the trial. At the second hearing, he represented, together with Nicholas de la Fontaine's lawyer, Hermann Colladon, the case against Servet. Eleven of the charges were tried. The next morning, 17 August, the members of the small council met for a brief meeting before the hearing. Calvin protested against Servet's theological errors. He deplored the fact that Berthelier, in sympathy with Servet, had given him political and moral support and had intervened in the

trial. He intended to act as an accuser against Calvin during the trial. Citizens were summoned to the hearing to support Calvin's secretary, De la Fontaine. Calvin's name was not mentioned at the hearing. Calvin was present. Servet was heard in connection with his case. He put forward false doctrines written by Servetus and complained that Philibert Berthelier had interfered in the Servetus trial and defended the accused (Kováts, 1909, pp. 96-97).

Berthelier remained absent from the meeting. Colladon De la Fontaine's lawyer interpreted the items left out of the last questioning and justified them with evidence. During the hearing, Servet responded to all the evidence presented. After the evidence had been presented, Colladon asked Nicolas De la Fontaine to be exonerated and reimbursed for all the costs of the proceedings and to be compensated in moral damages. The request was partially granted. He was acquitted of the charges and the reimbursement of the costs was postponed until the end of the proceedings. In preparation for the new hearing, the Chamber asked the Prosecutor General to take over the role of the accuser, given that the accused Nicolas De la Fontaine had been deprived of his right to stand trial.

Before a new decision was taken to this effect, they went to the Viennese court to ask for the reasons for his arrest and the date of his escape. On 21 August 1553, the Geneva authorities wrote to the Viennese authorities. They tried to obtain a certified copy of the denunciation and the arrest warrant. At the same time, it was decided to inform the other Swiss churches of the Servet trial (Kováts, 1909, pp. 97-98). They examined Arnoullet's letter, which showed that Michael Servet's book had been corrected by Vilmos Guyrod.[12] He was also implicated in the case. His arrest and interrogation as a key witness was deemed necessary. On that day, Servet was interrogated for the fourth time.

Investigator Judge Berthelier was present during the hearing. Three citizens were present and were questioned about Arnoullet Boldizsár and his letter. Nicolas de Fontaine and the clergymen of Geneva were then summoned to refute Servet's references to the authors. John Calvin also attended this hearing. He refuted Servetus' quotations from the church fathers. Servetus acted as an accuser against Calvin and his fellow ministers. He testified about his dishonourable behaviour as follows:

[12] Extract from the minutes of the small council. Monday, August 21st. They were discussing Michael Servet, who was arrested for heresy. If the matter was of great importance to the cause of Christianity, they decided to continue the matter. They write to Vienne to find out why he was arrested and how he escaped, and then they write all the data to the Lords of Bern, Basel and Schaffhausen, as well as to other Swiss churches, to inform them thoroughly of all this. They even looked at one of Arnullet's letters, which mentioned that William Guyrod had corrected Michael's last book, and then spoke of him. It was decided to interrogate Servet again, to show him the letter, whether he acknowledged it, and to ask him about it. If they find that Guyrod has knowledge of the book, arrest him and arrest him for a statement (Kováts, 1909, pp. 36-37).

> *"We went to prison as if we were the ones who had to give an account of our doctrines and were ready to answer his objections. But he spoke against me with his lips, so that the judges themselves were annoyed and shaken."* (Kováts, 1909, pp. 44-45)

During the interrogation, Calvin showed in his theological treatise that in his works, Servetus had erroneously referred to the teachings of the Church Fathers. He proved that Servetus' theological teachings on the Trinity were not true. The concept of "trinitas" was already in use before the Council of Nicea in 325.[13] The interrogation turned into a theological controversy. Servetus was promised that the theological books he had requested would be obtained and made available to him. At the end of the interrogation, Servet asked for stationery so that he could make his request to the city council. In his request, he demanded to be acquitted of the criminal charge. Among his reasons was the fact that the Bible's teachings and controversial issues had not been the subject of criminal charges in early Christian times. As a scholar, he had the right to contemplate and interpret biblical teachings freely. He also condemned the doctrines of the Anabaptists and considered them unacceptable. Finally, he asked for a lawyer to defend him in view of his unfamiliarity with the legal customs and laws of the city of Geneva.

On 21 August, prosecutor Rigot prepared a 30-count indictment, based on which he requested further questioning of Servet. Nicolas De la Fontaine's 38-point theological accusations were replaced by the charges he had formulated. In this completely different indictment, Servet linked the denial of the Trinity to Michael Servet's Israelite origin. He also linked his restless nature and his celibacy to his Italian connections. Finally, he explored the reasons that led Servetus to become involved in theological issues and to come to Geneva (Kováts, 1909, p. 101). On 23 August, the prosecutor's indictment was followed by a fifth hearing in which Servetus answered 30 questions. He denied being of Israelite origin. He claimed with conviction that he came from a Christian family and was in contact with religious scholars. He had theological discussions with them. He tried to excuse William Guerolt, with whom he had been in contact after his escape from Vienna. Guerolt had nothing to do with the publication of his book.

Servet confessed that he did not marry because of his physical infirmity. He objected to the allegation that he had a shabby life. He opposed only the death penalty for offenders under twenty. Based on the record of the interrogation, the prosecutor general prepared a new indictment. The prosecutor general

[13] Cr. 325 AD. May. 20. – July 25. The First Ecumenical Council was held in Nicaea during the reign of Constantine the great. (Magyar Katolikus Lexikon, n.d.a).

highlighted all the points of the indictment. From the style of its wording, it is highly probable that the co-author of the indictment was the reformer John Calvin. He severely criticized Servetus. for the shortcomings of his answers and allegations.

The Prosecutor General accused him of failing to answer the charges in substance. He falsified and misquoted Bible verses. He misinterpreted the teaching and case of the Apostle Paul. He made untrue claims about early Christian apology. He revealed with great care and detail, contrary to Servetus's claims, the laws and decrees of the rulers Constantine the Great, Gratian, Valentinian, Iustinian and Theodosius in the history of the Church against those who sinned against the Trinity. His position was made worse by the fact that he had previously studied law. He must have known the severe penalties for heresy against the Trinity.

Finally, the Prosecutor General stated that Michael Servet was one of the most dangerous and reckless heretics, because he wanted to subvert the order of justice and deprive the authorities of the right to punish. Servet refuted two other arguments. One was the death penalty. Servet objected to the death penalty because he was motivated by his own conscience. The other rebuttal emphasised that Servetus had Anabaptist doctrines, because he had not spoken against them in any places in his books. Servet's request for a defence lawyer was rejected. The reason given was that a liar does not deserve a defence lawyer: *„The law forbids it and there has never been a case of such a seditious lawyer advising and assisting him."* (Kováts, 1909, p. 64)

In the new indictment, the prosecutor added new items to refute Organét's arguments. On 28 August, Servet was interrogated for the sixth time because of the charges in the indictment. The examining magistrate instructed Servet to answer in the affirmative or in the negative to the questions put to him. The accused's cunning answer was to evade the instruction. He argued that he could only defend himself against the charges with long and detailed explanations. The prosecutor general responded to this argument with two indictments. The Geneva authority wrote to the Viennese authority on 21 August 1553.[14] It sought

[14] Letter from the Lords of Geneva to the General Court of Vienne. *"To the noble, wise, respectable and Grand Viceroy and magistrates, and to the King's other men at the Court of Vienne, which is good for our neighbours and dear friends. Noble, wise, respectable, and noble gentlemen, we offer ourselves to you with all our heart. Your Lords! We have in our prison a man named Michael Servet, whom we have heard that you have captured and arrested in your city of Vienne. but he left prison without saying goodbye to you, he just broke it. Since we find him guilty and charged with sin, we cannot, in any case, sufficiently know from him or anyone else of the things for which you have rigorously arrested him. We think and see that this could not have happened without cause, and surely you have testimony and information against him that he really deserved to be punished, and if he had not escaped, you would have done your duty well. Since it is in our hands, and we desire that we may do our duty against the truth as against him, we present to you with our servant our present petition to ask you in this way, for, as you know, in such matters every justice must help the other,- you should give us copies of the evidence, information, and injunctions you have against him, in order that you may help us to settle the matter, just as you may wish that in a similar we would, more*

to obtain certified copies of the indictment and the arrest warrant. On 31 August the Vienne tribunal replied by letter. They sent the death sentence against Servet and requested his extradition so that it could be carried out.[15]

At the seventh hearing, the Geneva Council gave to Servet a decision. He had two options to choose from. Return to the town of Vienne, where he would be burned at the stake, or leave his fate to the Geneva justice system. According to the record of the interrogation, Servet asked the small council to allow him to stay in Geneva and leave his fate to the Geneva tribunal. The hearing was attended by Calvin, who was taking part in the trial against Servetus for the second time. He refuted Servetus' claims against the divinity of Christ with theological arguments.

The small council ordered both Calvin and Servet to submit their theological arguments on paper to the judge. The written arguments were followed by an oral debate between Calvin and Servet. During the interrogation, the Libertine leaders Berthelier and Perrin launched an attack on Calvin and his associates in an attempt to improve Servetus' position. After the debate, Servetus asked for the opinion of other Swiss churches on the trial. Calvin summarised Servet's erroneous teachings in 38 theses under the title:

> "*Assertions or propositions taken from the books of Michael Servetus, which, according to the ministers of the church of Geneva, are partly evil and blasphemous, and partly full of impious errors and mad doctrines, which are quite at variance with the word of God and the doctrine of the true church.*" (Kováts, 1909, p. 58)

Calvin's 38 theses were answered by Servet. He proclaimed and proved with conviction that the name "Son" everywhere in the Bible means "son of man". He

than anything we can do. In anticipation of this, we ask God to bless you with happiness. Geneva, 1553. August 22." (Kováts, 1909, pp. 47-48)

[15] Reply of the tribunal of Vienne to the gentlemen of Geneva. *"To the noble, learned, respectable, grand and respectable syndicalist Lords and the Council of Geneva, Geneva. Gentlemen! about one o'clock yesterday afternoon, we received the letter which you deigned to write to us, containing the notice of the capture of Servet Michael of Villeneuve in your prison. We would like to thank you very much for the notification. To this end, in addition to the letter which we are pleased to present to your envoy, we send to you the inspector and captain of the royal palace of Vienne, with our letter of authorization and a copy of the final judgment against Villen [. . .], to humbly ask you, since he was a resident of the King's country, and the crimes for which he was convicted in the King's lands and escaped from our prison, and thus still our prisoner, to hand him over. to carry out the sentence, the execution of which will punish him so much that there will be no need to press any other charges against him. Regarding what you have deigned to write: let us send you a copy of the dust to be executed there-given the judgment we believe you have not been aware of until now-we ask you to forgive us if we cannot allow or agree to a different judgment based on our files and procedures. Otherwise, if you would agree, we would be rebuked by the king, who, we are sure, would be very pleased if you sent Villeneuve back. By doing so, you would show that the judgment of his authorities is also effective in your opinion. You would also wish that your judgment be carried out in a similar case. Iraim, we ask you again with this letter to listen to the inspector and to do what all justice is due to the other. Where, gentlemen, it will be possible for us, in such a case, or even more so, to reciprocate, we will do so willingly and with such a good heart, as we humbly offer our respects to you. We ask the creator to guard you. Vienne, 1553. on the twenty-sixth of August, Saturday evening. Due to the absence of the deputy governor, we could not send this Letterman first. Your neighbour, brothers and friends: deputy governor and Procurator of the king in the capital city of Vienne. At the behest of my lords, the deputy governor and the prosecutor, Chassalis is a court clerk."* (Kováts, 1909, pp. 73-74)

called Calvin an errant, a magician and a disciple of Simon the Magician. He called Calvin a murderer and a miserable beggar as a representative of paganism and the doctrines of the devil. In his rebuttal to Servet, Calvin called his opponent a liar and a cheeky liar. He submitted the three documents to the small council. At its meeting on 3 September, the small council decided to submit the Servet case to the Swiss churches and town councils for their opinion. On 21 September the letters were sent to the city councils and churches of Schaffhausen, Zurich, Bern and Basel. At the request of the Geneva Council, the other Swiss city councils and churches discussed the Servet case and the theological views it represented. The city councils of Schaffhausen and Zurich asked for the opinion of the pastors, who expressed their views as follows:

> *"We are sure that you will use your wisdom to suppress Servet's efforts, lest his blasphemies continue to destroy the members of the body of Christ like cancer. Why do we tolerate his madness for a long time? We all sign the condemnation of the servants of the Church of Zurich, our beloved brethren in Christ [...]."* (Kováts, 1909, p. 100)

The Bern City Council consulted the clergy. In their response, the pastors expressed their opinion: *"We ask God to give you the spirit of his wisdom, counsel and strength to remove this pestilence from your churches and from other churches."* (Kováts, 1909, p. 112) The city council of Basel, together with the clergy, stated emphatically what our brethren in Zurich have clearly and scientifically stated, it is unnecessary to repeat, we fully agree. The Genevese were asked:

> *"[…] to make us steadfast and unyielding in the face of Satan's attacks and terrible scandals." They were assured that Servetus should be persuaded to recant his doctrines, "and if he should be incorrigible in his destructive work, by your authority and by the power you have received from the Lord, restrain him, that he may no longer harm the Church of Christ […]"* (Kováts, 1909, p. 115)

The councils and pastors of the towns were unanimous in their opinion that the attempt to subvert public order and the peace of the Church must be stopped.

4. The conviction and execution of Michael Servet

The Servet trial also involved Calvin in the city council. Michael Servet's Christianismi Restitutio, published in 1553, was considered dangerous, denying the Trinity and rejecting infant baptism, and was accused of heresy by Calvin. His role in the Servetus controversy is mentioned in his Defensio orthodoxae fidei de sacra Trinitate (Calvinus, 1554).

Calvin proclaimed with deep conviction that the heretic, antitrinitarian Michael Servet was worthy of the death sentence. Calvin was invited by the city council

to participate as an expert witness in the theological debate. He later appeared as a witness during the trial. His views, which coincided with those of Thomas Aquinas on heresy, were considered in the death sentence:

> *"[…] if he is yet stubborn, the Church no longer hoping for his conversion, looks to the salvation of others, by excommunicating him and separating him from the Church, and furthermore delivers him to the secular tribunal to be exterminated thereby from the world by death."* (Aquinas, 1947, p. 2755)

The Council of Geneva considered the doctrines preached by Michael Servet dangerous not so much from a theological point of view but from a political and social one. In particular, the rejection of infant baptism made them dangerous. Because of his anabaptist views, he maintained that no one could be held responsible for sins committed before the age of twenty. The question of the absence of moral responsibility and the idea of its illusory nature met with emerging libertine views. To legitimise all this in the church and in moral life would have had irreversible consequences.

The Servet case had an important legal element that contributed greatly to the creation and development of the Servet case. This was the Constitutio Criminalis Carolina and the imperial right it guaranteed. Sentenced to death and persecuted by the Inquisition, Servet was captured in Geneva. Under imperial law, the city of Geneva was also under the criminal jurisdiction of Emperor Charles V, which was in force from 1532 to 1870 (Oestmann, 2015). The citizens of Geneva were therefore obliged to bring a suit against the captured Servetus and to condemn him for the forbidden heresy (Huszár, 2009, p. 112).

