STUDIA JURIDICA *et* POLITICA JAURINENSIA

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

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

STUDIA JURIDICA ET POLITICA JAURINENSIA

2021.1-2

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

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Imprint:

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

[Responsible for publishing: dean of the Law Faculty, Prof. Péter Smuk, responsible for editing: Dr. habil. Katalin Egresi]

ISSN: HU 2064-5902

LEGAL ASPECTS OF VENTURE CAPITAL FINANCING

GLAVANITS, Judit*

Introduction

What does venture capital mean? As a result of the PhD-study, venture capital is fundraising in a great growing potential company that is not publicly founded, which goal is raising value in the company though the joint ownership and sell the property with high return. The phenomena, which is in the focus of even more scientific areas, has so little history in the law science both in Hungary and worldwide. On the other hand, more and more lawyers in practice are facing these contracts and facing the venture capital industry in some of its appearances, so researches in this field cannot be postponed at all. We should nevertheless take into consideration, that – basically in Hungary, and in Eastern-European area – the venture capital financing has only some decades' past, so the precise categorization both economically and legally are opens even more doors of questions. The primary goal of this PhD-study is to suggest new ways of researches in this field.

On the most active market of venture capital, in the **United States** there is no question on the side of political will that the venture capital industry is useful and worth-to-support transactions. According to the 2011 Yearbook[1] of the National Venture Capital Association, the 3295 completed transactions of venture capital investments subtotal of 22 billion dollars had been transmitted to innovative companies, which means the 0,2% of the country's GDP. As the data of the IHS Global Inside[2] research institute, in 2008 the companies supported by venture capital gave the tax-income of USA in 21%, employed 12 million people, 11% of the whole employees of the private working sector. Companies supported by venture capital reached bigger net incomes and applied more people than other companies, who did not got this financial support. These results are not unique, as Josh Lerner's study confirms that the (state governed) venture capital-backed companies are acting significantly better in employment and income-data than

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[1] NVCA Yearbook 2011.www.nvca.org (date of download: 1st October, 2012.)

[2] IHS Global Insight 2009. http://www.altassets.net/pdfs/nvca_venture_impact_5thedition.pdf (date of download: 10th June, 2011.)

the average companies[3]. From the 1970's, more than 27.000 companies got come kind of venture capital finance from the total amount of 456 billion dollars[4].

The **European Union** (EU) gave attention only from the late 1990's to venture capital backed finances, and the effect on the impacts to the Common Market. According to the 2008 Yearbook of the European Venture Capital Association's (EVCA), the 5200 companies financed by venture capital or private equity reached 73,8 billion EURs. 85% of these companies were small- and medium sized companies (SMEs), whose employees number were under 500. Statistics of the EVCA shows, that between 2000 and 2004 the venture capial backed companies created 1 million new workplaces in the EU, which is an enlargement of 5,4% p.a., while during the same period the average of the EU25 was 0,7%. The companies in their phase of extension, financed by venture capital produced 2,4% of growth in employment between 1997 and 2004, and the SMEs in their start-up phase reached 30,5% of growth[5].

As the target of venture capital is the innovative young companies with a great potential of growth, the EU treated the question of venture capital financing with the topic of state SME- supports, innovation-support and state aids. As a result, the venture capital industry is seen through a different glass in the EU, which glass is the ease of reachable financial instrument for SMEs. At the same time, the working documents of the European decision-makers does not miss to admire the achievements of the European venture capital industry. It is worth to mention, that the venture-backed innovative companies spend 45% of their incomes to R&D, which means an average of 3,4 million EURs per company. This is 6 times more of what the best 500 EU25 company spends on R&D[6].

The venture capital industry has two decades of history in **Hungary**. Judit Karsai states, that until the age of 2000, the industry transmitting venture capital and private equity in Hungary – taking into consideration the actors, working mechanism, function and effectiveness – reached the form of European venture capital industry[7]. Between 2002 and 2009 the venture capital funds made 230 contracts with the total value of 2,2 billion EUR in Hungarian companies[8]. The JEREMIE program[99] created by the EU and the execution of it gives hope that both number and volume of the transactions will increase

[3] LERNER, Josh: The government as venture capitalist. The long-run effects of the SBIR programme. In. *Journal of Business* 1999, 72.285.