After his arrest, the Roman Catholic and universal Catholic Church in Vienna, France, put great pressure on the Geneva Council to convict him of heresy. If he had not been condemned in Geneva, the Catholics could have been accused of having really unleashed heretics on Europe through the Reformation. Servet had entered into communion with the religious movement that had previously caused religious and social tensions in Zurich, Münster and Strasbourg. By preaching his doctrines, he threatened the economic and social order of the city-state of Geneva, as well as its public peace and law and order. Based on a joint opinion of the cities, the Geneva Small Council charged Servet with blasphemy and incitement to public disorder. They declared him worthy of death at the stake.

He was condemned to death at the stake by the tribunal of the Council of Geneva on 25 October 1553. At 11 o'clock, the condemned man was escorted by two officials and Farel to the town hall, where a syndic read out the

sentence.[16] He received the sentence with a broken heart. According to Calvin's recollection:

> *"[…] when the news of his sentence of death was brought to his notice, he was said to have been beside himself several times, and then to have risen up, so that the whole hall echoed with him, sometimes shouting like a man in a frenzy. He behaved like a madman. His shouting increased. Beating his chest, he kept shouting in Spanish: Mercy! Mercy!"* (Kováts, 1909, pp. 121)

He spent his last hours in the company of William Farel, who was endeavouring to convince Servetus of the error of his teaching. Servetus stubbornly held fast to his theological convictions.

The lengthy judgment consisted of two parts. The first contained the facts, the list of crimes. The second part established the guilt. After a brief moral reasoning, it pronounced the sentence and the provision for its execution. Among his sins were his work against the Trinity, his anti-Trinitarian declarations, Christ not being the Son of God from eternity but only from his incarnation, his theological view contrary to infant baptism, his accusation of the churches of Geneva of being without faith and without God, his causing a schism of faith and church in Geneva, his spreading heresy in Switzerland and throughout Europe. On 27 October 1553, the city council of Geneva carried out the sentence and burned Michael Servet and his books at the stake on the highest hill of Champel (Selderhuis, 2009, pp. 161-162).

5. Conclusion

One of the most controversial cases of religious freedom in the history of the city of Geneva was the trial of Michael Servet. With the trial and execution of the Spanish polymath Michael Servet in 1553, the city of Geneva became a citadel

[16] The verdict against Servet. *"We, the syndicates and criminal judges of this city, having seen, on the charge of our investigator, Michael Servet of Villeneuve, of Aragon, Spain, the dust brought against you and carried out before us, from which, as well as from your confessions which have been voluntarily presented to us and repeated several times, as well as from your books presented to us, it seems and seems that you, Servet, have for a long time spread false and quite heretical doctrines, setting aside all admonitions, chastisements, evil, ungodly with stubbornness, steadfastness, you spread them, even printed widely circulated books God, against the father, the son and the Holy Spirit, in short, against the true foundations of the Christian religion. By doing so, you sought to create a schism and confusion in the Church of God, so that more souls could be ruined and lost. It's a terrible, terrible, shocking and blinding thing! Have you not been ashamed, have you not shied away from turning completely against the divine majesty and the Holy Trinity? You have regretted neither the tiredness nor the obstinate reasoning that you have stained the world with your heresies and your stinking heretic poison. It is a grave, abominable heretical crime and transgression that deserves harsh corporal punishment. Based on these and other justifiably outrageous reasons, desiring to clean the kingdom of God from such a blight and to cut such a depraved member out of it: - after having consulted thoroughly with our fellow citizens and invoked the name of God to pass a just judgment, bearing in mind God and his Scripture,-we have sat law in the place of our ancestors. In the name of the father, the son, and the Holy Spirit, let us pronounce this final judgment, which we give in writing, that you, Michael Servet, may be bound, taken to the field of Champel, and there bound to a stake, and burned alive with your written and printed books, until your body becomes Ashes. This is how your days end, to give an example to others who would want to commit such a sin. And you, our judge of inquiry, are ordered to carry out our present sentence. Read by Darlod Syndic 1553. October 27."* (Kováts, 1909, pp. 123-124)

of intolerance. John Calvin played an important role in this (Pásztori-Kupán, 2009, p. 263).[17]

The conditions in Geneva and Calvin's role as a reformer are described by the British historian Henry Kamen when he says:

> *"Calvin called the Reformation back to its true mission. In contrast to the practice of other reformers, he stressed the complete independence of Church and State, but also their interdependence. [...] After his return to Geneva in 154l, he persuaded the authorities to accept his Order as a form of religious government. [...] This theoretical autonomy of the Church was to some extent deceptive. The state still intervened in religious discipline through the lay members of the consistory, which governed the church but had no coercive power. [...] thus began, with the help of the state authorities, the [military] religious command which made Geneva a beacon of intolerance. [...] Despite their theoretical autonomy, the Church and the State obviously had to work closely together. [...] On one occasion, a nun was prosecuted for kneeling by her husband's grave and saying: 'Requiescat in pace'. Under Calvin's influence, the [city] council took numerous measures on church matters, such as making attendance at church services compulsory. The civil and ecclesiastical powers thus joined forces to crush religious nonconformism. [...] The severity of Calvinist discipline is shown by the number of excommunications, which rose from 80 in the four-year period from 1551 to 1554 to over 300 in 1559 alone."*[18]

Calvin became a spokesman for the impatient Protestants of the 16th century with his Declaratio Orthodoxae Fidei, published in 1554 in both Latin and French. For the moment, the only example quoted from this work reflects the reformer's views and positions on religious freedom and religious tolerance.[19] In

[17] Pásztori-Kupán, István: *Teokratikus Tolerancia? A Tordai vallásbéke teológiai üzenete*, in *Keresztény Magvető*, Vol. 115. No. 2. 2009. p. 263.

[18] *"Calvin recalled the Reformation to its proper mission. In opposition to the practice of the other reformers, he emphasised the complete independence, and yet interdependence of Church and State. [...] On his return to Geneva in 1541 Calvin persuaded the authorities to accept his Ordinances as the form of government in religion. [...] This theoretical autonomy of the Church was in some measure deceptive. The State still intervened in religious discipline through lay members of the Consistory, which governed the Church but had no coercive jurisdiction. [...] So began, with the aid of the State authorities, a system of religious regimentation which turned Geneva into a by-word for intolerance [...]. There was clearly to be close cooperation between Church and State, despite their theoretical autonomy. [...] In one case a woman was prosecuted for kneeling by her husband's grave and saying, 'Requiescat in pace'. Under Calvin's influence the Council also initiated several proceedings touching religious matters, such as the enforcement of the rules about attending sermons. Civil and ecclesiastical authority therefore combined to crush religious nonconformity. [...] The rigour of Calvinistic discipline is illustrated by the number of excommunications, which rose from only 80 for the four years 1551-4, to over 300 in 1559 alone."* (Kamen, 1967, pp. 51-52)

[19] *"Let our compassionate ones, who enjoy leaving heresies unpunished, see now how much their imagination does not conform to God's command. Out of fear that the church might not be criticized for its excessive severity, they would tolerate the spread of all kinds of error in the defence of one man. God, however, does not favour entire cities or peoples, but rather, as a sign of his utter contempt, fearing the spread of infection, he destroys the walls, erases the memory of the inhabitants, and turns everything upside down. It even tells us that by concealing sin, we become accomplices. This is not surprising, for it is a rejection of God and his Holy teaching, which corrupts and defiles all human and divine rights."* (Calvin, 1554)

his work he develops the idea that tolerance is nothing more than the toleration of heresy. He is convinced that toleration of heretical teachings is a crime against God, because they are against God's teaching. He proclaimed that heresies must be eradicated because they corrupt and desecrate both human and divine law (Calvin, 1554).

From a political and legal point of view, Calvin could not intervene in the conduct of the Servet trial, given that the Council of the Church in Geneva did not have public authority in criminal matters (Magyar, 2012). Calvin himself formulated the powers of the Geneva Church Council in his collection of Ordonnances Ecclesiastique from 1541, according which:

> "[…] *the pastors shall have no part in civil or criminal justice, and shall wield only the spiritual sword of the Word of God [...] and the consistory shall in no way diminish the authority and judicial power of the authority [...]"* (Nagy, 1959, p. 339).

However, he greatly influenced the outcome of the Geneva judiciary and the decision of the tribunal as a requested witness and theological expert. He supported the Michael's Servet dismissal and execution from a theological point of view and considered it justified.[20]

The stakes were very high because of the political, social and ecclesiastical controversies generated by the Servet trial. The trial against Servet, initiated by Calvin, was not only a defence of the Church of Geneva, but of Christianity as a whole (van't Spijker, 2003, p. 87). If Servet had not been condemned, there was a danger that the doctrines he was spreading would have spread throughout Europe. The town council used the Corpus Juris Civilis, the civil code of the Byzantine emperor Justinian (482-565), which made the dogma of the Trinity an important component of the Christian faith, to bring the case against Servetus (Glatz, 2000, pp. 382-383). The Code stated that anyone who preached doctrines contrary to this dogma was an enemy of the Christian community. The execution of the antitrinitarian Michael Servet became a necessity in the social and legal context of the 16th century. The acceptance of religious freedom and religious tolerance and their guarantee by the Geneva Laws was still to come.

In 1554, Sebastian Castellio (1515-1563) published his "De haereticis an sint persequendi" (Castellio, 1554), a work based on the trial and execution of Servetus. He became known as a defender of religious tolerance in Western European countries (van't Spijker, 2003, p. 87). He advocated persecution of

[20] According to historian Alister McGrath, *"the sixteenth century knew nothing of the recent objections to the death penalty; they were still a legitimate and effective method of getting rid of undesirable persons and of deterring their followers sufficiently. The city of Geneva was no exception: since there was no institution capable of serving longer terms of imprisonment (for a shorter period before the trial the suspects were taken prisoner at their own expense), two major punishment options remained: exile and execution."* (McGrath, 1996, p. 128)

heretics and religious freedom and interpreted religious tolerance. Sebastian Castellio, in his treatise "On Heresy", addressed the problem of religious freedom and the persecution of religious tolerance.[21] In the work, he proclaimed that heresy should not be punished with either ecclesiastical or civil penalties. Faith and religious beliefs are free and should not be coerced (Cadier, 1994, p. 154). In making this statement, he referred to the Servet trial and its consequence.

Who was right: Castellion or Calvin? Castellio was right, given the terrible jurisprudence. No one should have been condemned for the free expression of thought and opinion. As far as the teaching of the Church was concerned, Calvin was right. Michael Servet was wrong in his opposition to biblical and ecclesiastical teaching. In the spirit of the 16th century, the spreading of his false teaching had to be stopped at all costs, and he had to be sentenced to death according to the legal custom of the time and the ecclesiastical laws. Before the sentence was pronounced, Calvin said to him: *"I hope he will be condemned to death, I wish to mitigate the cruelty of the punishment."* (Pruzsinszky, 1909, p. 263)

What happened in the Servet trial: justice or the free rampage of religious fanaticism? We can say that both combined to strike Servet and make him a martyr of religious intolerance. In answering this question, L. Feuerbach identified the second factor as the cause and result of the Servet trial. It was therefore in no way personal hatred, even if it might have played a part, but religious hatred that sent Servet to the stake, the hatred that springs from the essence of an unlimited faith (Feuerbach, 1961, p. 410). The famous work of the philosopher John Locke (1632-1704), "A Letter Concerning Toleration", published in 1689, was only a philosophical approach to religious freedom (Locke, 1973). The issue of religious freedom was not put into practice. Achievements like religious freedom and religious tolerance in Transylvania and Poland were not made in Geneva until the late 18th century, because of the Declaration of the French Revolution on Human Rights.

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[21] Discussing tolerance, he argued that *"seeking and uttering the truth as we think it can never be a sin. No one can be imposed on a conviction, for the conviction is free the dogmas for which Christians mutually excommunicate and kill each other are quite indifferent in themselves and do not improve men. The judgment of the spiritual does not belong to men, but to God alone."* (Guggisberg, 1997, p. 45)

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CHATGPT AND THE WORLD OF EDUCATION: VISUALIZATION OF PUBLICATIONS

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ABSTRACT

The emergence of ChatGPT has brought significant challenges in the field of education. The use of ChatGPT for assignments among students spread in no time, which was something that educators were not prepared for. For this reason, the focus has been on learning about the use of ChatGPT from the student side, since in order to detect its use, it is necessary to be aware of the areas and methods of its use and to know the dangers of its use. The large number of studies on this topic suggests that there is interest among educators in the use of ChatGPT in education. The number of publications can be used to show the pace at which the number of papers on ChatGPT and education is growing in the academic world. Furthermore, it would point out that while the use of ChatGPT can be beneficial in many areas, there are some areas where human thinking is essential.

KEYWORDS ChatGPT, higher education, cognitive bias, VosViewer

1. Introduction

In order to identify the use of ChatGPT in higher education, it is first necessary to describe the areas in which it can be used as a student in higher education. Then I briefly describe how ChatGPT works and its applications in education. This is necessary because, to be able to check the work of students as a lecturer, it is necessary to know the areas in which it can be used. After that, I introduce the cognitive biases in human-machine systems, namely the dangers of decisions made while using ChatGPT.

To give an adequate representation of the extent of interest in the use of ChatGPT in education, I present the number of publications in ScienceDirect, Scopus, and Web Of Science databases for the keywords ChatGPT and education, which I also narrow down to the keyword higher education. Finally, I

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represent the difference between the answers given by ChatGPT and a visualization made with VosViewer in terms of research work. Ease of Use.

2. What is CHATGPT and how does it work?

ChatGPT (Generative Pre-trained Transformer) is a language model (OpenAI., n.d.) that can be used to generate texts. You have to write instructions in the window to communicate with it in writing. The instructions issued to ChatGPT are called prompts. Clarifying and rewording the instructions helps the ChatGPT respond more accurately.

In this paper, I have focused on the information related to the free version because I assume that the majority of students and lecturers use this version.

An introduction to the 4 steps (Juhász & Szekrényi, 2023) related to the operation of ChatGPT is necessary to understand the basis on which it generates the answers. The first 3 steps are referred to by the abbreviation GPT in the name.

Generative, which stands for generating new content. The dataset used for this is based on 45 TB of data, plus unpublished literature (Meeus & Lehtinen, 2023).

Pre-trained, which means pre-training, ranking, that is, the categorization and filtering of data by humans, which means filtering out biases, takes place in this phase.

Transformer, which means searching for correlations and drawing conclusions (Shahriar & Hayawi, 2024). In other words, in this phase, it narrows down the 45 TB by different categories, thereby becoming more confident. From here onwards it will give a pretty good answer.

Feedback: reinforcement learning (Lin, 2024) – i.e. the basic system receives feedback and learns. So, the more "prompts" are used to narrow a topic, the more accurate the ChatGPT will be.

3. How to use ChatGPT for learning?

ChatGPT is very popular among students to complete assignments, but teachers also use it to generate new ideas (Waxman, 2023). Students use it to save time when searching for information and solving assignments (Wandelt et al., 2023), ChatGPT also performs well in medical question-answering tasks, performing at the level expected of third-year medical students in the primary competency of medical knowledge (Gilson et al., 2023).

There are also disadvantages associated with the use of ChatGPT. One study found (Lim et al., 2023) that generative AI tools may be limited to current data (the database never works on the most recent data), and therefore may

intermittently provide false information and misinterpret requests. Another study found that ChatGPT mostly generates content that is written in general descriptive text (Rudolph et al., 2023). The publisher of Nature has communicated that Large Language Models (LLM) tools are not accepted as certified authors: 'This is because any attribution of authorship implies liability for the work, and AI tools cannot assume such liability'. In addition, the need to document the use of LLM and include it in the acknowledgments section (Nature, 2023).

Example of ChatGPT in higher education:
- Writing an assignment to be submitted
- Article summary, with a definable scope
- Title choice
- Explanation of terms
- Changing the terminology of language
- Literature search

4. The dangers of using ChatGPT

One of the main dangers of using ChatGPT is that it can be considered plagiarism (Dien, 2023). Therefore, more attention needs to be paid in education to the adaptation of the tasks and teaching materials that are given out. Furthermore, AI detection software can be used for verification (Jungco, 2024) to detect whether AI has been used to create the task.

ChatGPT is also widely used for thesis writing. An anonymous survey of Stanford University graduates in 2023 (Cu & Hochman, 2023), found:
- 17% of students used ChatGPT for their thesis,
- 5% gave a word-for-word version of the essay that ChatGPT published.

A further risk was that, at the time of implementation, the free ChatGPT database contained data until January 2022, so in many cases, the information sought was not available and, because the database was not up to date, it was often incorrect. Nowadays, the free version of ChatGPT 3.5 (Limited access to GPT-4o) works on a trial basis like the subscription version, but the problem is still occurring to a small extent, which means that incorrect data is being received.

In addition, it is often misleading meaning that there are cases where it generates different content than the question was intended for, so answers should be accepted with caution. Due to these dangers, cognitive biases may emerge in hu-man-machine systems (Sós et al., 2023). Cognitive bias is a systematic deviation from rationality, logical thinking, and behaviour (Dobelli, 2014).

One example is Confirmation bias, which means that a person collects data to confirm an opinion he or she holds and tends to ignore information that contradicts it (Sibony, 2020). For example, when asked a question about a specific topic, the answers are re-fined using "prompts" until the ChatGPT gives the exact answer that the user "wants to hear". Because it gives a very definitive answer, and it is genetically encoded in humans we are more inclined to "accept" a confident answer as true, and therefore often accept the answer without verification (Dobelli, 2013).

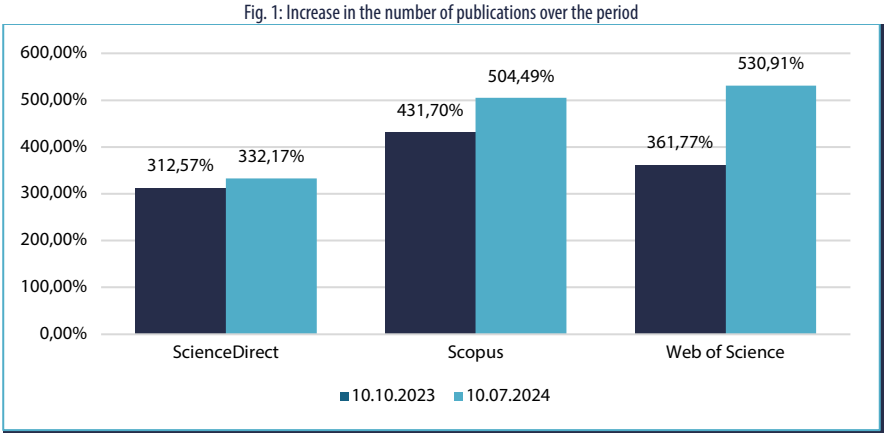
4.1. Results: Number of publications on ChatGPT and education

When I started the research, I screened 3 scientific databases: ScienceDirect, Scopus, and Web Of Science. In all three databases, the keywords chosen were ChatGPT and Education, and ChatGPT and "Higher Education". Subsequently, 1 month and 9 months (on 10 July 2024) I performed the screening again on the same databases.

Table 1: Results of keyword searches (PCS)

Database	Keywords		10/10/2023	10/11/2023	Increase in the number of publications between 10.10.2023-10.11.2023	10/07/2024	Increase in the number of publications between 10.10.2023-10.07.2024
Science Direct	ChatGPT	Education	708	935	32,06%	2921	312,57%
	ChatGPT	Higher education	11,5	146	26,96%	497	332,17%
Scopus	ChatGPT	Education	2104	2899	37,79%	11187	431,70%
	ChatGPT	Higher Education	668	931	39,37%	4038	504,49%
Web of Science	ChatGPT	Education	463	531	14,69%	2138	361,77%
	ChatGPT	Higher Education	55	69	25,45%	347	530,91%

Fig. 1: Increase in the number of publications over the period



As can be seen from the data in Table 1 and Figure 1, the number of publications for ChatGPT and Education/Higher Education between 10 October 2023 and 10 July 2024 was incredible: the increase in the number of publications was at least 312.57%, while for one of the databases (Web Of Science), it was 530.91%. In other words, there has been a significant increase in the number of publications on the topic in all databases.

The study described in the databases shows that the use of ChatGPT in education is widely discussed in the "research world" and that the number of publications is growing dynamically.

4.2. Visualization of publications

I created a visualization on 10 July 2024 from the database of ScienceDirect and Scopus websites, as I was curious to see how this large number of publications in higher education is distributed. VosViewer (van Eck & Waltman, 2023) generates a keyword map based on scientific databases, on which it plots the main keywords by analysing the title and abstract of publications for the keywords and examines the relationships between keywords and the clusters in which the keywords appeared.

Figure 2 shows that the most dominant cluster (red) on ScienceDirect shows keywords mainly related to education and academia: digital transformation, plagiarism, online learning, and technology acceptance model. In the other clusters, a few keywords from other fields appear, for example, more people are researching their use in health and management.

Based on the publications on the Scopus site (Figure 3), the most dominant cluster (red) shows keywords related to general educational tasks: e-learning, learning outcome, AI in education, and grading. However, in the other clusters, in addition to some other educational fields, several keywords related to the study of human behaviour: human, behavioural intention, psychology, and the keyword reliability. This indicates that misinformation in ChatGPT and its effects on humans are of concern to the scientific community, which means that there is a growing recognition that misinformation in ChatGPT can cause cognitive biases (Tamás et al., 2023).

Fig. 2: Visualization by VOSViewer from the research results of ScienceDirect on the 10th of July 2024. Keywords: ChatGPT AND "Higher Education". The minimum number of occurrences of a keyword: 4.

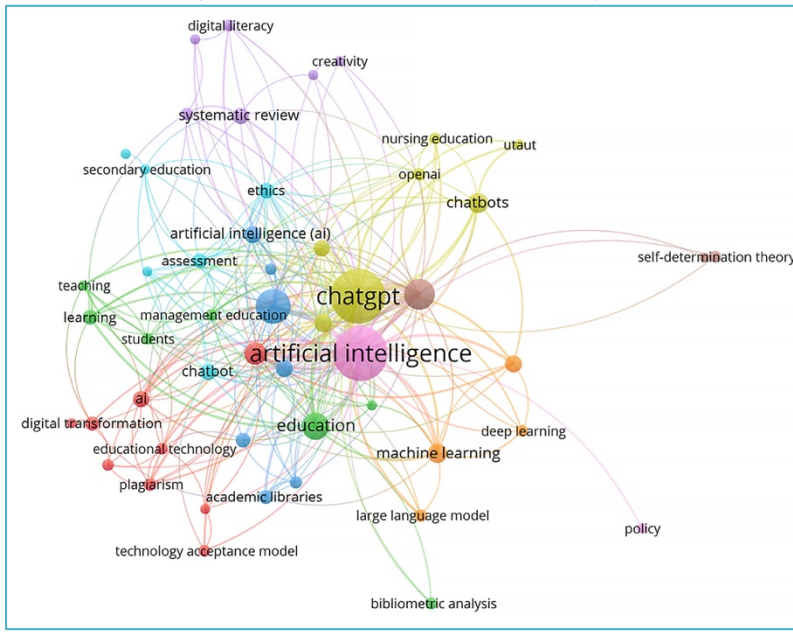
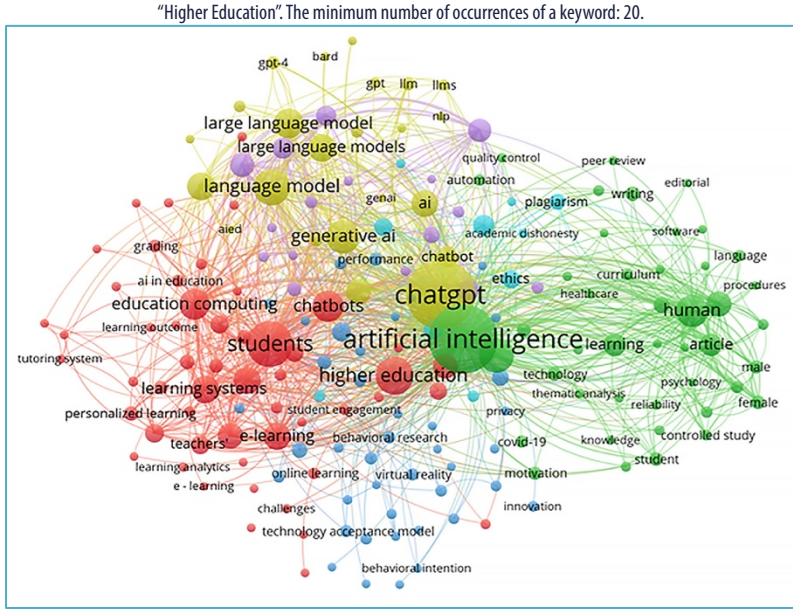


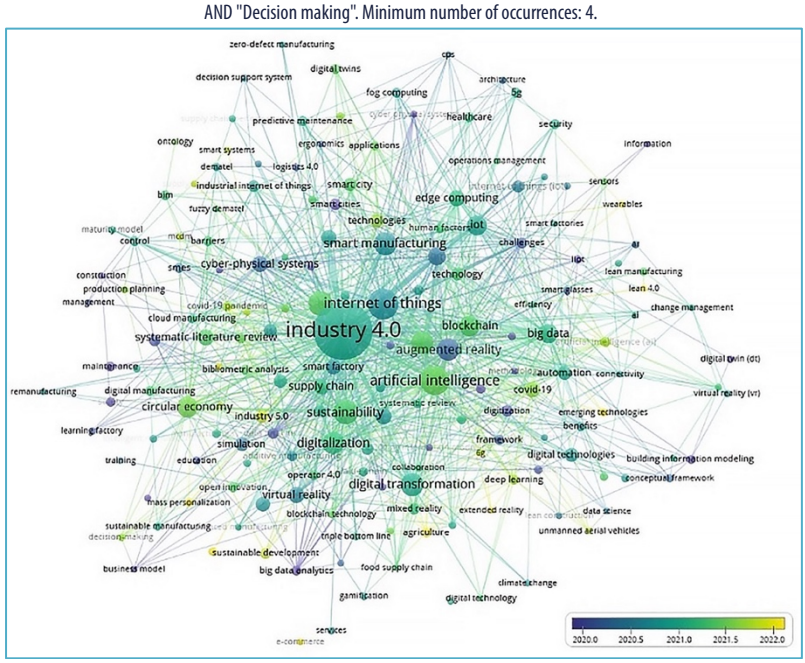
Fig. 3: Visualization by VOSViewer from the research results of Scopus on the 10th of July 2024. Keywords: ChatGPT AND "Higher Education". The minimum number of occurrences of a keyword: 20.



5. Comparison of using VosViewer and ChatGPT

The question often arises that if ChatGPT is getting "smarter" and so usable as a "prompt", why is it not used by researchers in the academic field? My first answer would be that its use is unethical for an academic, but there is much more to it than that. ChatGPT is great for quickly looking up a topic or for brainstorming, but to define a research gap or to do real research, you need to use software(s) that can support the research. To do this, I will give the following example: for a publication, I searched the ScienceDirect database on 11 January 2023 for the keywords Logistics AND "Augmented reality" AND "Decision making", and then visualized the results using VosViewer (Figure 4). When I did this search, I wanted to see what publications had been written for the keywords provided. VosViewer generates a keyword map based on scientific databases, on which it plots the main keywords by analysing the title and abstract of publications for the keywords, in this case, Logistics AND Augmented reality AND Decision making, and examines the relationships between keywords and the time periods in which the keywords appeared.

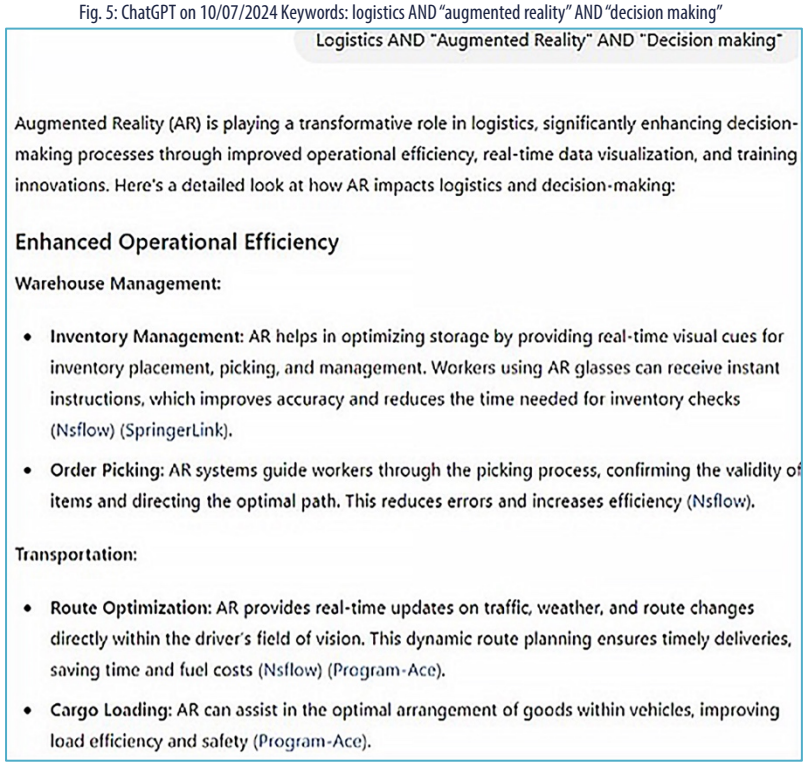
Fig. 4: Results of the narrowing on ScienceDirect on 11 January 2023 for the keywords Logistics AND "Augmented reality" AND "Decision making". Minimum number of occurrences: 4.