[4] Data from MoneyTree, presented by PricewaterhouseCoopers and NVCA

[5] EVCA Yearbook 2008.

[6] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Removing obstacles to cross-border investments by venture capital funds COM (2007) 853. final.7.

[7] KARSAI, J. A magyarországi kockázatitőke-finanszírozás másfél évtizede. 1989-2004. In. MAKRA, Zs. (ed.), A kockázati tőke világa. Aula, 2006. 35.

[8] Hungarian Venture Capital Association (HVCA) Yearbook 2010. www.hvca.hu (date of download 10th, June 2011)

[9] Joint European Resources on Micro to Medium Enterprises (JEREMIE)

significantly. The former data shows only the industry of formal venture capital, the companies founded for only this purpose of finance. But the business angels also play important part on the venture capital market, as they are the so-called informal investors, well-to-do individuals making also venture investments from their private asset. The Global Entrepreneurship Monitor (GEM) investigates the entrepreneurial activity and economic growth in its research program and among this the activity of informal investors in Hungary, and they figured out, that among the adult population 2,2%, about 144.000 individual made informal investment at the average amount of 1 million HUF[10].

Judit Karsai divided the history of the Hungarian venture capital industry to four development stages, from which the last would start from 2001 to nowadays, as the stage of purifying and rationalizing[11]. The time passed since her study, and the financial-economic crises of 2008 indicates – to my opinion – to suggest a new stage in the industry not only in Hungary, but internationally, as this year meant worldwide a recoiling, and pushed the whole industry to focus on the latter stages of investments. But the data from the year 2010 and after shows the market's curiosity of the venture finance.

Aims and goals

Working on the PhD-study the primary goal was the complete exploration of the national and international sources of the venture capital legal standards, and make a comparison of them. Elaborating the topic the historical descriptive method is dominant, while keeping the eye on the international best practices, which can be useful for the Hungarian or for the European practice as well. Working on the theses the lack of the Hungarian (legal) scientific literature was also an advantage and a disadvantage. This way we can look at the PhD-study as a completion of scientific achievements, but also a keynote document for the researches coming. The absence of national sources has the consequence of the need to elaborate the international literature as a whole thematically, practically mean sometimes the first Hungarian publication of foreign legal texts. The other main goal and aim of the PhD-study is to give a definition of venture capital that can be used both in the economic and legal scientific medium, define and systematize the related expressions, and modeling the investment process of venture capital financing from the sight of civil law. At the same time, an important aim is to put the created definition to the proof, and insert it to international medium[12]. Looking at the state's role in venture capital financing, the economic literature draws craggy line between direct and indirect

[10] GEM Hungary. SZERB, L. (ed), Vállalkozásindítás, vállakozói hajlandóság és a vállalkozási környezeti tényezők alakulása Magyarországon a 2000-es évek első felében. 2004.
[11] KARSAI, J. op. cit. 34-35.
[12] GLAVANITS, J: A kockázatitőkebefektetések jogi fogalmának meghatározása. In. *Jog-Állam-Politika* Vol.1 of 2012.

intervention tools[13]. To my opinion these governmental vehicles can only work properly by complementing each other, so much more as no country in the world has ever dared to apply the indirect tools alone.

The 6th figure of the PhD-study shows the direct and indirect tools elaborated by the former economic scientific literature, but the tax-advantages, which affect the central budget directly I rate among the direct supporting measures. Dealing with the questions regarding to public law the study is synthetizing and brand new at the same time, since nor the national nor the international science use this kind of approach. According to the subject of private law, the doctoral study is dominated by international comparison of laws. The chapter examines the content of deals related to venture capital, the structure and details of the contracts, and sets the legal documents into the timeline of the venture capital financing process. The method of the examination is the same as in the previous chapters: comparative presentation of Anglo-Saxon, EU and national practice of contracting.

The scientific literature and so the doctoral study deals with the following private law-questions of venture capital financing:

a) informational asymmetry and agent-theory among the venture capital partners
b) functioning and legal rules of formal venture capital (venture capital funds)
c) protecting the business secrets, and confidentiality
d) due diligence process
e) secured transactions and covers in the contracts
f) potential exit-strategies.

A main emphasis of the doctoral study is to present the venture capital policy of the European Union from the beginning up to the present days, and among this the international answers to the global financial crisis of 2008, for example the new legal framework for venture capital funds in the USA and Europe. This marks out the future way of the scientific studies according to the question of venture capital financing and venture capital markets, since during 2010-2011 brand new rules of financial acts came to effort across the whole world. Even Hungary will adopt these new rules in the following month or years.

Methodology

I examined the relevant legal aspects and questions of venture capital financing among the following methodology.

[13] eg. CUMMING, D. J.- JOHAN, S. A? Venture capital and private equity contracting. Elsevier Academic Prees, 2009, KOVÁCS, B.: Innovation financing with venture capital- the role of state aid programs, Konference-proceeding, Právni Rozpravy 2011, KARSAI, *Helyettesítheti-e az állam a magántőke-befektetőket? Az állam szerepe a kockázatitőke-piacon.* MTA Közgazdaságtudományi Kutatóközpont. Műhelytanulmány. Budapest. 2004.

a) Normative method

The basis of the research was the legal rules applied in the previous quarter decade both national and international level, but primarily the principals of the USA and EU legislation, and their direct effect on market. I supplemented these results with the later Hungarian rules which are basically fitting to the international main stream. The Hungarian legislation has two periods: laws accepted before and after accessing to the European Union with grate effect on the content and efficiency of rules. Part of the economic literature states, that the efficiency of some countries venture capital activity can be drove back to the legal order of the state, and the timing of the intervention of the state to the venture capital market[14]. For the proving of this hypothesis we have to examine the differences of Anglo-Saxon and continental legal order, and the legal tools applied by the countries which may cause these great differences. The financial crisis started in 2008 resulted a legislation "dump" according to the financial markets, which affected the venture capital actors as well. During the last two years both in the USA, Asia and the EU adopted rules that will change the previous surrounding of venture capital industry. Examining these new frames are in focus of the doctoral study. Among these new rules studying the effect on the private contracts is also object of the study, primarily changes in the civil law and the company law. The international comparison of these changing rules is also we should not miss to get around.

b) Functional method

Although the market of venture capital deals is an always changing world, the germane economic literature consistently reports on not eligible legal milieu. Both national and international surveys state, that the government dissatisfies to fulfill the requirements of the venture capital industry. The financial crisis has up-to-dated the question: on which level and how can the legislation help to support the venture capital industry?

The question is not new: practically since the venture capital financing itself exists, the role of the state is in the crossfire of scientific and practitioner experts. Several publications can be found on both sides, which state that the non-intervention of the state is desirable, or only the indirect measures are the keys for success, or even the active part of governmental institutions can be a solution for the financing problems for innovative small- and medium sized companies.

Dealing with this question, we have to look at the best-practices of certain successful countries, and examine the circumstances and the use legal vehicles to understand why some of them are more effective on supporting venture capital than the other. This means

[14] eg. GILSON, Ronald J.: *Engineering a venture capital market: lessons from the American experience.* In. Stanford Law Review, 2003. 55(4). 1067-1103. AVNIMELECH, G-TEUBAL, M: *Targeting venture capital: lessons from Israel's Yozma programe.* In: SUNIL, M –. BARTZOKAS, A (eds): *Financial System, Corporate Investment in Innovation and Venture Capital.* Edward Elgar. 2004. 85-116. 2004, CUMMING and JOHAN: op.cit. 2009.

applying a bit more economic approach than legal, but at the end we can find a number of common distinctive features, which can be suggested to be the factors of success on this field.

c) Historic approach

The scientific modeling of venture capital industry can be counted since the 1970's. This scientific field is this way quite new, no roots back to the ancient Greeks, and the published literature is primary economical. But we cannot set aside the relevant legal questions of the role of the state, and also the contractual practice configured by the actors of the industry.