In order to visualize and analyse the relationships shown in Figure 4, some research experience is required, but without it, it is clear what keywords were used to start research on the topic and what "direction" it is currently taking. Furthermore, VosViewer provided a map showing where the concept has "branched off", what new directions have emerged in the research, and which keywords have become prominent in which period.

As you can see in Figure 5, I also queried ChatGPT using the same keywords. I used several queries, not only this one where I entered the keywords, but also one where I asked for the context of these words in a whole sentence, in this publication I have included only this version.

Fig. 5: ChatGPT on 10/07/2024 Keywords: logistics AND "augmented reality" AND "decision making"



The result was the same in all cases: you gave each definition and linked the first one to the others. In other words, the results could have come from any of the websites.

As can be seen after comparing Figures 4 and 5, ChatGPT could not add any real value in terms of research work, but rather could only be used for brainstorming.

Therefore, in the field of research work, critical thinking is needed, that is, human thinking, because we cannot tell from a response from ChatGPT where research started, what direction it is going, what research gaps are there, what interconnections there are between different disciplines.

6. Conclusion

The use of ChatGPT in higher education is highly widespread, not only among students but also among teachers. In order to make its usability transparent, I have examined its use as a student in Higher Education and then presented its dangers, covering the cognitive biases in human-machine systems, namely the dangers of decisions made while using ChatGPT. At the beginning of my research, I conducted a scan of the ScienceDirect, Scopus, and Web Of Science databases for the keywords ChatGPT and Education and "Higher Education", which I repeated a month and almost 6 months apart. Based on the results, I found that the research community has shown significant interest in using ChatGPT in education. Finally, I will present a visualization related to the same topic that I created using VosViewer, as well as definitions related to the same keywords that I requested from ChatGPT. Overall, I have found that for ChatGPT, we do not know the “direction” in which the publications written for the keywords started and we cannot see the “direction” in which the research relevant to the topic is going. In other words, with these two visualizations, I represent that for real research work it will not be sufficient to use ChatGPT, it will still be necessary to use human thinking.

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ARCHITECTURE, LAW, AND POWER: RELATIONSHIP BETWEEN LAW/POLITICS AND ARCHITECTURE

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ABSTRACT

My interdisciplinary approach brings together the expertise of lawyers, architects, and art historians to examine the representation of law, power, and culture. Using a descriptive method, my research also incorporates elements of legal and art history, exploring how legal architecture functions as a symbol of power and reflects the legal system's societal role. Public authority buildings, such as courts and prisons, serve as significant cultural artifacts, representing not only the institutions they housed but also broader meanings connected to authority and law. These buildings are an essential part of legal cultural history, revealing the relationship between law and architecture throughout different eras.

Legal architecture, a term coined by István Kajtár, is deeply intertwined with both law and culture. Law shapes social relations, while culture, as a nation-forming force, influences the way law is expressed in physical spaces. Architecture, in this context, reflects legal norms and institutional systems, serving as a concrete expression of human culture. Over time, legal and authoritative architecture must be continually reinterpreted to reflect changing societal values and the objectives of those in power. As highlighted in Zoltán Megyeri-Pálffi's theory, the period, authority, and purpose of a legal building, including its spatial arrangement and geographical placement, play a critical role in its significance.

In modern times, legal architecture has shifted focus from monumental representations of power to human-centred design, emphasizing functionality, acoustics, lighting, and integration into the urban environment. The technological revolution and digital administration present new challenges to legal architecture, raising the question of whether physical representations of authority will continue to be relevant in the future. The evolving relationship between technology and architecture prompts us to reconsider the role of physical structures in representing power and law.

KEYWORDS Law, power, culture, symbol, architecture

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1. Introduction

This study uses an interdisciplinary perspective. I focus on the fields of art history and legal history, but exclusively from the perspective of architecture. Legal architecture is a distinct category and fits into the cultural history of law and belongs to the representation of law in legal studies. I deal with historically significant manifestos that have diverse perspectives, such as symbolic, iconographic or functional meaning but they have one common point of view; manifests power (Kajtár, 2022, p. 21). I would like to demonstrate how legal architecture, as an interdisciplinary field, influences both architecture and law.

Initially István Kajtár found legal architecture expression out:

> *"[the] public legal architecture manifests power and aligns with the system of public law: in the field of legal history buildings have been constructed to demonstrate the activities of the legislation- the public administration – the judiciary- the local governments, as well as the state's sovereignty and armed forces."* (Kajtár, 2002, p. 35)

According to Kajtár, the building itself is a symbol, but in addition symbols can also be found on it. *"This is the form through which it communicates a flag, a coat of arms, or a statue alike."* (Kajtár, 2020, p. 157) In the context of the legal science, the architecture is a medium, but also a cultural milieu. Buildings have their own significance and on the other hand they represent distinctive meaning that transcends themselves. Additionally, they are related to the existence of power.

Alongside the cultural analysis of law, the legal cultural-historical examination of legislative buildings can also lead to important conclusions (Kajtár, 2002, pp. 35-44). I would like to summarize on the following points in detail.

The theory of the branch of powers [legislative, executive and judicial] is also significant from the perspective of legal architecture. According to István Megyeri-Pálffi, *"the branch of powers also establishes a specific building type for each branch of power: parliamentary buildings for the legislature, judicial buildings primarily for the judiciary, and government, local, and territorial administration buildings for the executive branch."* (Megyeri-Pálffi, 2021, pp. 13-14) Megyeri's theory is innovative because it asserts that the law has spatial requirements which means, that it is not only symbolizes the power structure but also holds importance in its placement and integration into the cityscape. In this context, a representational need arises, pertaining to the size and quality of the buildings. In this way, it becomes a bearer of meaning, exemplified by the independent judicial power of the judiciary. The problematics of the accessibility of the building are also part of legal architecture. The presentation of various themed signs, the prominent relief of the state emblem, and the display of the

attributes of the statue of Justitia express a message (Megyeri-Pálffi, 2021, p. 22). These need to be interpreted, because the building can be analysed not only independently but also as part of the cityscape and with its interior spaces, just like Megyeri said.

In this sense, according to Kajtár *"the buildings of power besides their functional characteristics, can also be examined as symbols of the functioning of a state."* (Kajtár, 2001, p. 191) The representation of law and the building's characteristics can be orientation points too. Whoever holds power, whether *"a despot, a monarch, an absolute ruler or a dictator exercise their authority in an architectural space, which are their seat of power."* (Megyeri-Pálffi, 2021, p. 12)

2. Conceptual thoughts about the connection between power and architecture

To examine the system of legal architecture, it is necessary to establish how it relates to power. Power has a complex nature. I use the concept of power in the Weberian sense, which is about *"the probability that one actor within a social relationship will be in a position to impose his own will despite of the other's resistance."* (Takács, 2011, p. 135)

To express an adequate connection between law and architecture, my premise is that different eras regarded and manifested power differently. Accordingly, the nature of power has a different meaning: in one context, it is a characteristic of state public authority; in another, it is authority; and in yet another context, it is sovereignty (Takács, 2011, p. 132). The source of power raises many questions. According to Takács, power is primarily political in nature, whose fundamental element is to have a chance to make own decision (Takács, 2011, p. 136).

In the following, I will survey the art historical styles that have cultural-historical importance in the field of legal architecture and what kind of ways of power are found within them.

My work deals with only architecture, and I will not confront with the other area of fine arts. The art form of architecture has an instrument, which is the building, that on one hand can be a tool of legitimization with representing power and on the other hand it is an expression of the legal order. In addition to this, buildings can be an element that carries ideology but can be as a form of artistic visualisation. I search for the answer to this question; how does power use architecture to achieve its own targets in different artistic eras? I seek to establish a connection between the architecture of an urban and the representation of power. My method of examination is descriptive, incorporating elements of legal history and art history, but it does not exclude associative observations. The periodization is done by centuries according to the art history. I do not

mention their aesthetic quality and focus on the interpretive message of the respective era.

First, I would like to declare, that each period has an own special architecture, which not only has an artistic relevance, but also aligns with the social and legal realities. My presented items and examples are incidental but hopefully illustrate the dynamic between law and architecture.

In antiquity, the public squares had a significant political and commercial importance, thus at his time especially the Agora and the Forum Romanum represented power. The Agora was the gathering- and expression square of free man, it was a place for persuasion without violence. Essentially, it was the main square of Athens that was rounded by walled. Significant buildings were built in there such as the gymnasium for soldiers training. The altar of the twelve gods, stood the magistrate's seat and the bouleuterion for the council of five hundred were in the Agora as well (Cs. Tompos, 1976, pp. 14-15). The Forum Romanum was the site of legislation and commerce:

> "*The Forum Romanum was the very centre of ancient Rome. Throughout the lifespan of Roman civilisation, the Forum served as the focus of political, civic, and religious life. From magnificent temples and triumphal arches to the very seat of power in the Senate house, the Roman Forum encompassed every aspect of life for the Republic and wider Empire.*" (Johnson, 2021)

The dignity and authority expressed through the facade of Greek or Roman buildings (Kengyel, 2011, pp. 116-118).

In the depictions of the Middle Ages, the ultimate source of power is of divine origin. In the field of architecture, it serves as a tool of legitimization, and the most characteristic building is the church. Moreover, the coronation of rulers also has a symbolic message, as it took place there. The Middle Ages have a special building type which is the cathedral. This period is full of urban construction and wall building, so the city appears as an administrative unit, which means that the class of the bourgeoisie is as well. All these things considered, self-governance and urban development arise from these elements. As mentioned by Megyeri *"a typical medieval image is that the town hall is located in the main square of the city, the marketplace, where proclamations of judgments and other public events – including the market and festivals – took place in front of the urban community."* (Megyeri-Pálffi, 2020a, p. 561) In the city were large town hall as a symbol of freedom and expression of civic identity. Main square has a central role and is located at the heart of the city. The main characteristic architectural solutions are there the narrow alleys, the upward-expanding houses, the wooden building material. *"The cities' law enforcement and criminal*

justice systems increasingly defended against the aforementioned dangers." (Mezey, 1991, p. 35).

At this period the Romanesque and Gothic styles are determinate the architecture. The former is about 11-12th centuries and the later to the 12th century. The grandeur of Gothic is about role of light, tower, knight's hall and the ceremonial hall appear for the royal representation (Herendi, 2003, p. 115).

The Renaissance is a new dimension from the perspective of power, because appears the secular architecture, that means in this period of the 15th century in Europe the construction of the first privately funded public building, an orphanage, urban townhouse, large and spacious places and entirely new town hall so renovated old ones updated to fit the spirit of the age. Libraries, school and theatres are also liked as an architectural innovation. Characteristics of the Renaissance include humanism, the depiction of human figures, and the use of deeper-toned allegories. From an architectural aspect the Renaissance follows the antique classic forms (Herendi, 2003, p. 124). *"The classical columns, arches, cornices, and relief carvings make the palaces and public buildings both graceful and dignified."* (Artner, 1968, p. 218)

Baroque architecture attracts attention and dominate its environment. *"However, it completely transforms the form of the ancestors. It aims to exceed the creation of them, thus those style has special style mark, like powerful, grand scales, extended buildings and it overwhelms with ornamentation."* (Artner, 1968, p. 319) In addition it is full of ornamentation, grandeur, splendour and characterized by use of expensive, golden materials. *"The decoration is often subordinated to an allegory: for example, the War Room at Versailles."* (Herendi, 2003, p. 5) The main buildings in this period – 17-18th century- the church and palace, but huge, rich royal and aristocratic palaces are characteristic too:

> *"The Baroque architect thinks in large units, extending the design to the building's surroundings as well. It has a spacious area in front of and around the church and palace to maximize the building's impact. […] During this time, it appeared the kilometre-long boulevards that branch out from and ornate square and lead to the centres."* (Artner, 1968, p. 320-321)

The unique feature is the symmetry, the use of geometric shapes, and a new model symbolizing the ideal of a unified state. *"Just as in politics, in architecture too, France under the Sun King served as an example throughout Europe."* (Herendi, 2003, p. 5) The northern wing of the Palace of Versailles was the king's apartment; for example, the bedroom was the setting where audiences took place. (Herendi, 2003, p. 10) Consequently, the novum is the garden, in which not only its construction, but planting of plants are in an exact geometric order (Herendi, 2003, p. 5). *"In the same way that in the absolutism, where the ruler has*

the absolute power over the others, expressed by the palaces, so does the French garden the same over the natural environment. With its regularity and the geometric transformation of plants, the French garden is also like a city." (Herendi, 2003, p. 57) For instance, *"the Schönbrunn Palace, that has a typic Austrian Baroque style creates a solemn, majestic impression."* (Herendi, 2003, p. 18) "*In most cases, the still-standing palaces, gardens, townhouses and urban palaces are still usable today. Some of them (Buda Castle, Vác, Székesfehérvár, Eger, Győr, Sopron) define the cityscape".* (Herendi, 2003, p. 23)

The Classicism's essence is its noble simplicity quiet grandeur and often involving the imitation of Roman triumphal arches. *"Special characteristic is the precise, rational composition, the well-calculated lively movements and the mythological figures."* (Herendi, 2003, pp. 62-66.) It conveys dignity, authority and it is associated with the 18th and 19th centuries. It represents the rule of law and the decline of church prominence. The national symbol and the nation-state emerge during this period. As reported by Megyeri, *"The age of large public buildings was brought by the rise of the bourgeoisie and explosive industrialization."* (Megyeri-Pálffi, 2020a, p. 563) Characteristic buildings of this era are the parliament, the courthouse, and structures referring to national history, all while incorporating classical antique forms, too. In accordance with Megyeri, in the bourgeois 19th century, the political representation of urban power is determinate (grand halls, grand staircases, ceremonial facades), in the 20th century, the exterior of town halls are transformed, because they look alike office buildings, where functionality is primary and not representativeness (Megyeri-Pálffi, 2020a, p. 564). In modern administrative buildings are in that style here, in Hungary, where the customer area is given significant emphasis and a customer-oriented approach, such as government service window. *"They demand the creation of bright, transparent, mechanized solutions and, not least, comfortable spaces."* (Megyeri-Pálffi, 2020a, pp. 564-565)

In the era of historicist eclecticism, the system of parliamentarism solidifies, the role of the parliament increases, and tradition and national consciousness emerge. It is about from the first half of the 19th century to the early 20th century. In this period appears the problem of integrating new buildings into the urban landscape. There are several styles in this time, thus because of the simultaneity of different architectural styles - for example, during the construction of Vienna's official-government district in the 1880s. Near to the neoclassical parliament, a town hall with Gothic elements was built (Theophil Hansen), and the Burgtheater exhibits Renaissance features. Nietzsche referred to this as the *"masquerade ball of styles."* (Pataki, 2002, p. 7)

> *"In general churches were built in Gothic form, theatres borrowed Renaissance and Baroque motifs, the palaces of legislation with Renaissance and Classicism*

(the Gothic-style London Parliament and the Budapest Parliament, which mixes Baroque spatial structure with Gothic details, are exceptions that reinforce the rule)." (Pataki, 2002, p. 8)

The expression of the branch of power is increasingly significant, further strengthening national identity and its symbols. During this period, the Westminster in London, the Reichstag in Berlin, the Hungarian Parliament Building (Steindl Imre 1881-1902), and the United States Capitol in Washington, D.C. were constructed. Here, in Hungary in this era marks the monumental architecture of the nation-state, with the construction of St. Stephen's Basilica, Heroes' Square, and the redevelopment of parts of the Buda Castle District (Matthias Church, Fisherman's Bastion, Archive, Ministry of Finance). The materiality of the Hungarian Parliament Building is also expressive, as it was built mainly using Hungarian construction materials by Hungarian craftsmen. Numerous references to Hungarian history can be found, such as the dome's height of 96 meters, commemorating the Hungarian conquest of the Carpathian Basin, the statues of Hungarian kings in the dome hall, and the exhibited frescoes. *"In the Hungarian Parliament Building, various architectural styles and motifs are blended: its floor plan is Baroque, the facade decoration evokes Gothic elements, and the ceiling decorations carry Renaissance features."* (Országház-kalauz, n. d.)