According to Landström as to 1980 the venture capital's scientific literature simply not existed, and afterwards only the US scientific community showed activity on the subject[15]. The Europan Union gave attention only from 1998, so the doctoral study's goal is to collect the relevant publications of legal aspects of venture capital as a whole from the last three decades.

d) Comparative method

In the globalized world of venture capital the areas of the world and countries alone can occur as a privileged region for venture capital industry, which has the consequence of economic advantages, and virtue of vantage in global competition. The EU has made it clear many times on different forums that the raising of competitiveness, employment and R&D expenditures are crucial, and the target of venture capital, the innovative small- and medium sized companies got to have adequate legal environment to attract the venture capital industry's money. This legal environment is studied by international organizations such as the OECD[16] and the EVCA[17], and they are suggesting measures to governments. At the end it is still a fact that the conditions of the US market seems to be far the best place for the actors of venture capital.

The scientific economic literature is divided in the question of the Anglo-Saxon legal order apparent benefit can be equilibrated by pure legal vehicles, so the advantages of vivid venture capital markets can be reproduced in other counties as well. The clear answer for this question is crucial for the legislative bodies of the European Union. It is clear since the 1990's, that the EU is searching for a model to follow from the Anglo-Saxon countries to approve the efficiency of its capital markets. Showing the legal rules from the last 20 years, and comparing them to the USA's legislative policy it is obvious for all, that the efforts stood on the ground of mere attitudes of mind instead of efficient

[15] LANDSTRÖM, H.: Pioneers in venture capital research. In: LANDSTRÖM, H. (ed.): Handbook of research on venture capital. Edward Elgar. 2007.3-65.
[16] Organisation for Economic Co-operation and Development (OECD)
[17] Europaen Venture Capital and Private Equity Organization (EVCA)

ruling. But the shock of financial crises can give a swing in this tendency, and can give an opportunity to re-define the attitudes. The doctoral study gives attention to the adopted and also the forthcoming rules of the USA and them EU, and among this the prepared document of European Venture Capital Fund, and also advises *de lege ferenda* legal possibilities.

e) Legal analysis of economy, as a method

Examining the venture capital financing from legal aspects arises the questions of law and economy, or the connection of economy and law, and the inspection of this relationship. Among the legal science an independent discipline is dealing with the aspects of "the economic analysis of law", which has a great number of expert both in Hungary and abroad[18]. The Hungarian jurisprudent Tamás Sárközy deals with the question of law and economy, and states, that the legal rules governing the economy creates new elements from the economic phenomenon, so the foregoing examination of legal vehicles is very important – for eg. the impact-analysis and cost-analysis of rules is crucial[19].

Tibor Nochta and associates in their book presenting the legal framework of economic life state, that another perspective of the economic analysis of law can be to admit certain rules which legal dogmatic understanding and correct processing presuppose the cognition of economic information[20]. The logic of the doctoral study follows just the opposite of those upper perspectives: it tries to write down with legal vehicles the phenomenon experienced in the practice and examined by the economic literature, and it's goal is to define and categorize. This way the doctoral study is more close to the method wrote by Galgano[21] named the "legal examination of economics". Galgano's work is translated to Hungarian by Peter Metzinger, who also uses this method for his doctoral study as well[22].

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[18] POKOL, B: A jog gazdasági elemzése. In: *Jogbölcseleti vizsgálódások*, Nemzeti Tankönyvkiadó, Bp. 1984. 52-64.; CSERNE, P: Állam és gazdaság. Az állam gazdaságtudományi elemzései. In: *Államtan. Az állam általános elmélete* II. A modern állam sajátosságai és főbb formái. Állam és jog, TAKÁCS, P. (ed.), Bp. XVII.B; MENYHÁRD, A: Polgári jog és közgazdaságtan. In: STEIGER, J. (ed.) *Gazdaság és jog*, Bp. ELTE ÁJK, 2005. 87- 101.; WEBER, M. *Gazdaságtörténet. I-II.* Budapest, KJK., 1979; WEBER, M: *Gazdaság és társadalom I-II. A megértő szociológia alapvonalai.* Közgazdasági és Jogi Kiadó 1992.