The 1830s is the era of Hungarian history, which is identified as the birth of national culture. The essence of it is in the respect for tradition and not the originality. The educational intent is visible and a desire to restore national consciousness, with a formal toolkit that places the expression of an idea, which is obviously a political category (Révész & Bakos, 2005, pp. 7-9). The Enlightenment brought the realization that in the comprehensible images are the educational power of art (Révész & Bakos, 2005, p. 52).

The modern architecture is related to the shaping of environment and organic architecture, which represent a close unity of the building and its inhabitants, considering the living conditions of the population. Practically in this era the correct selection of usage, functionality and the exact architectural form with serving these purposes is a fundamental attribute (Pataki, 2002, p. 119).

The buildings of the justice are a special category on the field of legal architecture, because on one hand they are involved by court buildings, and on the other hand they include the penal institution or the prosecutor's office. *"Most of our current Hungarian court buildings operate in structures that were established a hundred to one hundred and twenty years ago, maintaining their original purpose."* (Megyeri-Pálffi, 2020b, 177)

The location of penal institution is in a real connection with the prevailing legal philosophy. Retributive power constructs prisons, that symbolize strength and security, causing suffering to the criminal and isolating them from the society. However, from the 18th-19th centuries, the emphasis on human rights marked the end of mutilating, corporal and degrading sanctions and leading to new prison architectural solutions, such as the Ospizio di San Michele Casa di correzione or the vicomte Vilain genti Maison de force (reformatories for juvenile offenders). This gave birth to the star system, symbolizing power and representativeness (Mezey, 2011, pp. 333-335).

From the second half of the 19th century, buildings were centrally located, which were built free from all sides. With the increasing number of cases, the good accessibility and the geographical features are a point, during this period, lower courts worked in town halls, higher courts in chancelleries, royal courts in the ruler's palace. The separation of the judiciary from the administration had the consequence, that it was necessary to build prison near to the courts (Kengyel, 2011, pp. 103-104).

For smaller courts jails were built, while prisons were constructed with criminal courts, tribunals, prosecutor's office in a special common building unity.[2] The court-prosecutor's office-prison complex led to the consequence, that was formed the legal quarters and appeared authorities and offices supporting the operation of the judiciary. The correct choice of geographical location could result aesthetic experience and dignified purposes too, such as a courthouse erected on an elevated site. It can also be symbolic what kind of other buildings were constructed near the court, because with proper design, they can further enhance the character of the court. According to Miklós Kengyel, *"light, and the tone and colour it creates, are extremely strong sources of human emotions. In their environment, the spatial-mass forms always prominently display the emotional factors, such as light and lighting characteristics, resulting in cheerful, joyful, solemn, depressing, or oppressive appearances."* (Kengyel, 2011, pp. 104-105)

In 20th-century courthouse buildings, there is a clear effort to re-establish a connection with the environment returning to the early days, when judges rendered their decisions under oak trees in the open air (Kengyel, 2011, p. 109). Since the second half of the 20th century, the humanization of justice has been the main purpose (Kengyel, 2011, p. 112), which can be created with the correct choice of different architectural styles. For instance, in France with the Palais de Justice and the neoclassicism (Kengyel, 2011, pp. 116-118). In England the Gothic was revived with the Royal Courts of Justice and it can also be seen in the

[2] In Hungary it is a difference between jail and prison, thus a person convicted of a minor offense is sent to jail, but for a more serious crime is sent to prison.

town halls of Munich and Vienna. *"The protruding central sections of the buildings, topped with high gables, as well as the variously sized arched windows and the massive, unbroken roofs, all express the will of power."* (Kengyel, 2011, pp. 120-121) In the view of Wilfried Koch, the selection of architectural style has *"an associative significance: for instance Romanesque for justice, Gothic for town halls and schools, Classical for administration and parliaments."* (Kengyel, 2011, p. 122) Kengyel complements these statements by noting that from the half of the 19th century, Neo-Baroque began to dominate. Its symmetrical facades and domes *"were capable of ruling over their surroundings."* (Kengyel, 2011, p. 122) From the last decades of the 19th century, eclecticism became dominant with that the purity of style were eliminated. It is a new problem: how to integrate the new building into the existing streetscape (Kengyel, 2011, pp. 126-127).

As I have already mentioned, not only the building has a message, but its design and environment too. Three forms of sculptural creations can be classified in court building: firstly, the freestanding sculptures, secondly the reliefs and thirdly the stuccos. The design usually is the depiction of Iustitia, law, Moses, owl and lion (such as the expression of strength) in moreover the specific motifs are peace, war, freedom and law.[3]

The stucco is a popular element of the architecture of the Classicism and Neoclassicism. Mostly appears in the staircases, ceremonial halls and courtrooms of buildings and decorated with white or gold paint. Decorative paintings can be found in these buildings in Egyptian, Roman and Pompeian styles in Eger, Győr, Gyula and Szeged. The famous fresco in Gyula and the figurative secco at the Eger Courthouse are visualized state theory, jurisprudence and even natural sciences. The furnishings, furniture, and coat of arms representations also carry symbolic messages (Dercsényi, 1993, pp. 46-48).

In Takács's opinion court buildings have functional, legitimate and aesthetic significance. They are functional, because they are the space, where the justice is realized. Legitimate, because authority is necessary for enforcement of decision. Finally, they are aesthetic because of the environment and emotions.

Here, in Hungary since the turn of the millennium courts have functioned similarly, but there is a need for modernization. This includes environmentally friendly developments, improvement of comfort levels, the incorporation of audiovisual elements and the other technical advancements. Gergely Lezsovits and Piroska Varga emphasize the thesis that cooperation among participants in judicial procedures can increase if the design of courtrooms considers factors such as air quality, airflow, thermal conditions, acoustic characteristics, lighting,

[3] For example, in the building of Budapest Bar Association. The owl symbolizes wisdom, and it can be found in Budapest, Kaposvár, Cegléd, Gyula, Győr and Dombóvár. The sculpture of Moses can be found in the court of Siklós and Mosonmagyaróvár.

colours, and spatial proportions. Human-centred design, which prioritizes the needs of people, can result in better and calmer communication, thereby making the administration of justice more efficient (Lezsovits & Varga, 2020, p. 331). The message of the law and its procedural aspects have essentially remained unchanged, so the oral, direct, and public trial still has its spatial requirements and functionality (Megyeri-Pálffi, 2020b, 184).

In totalitarian regimes appear a new element the need for emotional manipulation and mobilization. The buildings remain monumental, but there is no aim to seek artistic value. For instance, Hitler banned the display Expressionist, Cubist and Constructivist creations, because he thought modern art is degenerate. Similarly, Stalin believed that abstract forms were unable to communication and representation. The buildings gave a message like authority and using the solutions of Roman traditions. Demonstrating power, strength and glory. I would like to mention the Zeppelin Tribune, because from the perspective of this work has a significance. The Tribune was an important place in the Nazi regime, which was destroyed as a symbol the change in ideology:

> *"The fascist and communist dictatorships' visions of classicism, heroism, and people-centred art, forcibly intervened in the arts and sought to centrally control it, resulting in similar solutions. They tried to suppress any effort that did not align with their directed thinking from the outset. They intended to use art to propagate their system, which they proclaimed as unsurpassable and eternal. Architecture was deemed the most suitable medium for this purpose."* (Pataki, 2002, p. 141)

Nowadays in the 21st century in most of the country it is not a despot or tyrant, but global financial capital is represented. There is almost a competition for the tallest skyscrapers, High tech architecture appears with steel, glass being the favoured materials.

The novum of the modern era is clearly the technological explosion and the emergence of informational power. Although the design of smart buildings is still in progress or waiting on the drawing board for implementation, some countries already have primitive buildings where coordination, data collection, and analysis are central elements.

3. Conclusion

It is not far-fetched to say that soon, intelligent buildings will be constructed because of generative design, and the realization of 3D-printed buildings is not out of the question either. These buildings will prioritize sustainability, climate awareness, and intelligence (smart), as well as the smart city concept, where data collection and analysis will be taken for granted.

This raises the issue of multiple regulatory texts, for example, among the principles of GDPR, purpose limitation, and data minimization are already unsustainable due to the enormous amount of data and storage capacity, as unprecedented data usage and data accumulation occur in a very short time. The cornerstone of smart city developments is complexity and efficiency, where all devices communicate with each other, and everything is considered data. The new industrial revolution requires a new regulatory framework, necessitating a return to legal theory, raising questions about whether we want this revolution, and if so, within what frameworks, and whether humanity has any say in it.

Technological innovations are spreading widely, but careful consideration and adequate handling of challenges are crucial. Utilizing the results of legal theory will be key in establishing the appropriate frameworks, as the expected social impact, the presence and establishment of fundamental ethical norms, and the attitude towards innovation, as well as the assessment of risks and abuses, deserve special attention.

Architecture will obviously adapt to these changes, as historical experiences suggest. The relevance of the legal representation of law through art lies in the following conclusions for the future. Buildings are the objectification of power and carry unique meanings that align with the cultural order of a given society. The 21st century has not moved past the era of power construction; only the nature of power is changing. As law evolves, so does the building. Technology, law, and architecture interact with each other and shape each other reciprocally.

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THE HISTORY OF THE HUNGARIAN MEDIA REGULATION AND ITS POLITICAL NARRATIVES DURING THE POLITICAL REGIME CHANGE (1989-1996)

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ABSTRACT

I have chosen the systemic changes, which took place within the system of the Hungarian electronic media as the topic of my doctoral dissertation. This change was not only a significant point of controversy of the first two parliamentary cycles, but straight after the first elections it accurately reflected the basic lines of division manifest in the Hungarian political space. Studying the basic differences between the bills submitted during the Antall government and the Horn government and how much the ideological divide between the prevailing governing parties became apparent are not devoid of interest either.

It is important to keep track of how the positions of the different parties changed in relation to the Media Act, depending on whether they were on the government or the opposition side of the negotiating table, also how the standpoints of the smaller opposition parties changed, as well as that of SZDSZ, which went through a significant political turnaround, since the role and hardly overrated influence of the free democratic politicians on the process of the elaboration of the law and shaping the political arguments are hardly debatable. The thesis pays special attention to the concept of public service, which was finally successfully created only by Act I of 1996, although the makers of earlier bills had also been concerned about the issue.

KEYWORDS Political changes, media system, Hungarian electronic media, public service, media law

1. Introduction

I have chosen the systemic changes which took place within the system of the Hungarian electronic media as the topic of my doctoral dissertation. This change was not only a significant point of controversy of the first two parliamentary

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cycles, but straight after the first elections it accurately reflected the basic lines of division manifest in the Hungarian political space.

Since this thesis is being written within the framework of doctoral training in political science and jurisprudence, it stands to reason that it focuses on the study of draft bills and the subsequently adopted Media Act, but naturally it also keeps track of the political narrative of the topic, since I have completed my education as a political science researcher. I have been researching the change of the political regime since 2013 within the Research Institute and Archives for the History of Regime Change. I have written and co-authored several books (Fricz & Orosz, 2011; M. Kiss, 2014; Fricz et al., 2014; Orosz, 2017; Fricz et al., 2018) and studies, however, until now I have primarily dealt with the EU integration of Central-Eastern-European countries and Hungarian party history research, therefore the field of the media is new for me.

I have accepted the invitation of Professor Tamás Mihály Révész to compose the history of Act 1 of 1996 according to specified terms of reference and having used my foregoing research experience, I elaborated the previously researched parliamentary committee and plenary session reports by a set of criteria, which have not been studied so far. We limited the research to six different issues, along which the processing of the reports has taken place:

1) The issue of legal form and financial independence of the Hungarian Television and Hungarian Radio;
2) The appointment order of the head of the Radio and Television Office;
3) The debate on the extent of inclusion of foreign capital, anti-monopoly measures and content quotas;
4) The issue of financing the Radio and Television Office and the problem of conflict of interest;
5) The protection of cultural values and the issue of content quotas.

This paper is primarily based on the processing of the official reports of parliamentary committees participating in the elaboration of the draft bill and managing the six-party negotiations, as well as of the minutes of the plenary sessions, but it must include the processing of the documents of ministerial committees and of the motions which have been discussed within such committees. The extensive press documentation in this topic has assisted the understanding of the correlations, the most relevant part of this is indicated in the footnotes.

A fundamental problem is posed by the fact that only the official reports of the committee meetings are held at the Parliamentary Library, the Hungarian

National Archives or at the particular ministries and the motions and bills debated are not appended to them. A significant part of these has not been preserved in the archives at all, therefore these could only be obtained from private collections after lengthy inquiries or not even from there.

A further difficulty is presented by the fact that some parts of the pages typed by electronic typewriters or printed by ink-jet printers around 1990 are illegible, they are damaged due to the degradation of the ink. The documents are accessible on the Internet in scanned format, and I primarily worked from these, trusting that I would progress by having the original copies brought from the storeroom and that perhaps they would be more legible than the digitized version, but unfortunately this did not serve the purpose. Significant passages cannot be processed because of this. It is especially regrettable for instance that Miklós Haraszti's summary of foreign capital ratio cannot be read either, which basically includes the political viewpoint of SZDSZ (Free Democratic Party) on the entire media policy issue, although it would be vital for my research.

During the description of the particular debates the most important objective was to outline the contrasts and antagonisms between the views of the government and the opposition. Besides the legal aspects, the political narratives of the creation of the Act, the political dividing lines, which played an extraordinary role during the discussions and exposing the interests and adverse interests have at least the same importance for me.

I did not endeavour to outline the chronology of the events, as we could fill libraries with literature and press-matter about that. Besides listing the relevant literature on the topic, however, I could only rely for the most part on the official reports regarding the five subject-matters defined in the introduction, since I could not find specific professional publications, only some traces at best, even with the assistance of legal desk officers of the Parliamentary Library's Information Service.

Whilst processing these, I became familiar with the works of researchers who had dealt with the topic earlier, with special focus on the work of András Koltay, who is an expert on the field as well as of Tamás Klein, Gergely Gosztonyi, György Varga Domokos and Sándor Révész, who approached the events of the regime change related to the mass media and their works can therefore constitute the primary literary sources of the present dissertation.

During the research it is very important for me to explore what sort of position the successive party of MSZMP took up and how the positions and standpoints of the historical and newly formed parties were settled regarding this issue. Studying the basic differences between the bills submitted during the Antall government and the Horn government and how much the ideological divide

between the prevailing governing parties became apparent are not devoid of interest either.

It is important to keep track of how the positions of the different parties changed in relation to the Media Act, depending on whether they were on the government or the opposition side of the negotiating table, also how the standpoints of the smaller opposition parties changed, as well as that of SZDSZ, which went through a significant political turnaround, since the role and hardly overrated influence of the free democratic politicians on the process of the elaboration of the law and shaping the political arguments are hardly debatable.

It was an important undertaking of the research to examine what type of media system had evolved in our country after 1990 and what effect the activity of the Constitutional Court had had on it, although this paper primarily focuses on the development of the circumstances of national public radio and television broadcasting.

The thesis pays special attention to the concept of public service, which was finally successfully created only by Act I of 1996, although the makers of earlier bills had also been concerned about the issue. The work, through the representation of literature on the topic, establishes that public service on the one hand is political and state influence and control and on the other hand, a system of ideas and values, which possesses specific social functions and cultural roles (Terestyéni, 1997, pp. 91-92). Certain basic principles of public radio and television service may be determined by the features of its scale of values. These include unlimited access for the public and geographical coverage, compliance with the main requirements, diversity of services, respect for minorities, guarding of European as well as national culture, language and identity, conformity with high professional standards (Gosztonyi, 2003, p. 3; Koltay & Nyakas, 2012, pp. 246 & 264; Koltay, 2007a, pp. 25-33) and naturally, last but not least, compliance with the requirements of a democratic political system, regarding the right to balanced information and orientation as well as impartiality and objectivity (McQuail, 2003, p. 142; Jakab, 1995, p. 58; Gosztonyi, 2003, pp. 3-4; Koltay & Nyakas, 2012, pp. 245 & 260; Terestyéni, 1997, pp. 92-93.).

The era of technological innovations which took place in the 1980-ies created the significantly cheaper and more efficient instruments of electronic broadcasting, and because of this, the different media companies were mushrooming, the market and profit orientation of which wanted to meet the demands of the masses. Following this, the idea of public service was not just relegated to the background, but by the turn of the millennium it was practically questioned, resulting in numerous political and professional disputes (Antal, 2011, p. 151).

However, in my view, the service of public interest bears a transcendent significance and is quite a different matter than satisfying business interests, since public interest is always superior to the interests of individuals or a narrow business circle.

2. The issue of the form and financial independence of the Hungarian Television and the Hungarian Radio

The Hungarian Radio and the Hungarian Television had to remain two of the basic institutions of the Hungarian mass communication system even after the regime change, within the legal frameworks which ensured the political independence of the two public institutions, and besides independence from and in relation to political power relations, created an institutional form that eliminates the financial dependence on the general budget, but nonetheless ensures the operational prerequisites for providing public service tasks.

Originally, at the time of the first parliamentary cycle, two separate concepts were formulated, which showed several overlaps besides their basic differences. According to one version, the Parliament would have established two public foundations, which would create the Hungarian Radio and the Hungarian Television as a publicly financed public foundation institution, within the deadline specified in their deeds of foundation. According to the other idea, the boards of trustees of the public foundations would establish joint stock companies and the public service radio and television would operate in this legal form in the end.

Besides the legal form, the justification for the budgetary status of the two institutions was also an issue, which assumed a potential political influence and could have implied a blackmailing potential at the annual budget debates.

The pros and cons of political dependence and the pros and cons of budgetary dependence constituted the dividing line at the debates between the first democratically elected government and the opposition and this dividing line accurately reflected the ideological differences between the civic-conservative and liberal conservative political forces.

The draft bill which fell through in 1992 envisaged the legal form of the institutions as public foundations and although it removed them from the budgetary institution status, in reality it did not put an end to the dependence of the radio and the television on the central budget.

The legal form of the institutions of the radio and the television provided an inexhaustible source of disputes at the 1995 autumn debate as well. The politicians at the negotiating tables ran the same circles in succession in 1991,

1992, 1994 and 1995 as well. The "public foundation versus joint stock company" debate does not reveal anything new over hundreds of pages of committee reports. In the end an agreement was reached in a somewhat interim form, and the public foundations established by Parliament created joint stock companies for a specified time, which provided wider opportunities for management and profit-making economic activities.

Setting out from the fact that financial dependence and political dependence are aspects which are not separable from each other, the paper arrives at the conclusion that the Media Act passed in the end did not assure these in either its appointment order or its financing system, on the contrary. The appointment order created the total politicizing of the institutions, whereas the financing system wishing to avoid political dependence did not function in the first few years either, as the Programme Servicing Fund did not come into existence despite the legal specification, and the organisational restructuring of the Hungarian Television did not take place either, thus the wasteful administration and the sizable corruption continued within the institution.

However, until an institution is unable to support itself by self-sufficient management and relies on the support of the general budget, it cannot be called independent. Especially not in a young democracy where the political traditions brought with them a mass media hog-tied by the central power.

3. The appointment order of the head of the Radio and Television Office

After the regime change public service television channels were envisaged to be in public ownership by all political parties (Országgyűlés, 1991, pp. 44-50). Since personalized social property is difficult to legalize, they assumed that the legal status and the control system together would be able to ensure public service televisions remaining publicly owned, independent, being managed and controlled by the public.

In relation to the control system there was full agreement in that some sort of public control should be provided as well over the institutions, which, based on a German example, could mean the representation of socially relevant groups, that is they tried to originate the nature of public control from public property. Thus, the public control of public radio and television broadcasting had to be done by a control panel which would ensure the expected independence in all aspects also by the representation of relevant groups in part (Országgyűlés, 1991, p. 63).

In the 1992 proposal, which failed in the end, an advisory board became the trustee of the assets of each of the public foundations, and the government

parties as well as the parliamentary panels of the opposition parties jointly could have delegated three members each. The public foundation broadcaster would have been directed by the president as a one-person responsible leader. Act LVII of 1990, namely the Appointment Act would have regulated the appointment and dismissal system of the president and vice presidents of public foundation broadcasting service.

The supervisory board of the public foundation broadcaster would have supervised the activities of the public broadcaster comprehensively and theoretically, which would have been determined by the act and the Public Service Regulations. The government parties as well as the parliamentary panels of the opposition parties jointly would have delegated three members each into the committee and the government parties as well as the parliamentary panels of the opposition parties jointly could have asked three widely respected persons additionally each to participate in the Committee. On top of that, the government would have delegated a member, and this is where the representation of the community organizations would have appeared according to the original ideas. The draft bill listed the organizations entitled to delegate one by one.

Another important element of the system of public service institutions in the 1992 bill is the Radio and Television Office (RTH), which would have been an administrative body of national jurisdiction performing specific official tasks and which would have been established as a separate publicly financed institution. The so-called Social Council of the RTH (RTH-TT) would have invited tenders to fill the position of the president of the RTH. RTH-TT would have submitted the list of candidates bearing two-thirds support to the prime minister, from among whom the prime minister was authorized to select and appoint the president.

The short summary of the system of institutions shows that those outlined by the 1992 bill did not realize in any way the requirement of political independence. The political parties and the member of the government delegated into the supervisory committee of the public foundation all guarantee the absolute political and professional dependence on the government and the parliamentary parties.

During the negotiations in the second cycle, in the autumn of 1995 they already managed to reach consensus in that the radio and television operating in state ownership at the time would operate as public foundations having founded joint stock companies following the coming into force of the act, however, it was more difficult to agree on how many public foundations would cover these institutions. MDF, KDNP, FKgP and MSZP proposed the establishment of three public foundations as well as three advisory boards attached to them, and in the

case of Duna Television they placed special emphasis on the necessity of delegating members of Hungarian organizations across the border into the advisory board (Országgyűlés, 1995d, p. 16).

SZDSZ however, was originally in favour of the establishment of a central institution. The Polish solution was mentioned as an example, where the authority equivalent to ORTT was also the advisory board at the same time and had ten or so members altogether. Nevertheless, the other parties insisted on having one advisory board per institution, that is three altogether, headed by senior management staff being set up at par from a political viewpoint. This would be some sort of executive committee within the board, a professional staff with appropriate remuneration, who possess adequate experience and expertise for the operation of the institutions.

The other parts of the advisory board would operate as some kind of general assembly, not in full-time positions and would consist of delegates of different professional and community organizations (Országgyűlés, 1995d, pp. 27-28). This is where the representation of community and professional organizations appeared which also emerged in the first cycle and there seemed to be an agreement on the notion that the ratio of persons delegated by the parties could not exceed the ratio of professional and community delegates, namely the political sphere should not intrude in the work of the advisory boards to a higher degree than this.[2]

The studies conducted on the effects of the act uniformly point out that the political influence did not cease in the public media, although the act formally prohibited it and tried to exclude it by the method of financing (Monori, 2005, p. 276; Cseh & Sükösd, 1997, p. 42; Farkas, 1997, p. 214). It was to no avail that the filling of presidential positions was tied to tenders, the decision depended on the agreement between the political parties. It needs to be added that the elimination of political influence was also hindered by the fact that some of the board members delegated by the parties „fought through" almost six years of the media war, therefore regardless of being professional or having parity, these delegates could not have made politically neutral decisions, even if they wanted to. Partiality was already a foregone conclusion at the time of appointment (Farkas, 1997, p. 214; Gellért, 1998, p. 298; Molnár, 1998).

4. The extent of raising foreign capital, on anti-monopoly measures

Act I of 1996 tried to restrain the formation of media monopolies, since the freedom of the means of mass communication depends on the regulations

[2] This was also the subject of the committee meetings on 3, 4, 5 and 9 October.

regarding ownership as well. The media act of a given country is qualified to express these values through the regulations in respect of the monopolies. In the first cycle after the regime change the government tried to ascertain these values through a high degree of restrictions on letting in foreign capital and strict quotas of programme content. However, in the second cycle other types of regulatory aspirations appeared regarding de-monopolization, by which they tried to hinder the ownership concentration of the media market. According to § 86 (5) of Act I of 1996:

> *"§ 86 (5) Any person who is entitled to broadcast on the basis of a contract or notification may simultaneously be entitled to operate not more than:*
> *a) one national programming service; or*
> *b) two regional and four local programming services; or*
> *c) twelve local programming services."*

The question is whether this provision can prevent the formation of large communication monopolies. According to Cseh and Sükösd the answer is definitely no. In order to interpret the example, we must precisely define the concepts of national, regional and local broadcaster. The act classifies local broadcasters as those whose coverage area has a population of no more than 100 000 inhabitants per year and no more than 500 000 inhabitants per municipality. In the case of regional broadcasters this figure means that less than half of the country's population may fall within a coverage area. Therefore, if someone owns two regional televisions and four local radios at the other end of the country, then in an extreme case even seven million inhabitants may have access to the services provided, which means a significant advantage as opposed to the other providers. The anti-monopoly provisions of the Act did not prevent this by themselves, but the ORTT could (have) prevent(ed) it by a circumspect evaluation of the proposals at the time of awarding the broadcasting licences (Cseh & Sükösd, 1997, p. 195).

Besides the economic efficiency of size and selection, the evolvement of media concentration is influenced by the forced growth ambitions of the media companies, even to the detriment of profitability, the effort to reduce market risks and the aspiration to prevent unfavourable economic effects (Gálik & Polyák, 2005, p. 323). Besides business aspects though, the moral and political influence within the given society should be weighed as well, which is also an important motivating force for the media companies. The effect on people's thinking, their shopping and consumption preferences or even their political decision making and culture places huge social and social capital into the hands of these businesses besides the money, which can obviously again be exchanged for financial gain. Thus, it is not only about increasing economic

power, but the interaction with the social environment cannot also be overlooked either.

Within the concept of pluralism, we differentiate between internal and external pluralism, which originates from the so-called third television resolution of the German constitutional court and was later taken over by the definition created by the Council of Europe (Bundesverfassungsgerichts, 1981, p. 326). Internal pluralism demands a balanced state in relation to the programme content of a television or radio, or in cases of impartiality and disputes, by presenting completeness of the relevant views and opinions. The requirement of internal pluralism is primarily tied to public broadcasting.

External pluralism demands the diversity of views and content offers in respect of the entirety of the media system or their balance and does not demand internal pluralism separately regarding each broadcast (Nyakas, 2012, p. 53).

The problem of media pluralism and media concentration appeared in the history of EU legislation due to the globalization processes arising in the field of the media already at the beginning of the 90-ies, because of which the European Commission published the so-called Green Paper dealing with the topic in 1992, which examined the connections of pluralism and media concentration (Commission of the European Communities, 1992; Nyakas, 2012, p. 54).

Horizontal expansion connects the markets in a geographical sense, whereas vertical expansion means the mergers between companies operating in each area or acquisitions, which increases the safety of operations of large companies, decreases the opening of the competition, and by this strengthens the opportunities and the degree of control over the markets (Gálik & Polyák, 2005, p. 323).

In the vertical and diagonal expansion, the so-called cross ownership can be caught out through the mergers, which can result in such impenetrable ownership structures in the media systems of the different countries, which are quasi untraceable and difficult to be restrained or caught up even by the authorities supervising the media – Act No. 1 of 1996 failed to do this as well. The products belonging to the same corporate circle but launched on the market in different sectors are capable of seizing huge market segments by strengthening one another, beside whose multinational size and global influence the smaller companies are left with only a fraction of opening (Sánchez-Tabarnero, 1993; Gálik & Polyák, 2005, p. 328; Doyle, 2002; Farkas,1997, p. 211).

The pluralism of the media scene and the diversity of media coverage are key concepts which are present in different forms and emphases in the legislation of

the different countries. The diversity of media coverage reflects the diversification of sources, which depends on the structure of the proprietary circle operating radio and television as well as the scale of values of them and of the workshops creating the programmes (Gálik & Polyák, 2005, p. 326). As a result of this, the less concentrated the ownership structure of a media system is, the more varied the programme offer and the content offer can be, nevertheless, the globalization trend affecting also the electronic media makes a negative impact on it, which leads to the unification of programme contents and to becoming heavily tabloid, and reduces the possibilities for diversity or uniqueness – not to mention the possibilities of effectiveness of traditional cultural values.

The primary task of anti-monopoly regulations is the prevention of abuse of economic superiority at the expense of media pluralism and media offer, which allows for more versatile information gathering opportunities for people.

§ 86 (5) of Act I of 1996 does not just refer to the broadcaster, but also to the companies in the background, emerging in the ownership structure of the broadcaster:

> *"§ 123 (1) With the exception of specialized broadcasters, broadcasters with national broadcasting rights and those holding a controlling share therein may not acquire a controlling share in another company that is engaged in broadcasting or program distribution services.*
>
> *(2) The same company may acquire a controlling share in an organization holding broadcasting rights subject to the restrictions specified in Subsection (5) of Section 86."*

Therefore, not only the business possessing direct proprietary rights in broadcasting needs to be taken into consideration, but any further companies which are proprietors in these companies as well. However, as I have already mentioned it: tracking these is almost impossible, as cross ownership may result in such complicated ownership structure which is difficult to follow or not by any means traceable by legal instruments. This is partly because multinational companies simply do not comply with their data reporting obligations and their enforcement cannot be ensured merely by the force of law and the legal means of the authorities. Consequently, through direct and indirect ownership, the media companies gained influence in several programme providers, to a far greater extent than it would be possible by the original intention of the law.