[19] SÁRKÖZY, T: *Gazdasági státusjog-Magyar gazdasági jog.* Egyetemi tankönyv. I. Aula, 2007. 23-24.

[20] NOCHTA T. – JUHÁSZ L. – SZÉCHÉNYI L.: *A gazdaság jogi szabályozása* Jogi szakvizsga segédkönyvek, Dialóg Campus, Budapest-Pécs, 2008, 21

[21] GALGANO, F: Globalizáció a jog tükrében. A gazdasági jogi elemzése. HVG-ORAC, 2006.

[22] METZINGER, P.: *A vállalat mint tartalom és a társaság mint forma a globalizált üzleti jogban.* Doktori értekezés. Budapest-Pécs. 2008.

Introducing the scientific achievements

Legal definition of venture capital

Since the current financial crisis caused a legislation "dump" in the world on the field of finance and financial markets, and according to the international statistics, the venture capital- type of financing is more and more widespread, the detailed study of the relevant legal issues cannot be delayed any longer for the legal science.

The venture capital deal seem to be unclarified phenomenon for both the economic and the legal sciences. As until recent days there were no punctual legal definition of venture capital actions, we can say there were no authentic interpretation of venture capital investment. The economic literature however created his own terminology, but it was all without any legal roots to refer. This terminology is based upon the Anglo-Saxon legal order, and used mainly in the United States, but the prompt circle of actors and actions were not a common knowledge. During the writing of the doctoral study two important legislation appeared, which contained definitions on venture capital, which shows the actuality of the questions proposed it the doctoral study. The definitions constituted by the author are influenced by these sources of laws, and reflects the expectation on internationalization of these definitions. At the same time we should not disregard that the new legislation is still a debtor with the prompt definitions of additional categories of venture capital investments, such as "early stage investment", or "business angels", this way the categorization and comparative examination of these phenomenon are the duty of the scientific literature, and at the end – duty of the parties who applies the law.

As a definition, we use the term 'venture capital for agreements which aim is to acquire property in publicly not listed companies with great growing potential, and the goal is to raise value in the company by taking part in the decision-making, and as a result of the capital invested sell the acquired property with high profit rate. Venture capital as a *terminus technicus* became well-known after 2000, in Europe mostly after the European Commission and the European Investment Fund created the program of JEREMIE[23]. Though the legal definitions exist only for venture capital fund and venture capital companies, these seems to be stable enough not to change them any ways.

On the other hand, it is worth to think that while adopting the new rules of venture capital investments to Hungarian law, the hiatus of the definitions could be filled. For the method it is possible to use the terms of the EU legislation word-by-word, or to adopt a definition that is not opposite with the content and spirit of the EU texts, but which shows the specifications of the contracts, and refers the distinctive features which makes the venture capital contracts special from another investment action. According to the prepared text of the regulation of European venture capital fund, the venture capital investment (qualifying investment) means equity or quasi equity instruments that are

[23] Joint European Resources for Micro to Medium Enterprises - JEREMIE

- issued by a qualifying portfolio undertaking and acquired directly by the qualifying venture capital fund from the qualifying portfolio undertaking, or
- issued by a qualifying portfolio undertaking in exchange for an equity security issued by the qualifying portfolio undertaking, or
- issued by an undertaking of which the qualifying portfolio undertaking is a majority owned subsidiary and which is acquired by the qualifying venture capital fund in exchange for an equity instrument issued by the qualifying portfolio undertaking[24].

We can summarize the upper as *a transaction during which a venture capital fund as collective investment company acquires equity or quasi equity in a non-listed small or medium sized company.*

From the terms used by the European Union legislation it would be admirable to derecognize the term "risk capital", as looking at the international terminology it is unique, and can cause confusions, and relativize both the term venture capital and both private equity while comparing the content of the terms used in different documents. The doctoral study analyses the changing and delusive terminology of the EU in Chapter II.