5. The issue of financing the Radio and Television Office and the problem of conflict of interest

Since the regime change, the awarding or withdrawing central budgetary support has been a political weapon in the hands of the parliament against the Hungarian Radio and the Hungarian Television. The Antall government rejected the application for bonus of the Hungarian Television for political reasons in the 1991 budget debate, and one year later even the granted budget support was sequestered, again for political reasons, in order to finally achieve the dismissal of Elemér Hankiss as the head of Television. By 1994, the Hungarian Television was indebted to such an extent that the mere functioning of the institution became uncertain – I have already mentioned these in the chapter about financing of my paper.

Therefore, the primary goal of the Media Act was to relieve the public media of financial defencelessness and to create a financing system, which would make public media independent from the state budget to the greatest possible extent, in a way that the financial resources of the institutions could be planned and calculable years ahead. Because of this a complex system evolved, which consisted of a certain proportion of the appliance operating charge, the appropriate amount of state subsidy of broadcasting costs, entrepreneurial activities and advertising revenues.

In respect of financing, the aim of the Act was to adjust financial opportunities to the particular types of institutions. In order to fulfil programme structure requirements, it provided the kind of financial support, which did not signify direct state subsidies, but by ensuring a share of the Broadcasting Fund and by dispensing with certain financial obligations, it endeavoured to provide some sort of safety for the public broadcasters (Cseh & Sükösd, 1997, p. 27).

The most significant income is realised by advertising for all media, however, the Act set quantitative and content limits to its opportunities according to international trends. It determined the possible ratio of commercials within the programme structure and in certain cases it introduced content bans on certain topics.

Back at the six-party negotiations the parties clarified that it would be the 1996 interim period when public media were to struggle, and their financing would be totally uncertain. Accordingly, by the end of 1996 both the Hungarian Radio and the Hungarian Television continued to roll a serious set of debts before themselves. The Hungarian Radio planned an 8.7 billion HUF revenue, but it was not sufficient for its 9 billion HUF expenditure, therefore the missing amount was replenished by the central budget. This did not include the 2 billion HUF, which was owed by the Radio to Antenna Hungaria in the form of broadcasting cost,

of which only a part was compensated by the central budget. Another problem was presented by the fact that the appliance operating charge was paid less and less by the consumers and the debts were difficult to collect, and also the advertising revenues had been over-planned, of which only a fraction rolled in in the end (Farkas, 1997, p. 216).[3]

The financial situation of the Hungarian Television was much more difficult to survey. Ádám Horváth took over the institution in 1994 with a huge volume of debt, and he was unable to change the situation in effect, partly due to the lack of law. In 1996, the planned budget of the Television was 24 billion HUF, of which altogether 21.9 billion HUF rolled in finally. Out of this, the extent of state subsidy was 3 billion HUF. Although the Television managed to grab a significant segment of the advertising market, it accumulated such a great quantity of unpaid invoices and tax liabilities over the years that these revenues could not counter-balance the huge shortfalls for the time being, and essentially the institution continuously manoeuvred on the verge of insolvency (Farkas, 1997, p. 217).

We must add that in 1996 the two institutions could not count on the concession fees, which would have functioned as a ventilator for the budget, since the tenders have not been completed yet at the time.

Thus, in the first year the public media transformed into joint stock companies stood on really wobbly feet and essentially it was up to the benevolence of the government whether they went bankrupt or were forced to conduct mass downsizing or to narrow down airtime.

The passing of the Media Act in the short run resulted in a balanced condition only for Duna Television, where the significant share of appliance operating charges and large-scale subsidies for broadcasting costs proved to be a reassuring start.

Péter Molnár in his article of April 1998 – that is more than one year after the law had come into force – wrote (Molnár, 1998, p. 17) that the Broadcasting Fund, which should have supported the production of public service programmes and the operation of non-profit broadcasters, still did not start at this time (Orsina & Székelyné, 1998, p. 126). Thus the financing system only worked in part in the first years and even the financial experts could not tell at that time when the system built by the law would come into being and whether it would be financeable. One of the reasons for this was that the law prescribed a much

[3] Let us note that from 2002 the citizens were not required to pay the appliance operating charge, as the government overtook this liability (Origo, 2007).

greater role-taking than the previously undertaken amount by the central budget.

They also had to prepare for the scenario that in 1997, when commercial radio and television services were to start, the share of the advertising market would be significantly smaller for public services, therefore in the following years a drastic reduction of these revenues would be expected as well. Therefore, even having the law in effect, the financial situation of the institutions was still not clarified, and the letter of the law did not offer a reassuring alternative for the following financial year either.

6. The protection of cultural values and the issue of content quotas

In chapter II/2 of my paper I described the notion of public services in detail, as well as the conflicts of public and commercial broadcasting, of which content restrictions constitute a relevant part. The discord between the two sectors generated serious political and economic disputes in every country and influenced the content of regulations, *"the intention of the legislator in respect of formulating the concept and the institutional system of the Media Act."* (Cseh & Sükösd, 1997, p. 29). The aim of any media act is to regulate the relationship of public service and market-based media organizations, by ensuring operability and financial viability. A part of this is the formation of requirements regarding programme structure, during which we must also differentiate between programme types of public broadcasters, commercial or the so-called non-profit specialized media (Cseh & Sükösd, 1997, p. 29). The same refers to the beginnings of Hungarian media regulations following the first democratic elections, when the primary goal of the legislator beyond creating media pluralism was to create legal security within the media, by elevating the state of affairs previously regulated at the level of Hungarian Television statutes and resolutions to the level of the law, which I described in detail in the introductory essay of this present dissertation.

The so-called content quotas formed part of the regulation, about which there were extremely intense debates, and these conflicts truly reflected the deep divide in values between the government and the opposition. One of the cardinal points of the political skirmishes, called media war by the public, was a very deep ideological, difference of the scale of values, which meant a gaping abyss between the conservatives and the left and the liberals. This was the so-called vernacular-urban antagonism which emerged in the 20-ies and 30-ies of the last century and although latently, but survived communism and during the regime change it became one of the most important drivers of party dissent (Fricz, 1999, 2017). This is what we can trace the continuous political conflicts

between the Hungarian Democratic Forum and the Alliance of Free Democrats back to in the 90-ies, which interspersed with all spheres:

> *„The radical nature of discords between the vernaculars and the urbanes was significantly accountable to the fact that their view of the world, their conception was simply different. The urbanes, if they are liberals, are cosmopolitan, and if they are socialists, they are international, whereas the vernaculars are strikingly marked by a national-conservative disposition. Actually, it is more precise to call this a dispute between globalists and nationalists"* (Fricz, 2017).

These differences during the media war manifest themselves in the content issues of the television and radio programs in a cumulative way.

The government wanted to achieve by the content quotas to provide an ongoing leading role for the protection of Hungarian culture, Hungarian films and Hungarian-produced programmes in the electronic media and to ensure that the effect suggesting strongly questionable values of the media coming from the West should only gain admittance into the homes of the Hungarian families in a certain proportion (Koltay, 2007b, pp. 26 & 160; Koltay, 2007a).

The left and the liberals were much rather characterized by a West-friendly mentality, and they emphasized that Hungarian people wanted to be entertained when they sat in front of the television or the radio, above all they wanted to watch American movies and modern programmes and were not interested in the programmes which had been considered boring, even up to that time. The era of merely public television broadcasting had passed, people longed for something different, and the gates had to be fully opened towards Western media. They did not manage to agree in that people's tastes could be formed and their needs evolved partly according to what was offered to them.

The liberal opposition accepted what had been said about the protection of cultural values. They also accepted that it was necessary to insist on the quotas protecting the development of Hungarian production capacity and Hungarian cultural values in the programme policy stipulations of the law, but they rejected all forms of restrictions in ownership and considered them harmful. They held the view that if such provisions were to be included in the draft bill, these would not reduce but much rather increase the level of state interference in the media, and in fact, state administration type of press companies would gain ground in the market. This is dangerous in an era when we were about to dismantle a sector with government majority (Koltay, 2007b, pp. 26 & 160; Koltay, 2007a).

During the second cycle they were discussing the content quotas in relation to the distributable frequencies and there seemed to be consensus in that the law had to prescribe content quotas as well, i.e. in what proportion should

programmes of public interest, programs produced in Hungary and in Europe and films made in Hungary be broadcast on the two new commercial channels. According to the original plans these quotas for channel 2 would have been identical to those of TV1. However, a debate unfolded about this, because TV2 was not a classical private station as the new programme starting on channel 58, where theses constraints prevail less, but it could not be treated as a traditional public service channel either. That is precisely why it occurred that stricter quotas should be determined than in the case of channel 58, but according to the professionals it was impossible to produce so many Hungarian films and programmes made in Hungary to comply with this requirement (Országgyűlés, 1995b, p. 7).

It also arose that as channel 2 operated via satellite, only 30 to 35% of the population were able to receive the transmission. As a result of this, in significant parts of the country public broadcast was being transmitted through one channel only. The only way to improve this ratio was to press for urgent expansion of the cable system, but this resulted in a higher rate of accessibility to the channels only after several years (Országgyűlés, 1995a, p. 22; Országgyűlés, 1995c, p. 8).

7. Conclusions

In 1998 Gábor Gellért Kis wrote that the greatest error of the Hungarian regime-changing politics had been that they had sensed the media not as an object, but as its central objective and had wanted to regulate it not according to the fundamental principles of democracy, but it had created the regulations regarding the media in order to fulfil its own assumed or real mission (Gellért, 1998, p. 296). The aspirations of politics in relation to the media pointed far beyond what it would have been entitled on the basis of the democratic elections, and the media also undertook political tasks, which stretched beyond the scope of activities of free press and the media.

Although the coming into existence of the first Media Act put a stop to the media war conditions for a while, which both the profession and politics, as well as the viewers were fed up with, but it did not resolve the conflict itself between the „spheres", it simply transferred the battle ground from the parliament in between the walls of the public media institutions and ORTT (Gellért, 1998, p. 65). It was to no avail that the law seemingly eliminated the influence of politics on the affairs of the media, as a matter of fact, not one decision was made, the birth of which was not shadowed by political interest to the detriment of professional aspects. Thus, the system of institutions created did not terminate political influence, but much rather institutionalized it and put it in a legal framework (Székely, 1998, p. 305; Halmai, 1997, p. 94; Gellért, 1997, p. 70).

Consequently, the system of institutions became the instrument of political dependence and the stumbling block for a really free mass communication.

In the 20th century mass communication turned into a quasi-industry and transformed political public sphere to such an extent that it became not only the territory of a narrow group of specially trained people, but the participants of (internal and external) political processes lay claim to it as well (Halmai, 1997, p. 92). This is how mass communication – written and electronic press equally – became an inter-sphere between politics and society, a field where the different political parties do not only battle against one another, but also fight for the attention and the votes of the citizens. Based on this, the history of the first Hungarian media law is nothing but the history of mistrust of the political forces operating at the time of the regime change against one another, which can be explained by the lack of democratic traditions of our country, but as Gábor Gellért Kis put it: no one can be excused from their responsibility.

Following the invitation of the first tender, the scandals of extending broadcasting licences (Smuk, 2011, p. 268) and the news in relation to the digital change-over (NMHH, 2018; Rozgonyi, 2012) indicated that although the media war came to rest by the passing of the Media Act, but it did not mean its end. After the 1998 parliamentary elections, by the formation of the Orbán government Hungarian radio and television services entered a new era, but the history of this cannot constitute the subject of this paper. However, it offers wide perspectives for the continuation of research. The undertaking of the dissertation was to write the history of the series of negotiations of the two parliamentary cycles after the first democratic elections and of the birth of Act I of 1996. The research fulfilled its commitment along the subject matter given in the introductory study, trusting that the new knowledge acquired may provide further directions to the research of the history of the Hungarian media, e.g. with regards to the comparison of the media systems of the ex-socialist countries as well.

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SMART CONTRACTS: A COMPREHENSIVE ANALYSIS OF VULNERABILITIES AND EUROPEAN MEASURES

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ABSTRACT

Smart Contracts form a predominant tool for today's operations, and it is existing in practically all fields like health, banking, investments etc. It is an alternative that matches the rapidity, and the easiness required by the new era. But legal adjustments are needed to preserve the rights and confront the challenges that come with it.

KEYWORDS Smart contracts, blockchain, European Union, regulations

1. Introduction

Accessibility and facility are the requirements for our era. The fast-paced life made our system establish an updated process that can come up with new factors. As many fields changed their way of operation, law also has been changing to reach the necessities of this new world either by creating new sections or switching rules from traditional form to an updated form.

This paper aims to explore the role of legal technology, smart contracts, in the future contract law and their impact on the legal system. The emergence of new technologies is reshaping how contracts are written, signed, and conflicts are settled, bringing up various legal and ethical concerns. By examining these issues closely, we can gain insight into the capabilities and constraints of legal technology, which can inform the evolution of civil law in the future.

2. Smart Contract: a new technology built upon blockchain

Before jumping directly into emphasizing the term "smart contract", it is essential to define the contract, which is an agreement between parties, creating mutual obligations that are enforceable by law (Committee on Payments and Market Infrastructure, 2017, p. 2).[2]

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[2] DLT refers to the processes and related technologies that enable nodes3 in a network (or arrangement) to securely propose, validate and record state changes (or updates) to a synchronized ledger that is distributed across the network's nodes.

The fundamental components needed for a contract to be legally binding include mutual agreement demonstrated through a valid offer and acceptance, fair consideration, capacity of the parties involved, and compliance with legal requirements.

In certain jurisdictions, consideration may be fulfilled through acceptable alternatives. Potential solutions for breaching a contract encompass general damages, consequential damages, reliance damages, and specific performance. The concept of smart contracts was first developed in 1994 by Nick Szabo, an American computer scientist. Szabo defined smart contracts as computerized transaction logs that execute the terms of a contract. It involves recording contracts in the form of computer code that would automatically activate when certain conditions are met. When these triggering elements occur, the encoded contract executes itself. This operation shows it as a software, the smart contract is more of a technology than a legally binding contract in the traditional sense. This innovation enhances remote transactions between completely unrelated parties without any intermediate authority through blockchain.

A blockchain or "distributed ledger technology" (DLT) , is a distributed database that keeps an ever-expanding list of organized records, known as blocks. These blocks are connected through cryptography, with each block containing a cryptographic hash of the preceding one, along with a timestamp and transaction data. Functioning as a decentralized, distributed, and public digital ledger, a blockchain records transactions across numerous computers. Its design ensures that altering any past record necessitates changing all subsequent blocks and gaining consensus from the network (Catalini, 2018). This smart contract can operate without being tied to a central authority. All assets requiring central authority can be exchanged on a blockchain: financial assets, property titles, etc. It's the trust provided by the blockchain that enables it to become a tool for disintermediation. This disintermediation has the power to reduce costs and make exchanges more seamless.