The recent crisis made the governments to set up the goal of regulating the monetary intermediary system as a whole, and among this, the venture capital actors' activity as well. The doctoral study's third and fourth chapter is trying to clear up the role of the state on the market of venture capital investments. The economic scientists' opposite attitude on this question can already be seen in current Hungarian literature as well. While some authors state with statistical data that the motivation programs of the government can show significant success[25], at the same time other authors state with other data respective that the state is crowding out venture capital and private equity partners from the market. As a summary of the different theories we can say that the crucial role of state's direct efforts can be admitted when it only catalyzes the market actors, and is not taking their job away. Best practices can be seen in the United States[26], Israel[27], Finland[28], significant success in Great Britain[29], but the crowding-out mechanism is

[24] COM(2011) 860 final, Article 3, c.

[25] Details in the doctoral study's Chapter IV. 1

[26] see Lerner: op.cit. 1999

[27] see Avnimelech and Teubal: op.cit. 2004

[28] see MAULA ET AL, M.: *The prospect for success of early-stage venture capital in Finland.* Sitra report 70. Helsinki. 2006.

[29] see BÜRGEL, O. – FIER, A – LICHT, G. – MURRAY, G: *Internationalisation of High-Tech Start-Ups and Fast-Growth Evidence for UK and Germany.* Discussion Paper 00-35, Centre for European Economic Research (ZEW), Mannheim, 2000.; BVCA 2009: *Benchmarking UK venture capital to the US and Israel: What lessons can be learned?* BVCA, London. 2009.

documented in Canada[30] and partially in Hungary[31]. The European Union is dealing with the question of supporting venture capital activity through the glass of state subsidies, and the final question is if the support distorts the competition on the Common Market. In many documents the EU ascertained that the state's support is only acceptable in the companies seed and start-up phase[32].

As mentioned before, some authors see the roots of the different success of venture capital markets in the different kind of law regimes, like the Anglo-Saxon tradition fits more for this kind of transactions[33]. Examining the contractual design and practice, it can also be seen, that the quality of bank-connections is an important indicator for venture capital investments: significant connection is demonstrated in the international scientific literature between the bank-based countries relatively small venture capital market, and between the market-based counties relatively big venture capital market[34]. Pondering over the role of the state on venture capital financing the solution cannot be positive or negative solely, the only result is we can make some statements from the international empirical observations:

- those **state-supported programs** seems to be successful, which quit the market after fulfilling the catalyzing function, avoiding the risk of crowding out the venture capital actors from financing (eg. SBIR[35] and YOZMA[36])
- **tax-incentives**, consequently mentioned in the doctoral study as direct support by the government mean obvious advantage in international competition for venture capital, so direct incentives for venture capital funds or for the target companies are helping to create and operate active venture capital market (eg. Australia, Great-Britain). In connection with this efforts, although Hungary is middle-ranked in the European field, there is still a lot of tools to apply for more targeted support for all the actors of venture capital transactions. Examining the international best practices in this subject, it seem obvious for Hungary that the former applied (1998) preferential tax-

[30] see CUMMING, D. J. – MACINTOSH, J.G: *Crowding out private eqiuty: Canadian evidence.* Journal of Business Venturing, 21. 569-609. 2006.

[31] see KARSAI, J: *Helyettesítheti-e az állam a magántőke-befektetőket? Az állam szerepe a kockázatitőke-piacon.* MTA Közgazdaságtudományi Kutatóközpont. Műhelytanulmány. Budapest 2004; KOVÁCS, B.: *Állami kockázati tőke a kkv-finanszírozásban.* PhD értekezés, SZE RGDI. 2011.

[32] Details in the doctoral study's Chapter III.3.

[33] see eg. BASHA, A. – WALTZ, U.: *Convertible Securities and Optimal Exit Decisions in Venture Capital Finance.* Journal of Corporate Finance, 2011/ 7, 285-306.; GILSON, R. J: *Engineering a venture capital market: lessons from the American experience.* Stanford Law Review, 2003. 55(4). 1067-1103.; CUMMING, D. J. – SCHMIDT, D – WALTZ, U: *Legality and venture capital governance around the world.* Journal of Business Venturing. doi:10.1016/j jbusvent.2008.07.001

[34] GILSON, R. J. – BLACK, B. S.: *Venture Capital and the Structure of Capital Markets: Banks Versus Stock Markets.* Journal of Financial Economics, 1999/ 47. 243-277.