According to Nick Szabo:

> *"A smart contract is a computerized transaction protocol that executes the terms of a contract. The general objectives of smart-contract design are to satisfy common contractual conditions (such as payment terms, liens, confidentiality, and even enforcement), minimize exceptions both malicious and accidental, and minimize the need for trusted intermediaries. Related economic goals include lowering fraud loss, arbitration and enforcement costs, and other transaction costs."* (Szabo, 1997)

Trying to seek the differences between traditional contracts and smart contracts, the enforcement is based on a blockchain which needs a consensus mechanism

to generate the contracts. The consensus remains a main stone in both traditional and smart contracts but in different shapes. There are two main consensus mechanisms: proof-of-work and proof-of stake. If it is a proof of work "PoW", parties agree through using their computational power.[3] The agreement will be incorporated into and upheld by a blockchain if the majority of the computational power within the blockchain agrees to it. As per Satoshi Nakamoto, the pseudonymous creator of Bitcoin, through a proof-of-work mechanism, individuals express their acceptance of valid blocks by dedicating their CPU power to extending them and reject invalid blocks by abstaining from working on them.

This protocol requires a verification process handled by someone called "the miner" to resolve the cryptographic question quickly to get the tokens as a reward.

The second way is the proof of stake "PoS", it depends on the available amount in the digital wallet of the validator or the "stake". It is like a lottery game where the wealthiest in the system, the higher the probability of becoming the block leader and winning the validation as it is chosen by the system.

The second difference is the language used in preparing the contract is the language. It is switched from a legal composed clause to a computer language that can be stored in the system as a code .

Szabo says that:

> *"The basic idea behind smart contracts is that many kinds of contractual clauses (such as collateral, bonding, delineation of property rights, etc.) can be embedded in the hardware and software we deal with, in such a way as to make breach of contract expensive (if desired, sometimes prohibitively so) for the breacher. A canonical real-life example, which we might consider to be the primitive ancestor of smart contracts, is the humble vending machine. Within a limited amount of potential loss (the amount in the till should be less than the cost of breaching the mechanism), the machine takes in coins, and via a simple mechanism, which makes a freshman computer science problem in design with finite automata, dispense change and product according to the displayed price."* (Szabo, 1997)

He installed his theory on the example of a vending machine where the fact of inserting the coin will result in the automatic delivery of the products. This implies that every smart contract includes a collection of rules that initiate

[3] Blockchain computation involves carrying out the instructions contained within transactions or smart contracts on the blockchain. This process demands substantial computational power and energy, particularly for blockchains that handle intricate smart contracts. Block producers, such as miners or validators, typically perform the computation process, enabling state changes by executing transaction.

predefined responses automatically, matching specific conditions within a deterministic computational log.

The smart contract, by guaranteeing the permanence of transactions, will help in foreseeing the different terms of the contract. Essentially, any alteration, deletion, or removal of an entry from the ledger requires consensus from all network members, ensuring the high security of the blockchain. Smart contracts will enable the automated execution of various agreements such as insurance contracts, transportation agreements, loans, shareholder agreements, or preference agreements. Self-executing contracts faced a hurdle in transfer assets without relying on a trusted intermediary (like a bank or notary). However, blockchain-powered smart contracts have changed this situation to having the contract terms, represented as lines of computer code, stored on the blockchain and executed automatically. These terms are immutable once recorded but are available for all stakeholders to review.

3. Legal risks in smart contracts

Cryptography was the tool for the blockchain to ensure the integrity of transaction terms. This aspect is particularly intriguing for the field of law. Through this operation we will be able to prove the existence of agreement and commitments made by the parties involved. As a ledger, the blockchain guarantees traceability of all operations conducted, along with different transaction dates. Therefore, it will be impossible to deceive or lie about the fulfilment of contract conditions which will provide the right information with no need of proof.

Another interesting aspect regarding the "preservation" of the ledger is viewing the blockchain as an archive. Not only is it unchangeable, as mentioned earlier, but the blockchain also retains all its data, stored in storage nodes. Everyone can see it, and everything is retrievable. It's unlike a paper contract, which can be (and sometimes is) lost. Thus, by definition, the blockchain fulfils the publicity conditions inherent to a contract. Logically, if everyone has access and can see what happens on the blockchain, then the obligations of publicity and publication are met.

These elements are surely facilitating but doesn't still make the smart contract legally right?

Usually, a contract implies an offer, an acceptance meeting the conditions of validity like consent, capacity, absence of fraud, absence of error, stated in the national Civil Code but here the informatic code is the law Logically, the question arises: can a smart contract fulfil these conditions of the traditional contract?

Also, the identification of the contracting party is blurry. As mentioned earlier, each blockchain user possesses a private key, which is crucial for certifying their actions on the blockchain. This private key can be stolen or lost, or it can be held by multiple different individuals (similar to multiple people using the same bank card, knowing the PIN). Additionally, since blockchain allows for anonymity, the contracting party in a smart contract may wish to remain anonymous.

4. Interpretation of Terms and Conditions

The first difficulty lies in formalizing the offer and ensuring informed and valid acceptance of the offer by the co-contractor. As it must be of legal age, capable of understanding all the terms of the contract, not making any errors, and not being subject to pressure to sign the contract.

It is already challenging to verify all these conditions in the case of traditional contracts, and they are even more difficult to verify in the case of digital contracts, because it's the code that defines the smart contract in a complex programming language, so the terms are hard to be interpreted and can be confusing for non-technical persons.

Therefore, it must be proven that the co-contractor understood the code integrated into the contract and he approved it without any ambiguities.

Interpreting the terms and conditions of smart contracts (Cannarsa, 2018) may raise the question of whether it should be objective or subjective. In traditional contracts, interpretation is often based on the parties' intention, which can be subject to differing opinions. In the case of smart contracts, interpretation may be based solely on the computer code, providing a more objective interpretation. However, this can lead to unexpected or unfair outcomes in certain situations, but the computers are "non thinking, high performing agents" (Susskind & Susskind, 2015) who follow the rule according to the available information that was inserted in the system as there is no room for interpretation which makes it a rigid instrument especially in problem situations.

At that point the responsibility of the parties take place in a dispute regarding the execution of a smart contract, it can be difficult to determine who is responsible, particularly in cases of programming errors or differing interpretations of the terms. Parties may find themselves in a situation where they must bear unforeseen or unfair consequences due to the interpretation of the terms and conditions placed by the code.

5. Absence of specific regulation

The absence of specific regulation creates an uncertain legal framework for smart contracts. Existing laws may not be suited to address the unique

challenges posed by this technology. Traditional legal principles may not directly apply to smart contracts, leading to uncertainty regarding their validity, execution, and interpretation. This situation can make it difficult for involved parties to understand their rights and obligations. The validation and enforceability of smart contracts are major concerns in the absence of specific regulation. In many countries, traditional contracts are generally valid and enforceable if certain conditions are met, such as offer, acceptance, and consideration. However, smart contracts may require different criteria to be considered valid and enforceable. The lack of clear regulation can make it challenging to determine how smart contracts should be legally formed and enforced. It also raises questions regarding the contractual liability of parties involved in smart contracts. In case of disputes or breach of contractual terms, it may be difficult to identify available remedies and determine the parties' liability in the absence of clear legal guidance. This can lead to legal challenges in resolving disputes and protecting parties' rights.

Therefore, it can impact consumer protection in the context of smart contracts. Consumers may face risks such as unfair contract terms, programming errors, or unfair business practices. Without clear regulation, it can be difficult to ensure that consumers are adequately protected when using smart contracts.

6. Confidentiality and personal data

It is insightful that blockchain technology offers complete transparency to smart contracts, allowing all parties involved in a transaction to access necessary information. However, this transparency must be balanced with data protection, so we can ensure that only necessary information is shared while preserving the confidentiality of sensitive data.

The user consent and control can be programmed so that users have total control over their personal data. For example, a user can specify the conditions under which their data can be used and share only necessary information. This approach enables users to give informed consent and maintain control over their data. This is an advanced cryptography technique to protect personal data.

Sensitive information can be encrypted before being stored on the blockchain, ensuring that only authorized parties can access it. Additionally, smart contracts can be designed to automatically delete sensitive data once predefined conditions are met.

But these above-mentioned options sometimes fail to comply with data protection regulations. Mainly smart contracts can be designed to comply with data protection regulations, such as the European Union's General Data Protection Regulation (GDPR) and by integrating privacy and data protection

mechanisms into the design of smart contracts, companies can avoid non-compliance risks and ensure the confidentiality of their users' personal data but some characteristics in the contract itself can be debatable with GDPR.

The immutability and the non-changing element in this type of contract can be against data subject rights such as right of rectification and right to erasure (right to be forgotten) in article 17 from the same regulation. While concluding and finalizing the General Data Protection Regulation Jan Philip Albrecht, a Member of the European Parliament who played a prominent role expressed that:

> *"Certain technologies will not be compatible with the GDPR if they don't provide for [the exercising of data subject' s rights] based on their architectural design […] This does not mean that blockchain technology in general has to adapt to the GDPR, it just means that it probably cannot be used for the processing of personal data."* (Meyer, 2018)

7. The regulatory framework for smart contracts

All kinds of innovation need to be organized and legally well-structured to build the trust of users towards the new technology and feel safe as being protected by the government in case of a problem.

While smart contracts offer innovative solutions for executing agreements and transactions, they must still adhere to relevant laws and regulations governing contract formation, consumer protection, data privacy, and financial transactions.

One of the challenges with smart contracts is that they often exist in a legal grey area due to the novelty of the technology and the lack of specific regulations tailored to them. As a result, legal experts and policymakers are working to adapt existing laws or create new ones to accommodate smart contracts and ensure their legal validity and enforceability.

Thus, the European Union introduced through the last decade multiple regulations to be up to date with the advancements in different fields, it has undergone a transforming shift in the personal data and its impact by technologies.

8. Data Protection and Privacy compliance

Smart contracts often involve multifaceted considerations such as the processing and storage of personal data, raising concerns about compliance with data protection regulations such as the European Union's General Data Protection Regulation (GDPR,) where developers must implement privacy-

enhancing measures to safeguard sensitive information and comply with consumers rights as for the users.

More provisions took place with GDPR to ensure lawful and transparent processing of personal data like Eu Data Act, eIDAS regulation and the European Law Institute's Principles of Blockchain Technology.

The vision started in 2018 with the Communication Towards a common European Data Space in order to cover personal data and public data to reach business-to-business and business-to-government data sharing. with the adoption of the Data Governance Act in 2022 and was the first deliverable under the European strategy for data, the concretisation of a harmonized strategy came to the light as it focused on having a united market data with European sovereignty. The application started with Data Governing Act serves as a comprehensive mechanism for supervising the utilization of public or safeguarded data across diverse industries. Its primary goal is to streamline data exchange by regulating newly established entities called data intermediaries and advocating for altruistic data sharing practices. Both personal and non-personal data fall under the purview of the DGA, with the General Data Protection Regulation (GDPR) being applicable whenever personal data is involved.

To foster trust in data sharing and reuse, the DGA incorporates additional safeguards alongside GDPR. This emphasis on trust-building is pivotal for expanding data availability within the market.

The Data Act is a complementary tool for the above-mentioned provisions, as the Data Governance Act establishes frameworks and procedures aimed at promoting data sharing, particularly within the public sector. The Data Act introduces fresh regulations governing the utilization of data generated by connected products and associated services. It delineates guidelines regarding how users can utilize such data and outlines conditions under which data holders can derive economic benefits from it and insert detailed definitions in Article 2 for data and even for smart contracts as *"a computer program used for the automated execution of an agreement or part thereof, using a sequence of electronic data records and ensuring their integrity and the accuracy of their chronological ordering"* and it included a whole section in Article 36 for *"essential requirements regarding smart contracts for executing data sharing agreements"* that regulates the use of smart contracts as a tool between IoT providers who are the data holders and third party recipients who need to enter an agreement for data sharing and flow.

The use of smart contract in the act was "neutral" as mentioned, as it can mean electronically ledger connection or "in- house for internal use" but the key is the

> "*requirement to ensure that smart contracts can be interrupted and terminated implies mutual consent by the parties to the data sharing agreement. The applicability of the relevant rules of civil, contractual and consumer protection law to data sharing agreements remains or should remain unaffected by the use of smart contracts for the automated execution of such agreements*" (Data Act, Preamble 104)

and for that smart contracts are for any vendor sharing data and for data holders of IoT providers where any operations that will provide a third-party data, the application is direct.

In the same matter, European Union introduced since 2014 the eIDAS electronic identification and trust services(eIDAS) the digital identity (eIDAS2) and the self-sovereign identity, which involves the use of a verifiable credential from an issuer in a signature process and simplifies the work of the verifier throughout the European Union.

The legal report on SSI analyses various scenarios regarding the use of the eIDAS Regulation to ensure digital identity and transactions based on DLT technologies, i.e., from a centralized perspective. It contains insightful suggestions regarding the ongoing revision of the eIDAS Regulation (European Commission, 2024).

9. Financial Regulation and Market Integrity

As Smart contracts operate on blockchain technology and promote high levels of efficiency and transparency, it became a required tool in the BFSI "Banking, Financial Services and Insurance Sector" to achieve some strategies in manual processing, minimize fraud rates and lower the expenses. Its compliance with the encoding regulatory requirements in different regulations is essential such as Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) regulations, as well as Know Your Customer (KYC) requirements[4] to ensure accountability, safety and transparency in identity verification to provide a high level of security in processing agreements.

Infinite number of operations are done every second and limiting crimes is getting more challenging with high-speed application, so the extension is needed to cover more than traditional crimes to emerging frameworks tailored for digital assets and blockchain technology. "Markets in Crypto-Assets Regulation" (MiCA), is a revolutionary milestone legal framework that stand up for management of crypto assets in the EU by clarifying and unifying the law in this matter and it is also a complementary document for Central Securities

[4] KYC is a process implemented by companies to confirm their clients' identities in adherence to legal requirements and regulations, including AML, GDPR, and eIDAS (Koczan, 2021).

Depositories Regulation (CSDR), Markets in Financial Instruments Directive (MiFID), and Transaction Reporting Regulation (TFR) regulations.

These sets form a package that fulfil the gap between the old management of financial law and the new digital ecosystem. By establishing these significant elements, the adjusting of new crimes and the operation of future processes will be elevated and harmonized.

The clarity imposed in Mica that places a mechanism for crypto across Europe allows to facilitate the cross-border activity and implement standard practises to ensure the market integrity and stabilize risks.

The integration of other regulations works on aligning interoperability between institutions and create a smooth cooperation to develop a strategic service for the innovative financial market.

10. Conclusion

Smart contracts are a double-edged weapon, where it presents risks and high problem probabilities but the fast changing world is implementing easier and faster processes to get up to the results enchanted by the market.

For that the European Union has strategic steps implemented through the years to get approximately a completed vision that works on the major loopholes that were declined by the traditional texts.

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