[35] Small Business Innovation Research, USA

[36] world from the hebrew 'goal', Israel's program introducing venture capital in the country

rate can be introduced again. These losses for the central budget are not significant, but can be a gesture for the venture capital investors, and can almost immediately lower the shortage of resources for small- and medium sized companies.

- **entrepreneur-friendly administrative and law-environment** help the market-ready ideas to find capital and financing, which is not only good for venture capitalists but also increases the regions competitiveness. On this basis the EU support the state programs to ease the start to become and entrepreneur[37]. According to the international literature, introducing measures on this field may take more time, and/or rebuilding previous structures, so most of the countries choose the direct investment forms while they are easy and fast to set up, and can be better communicated as an immediate success of the recent government[38].

Evaluating the legal documents created during the venture capital process we can see the lack national legal literature, primarily the Anglo-Saxon contractual design is known, and as a narrow view, the EVCA published some documents on the question but only for the proof of economic hypothesis. But we cannot forget, that the venture capital investing process produces many kind of legally relevant documents governing the rights and obligations of the parties, even in those cases which not ends with investment agreement.

The first question to answer is the prompt definition of the parties. Both in national and international legislation we can observe that the legislation searches the perfect fields for the actors of venture capital investment, either the place of the transaction itself in the legal order. The role of venture capital funds as formal venture capital investors is changing dramatically in the year 2011 according to the changes in regulation of alternative venture capital funds and fund-managers in the EU, and according to the new rules of investment advising in the USA. The mentioned regions both agree on the venture capital funds as small parts of the monetary intermediation play negligible part on the current financial crisis, though a "reloaded" regulation on these actors cannot be avoided. But due to their slight effort on capital markets the new and very strict regulation of investment funds and investment advisors cannot take effect these funds and fund managers – with the same content. In the United States easier rules should be applied for venture capital funds and investment advisers who are dealing only with this kind of financing[39], while in the EU's directive on alternative investment fund managers the venture capital fund managers will be out of the scope because of the minimum capital-level of applicability. The prepared document of the European Venture Capital Fund[40]

[37] eg. COM (2011) 669 final. Communication from the Commission: A roadmap to stability and growth.
[38] Harrison, R. T. – Mason, C. M. (ed.): *The role of public sector in the developement of a regional venture capital industry*. Venture Capital, 2000/4. 246.
[39] see the III.4.2. part of the doctoral study for the details. This part refers to the Dodd-Frank Act and it's implementation rules by the Securities and Exchange Commission.
[40] COM (2011) 860 final

and its special regulation shows the way the European Commission is try to solve the problem of legislation of venture capital funds, which is observed in details in part III.4.5. in the doctoral study.

Among the parties of the venture capital contract there is the target-company to which the capital is transferred. As a legal form for this company it is possible to occur as a pre-company or even as a public limited company (not listed on stock exchange) depending on what kind of investment is under construction in a venture capital agreement. In the current European legislation the only barrier for the target-company is that it should be a small- or medium sized company, but the current legislation in the US does not contain restrictions on the size of the company. This target-company as the receiver of capital goes under serious changes in the phase of investment both in connection with property, governance and company law. After detecting the actors of venture capital can we go towards the field of examination the venture capital contract, as legal transaction.

Efficiently defending the business secrets can be a crucial question even during the start-phase of venture capital negotiations, as the business plan required by the investor can even contain significant information that is to keep in secret. In the life of early stage companies, these secrets can mean life or death, and as basically innovative companies the protection of intellectual property can occur in the early phase of venture capital investing. Taking into consideration that many of the venture capital investors work internationally, the worldwide protection of trade secrets, inventions and any kind of intellectual property is a basic question of the investment process.

As the Hungarian law does not know a separate type of contract that is called "venture capital contract" it is obvious that for examination of the legal practice we have to "borrow" the rules of different contractual types, such as the investment agreement. As the scientific description of the investment agreement is also under process nowadays, first, we have to look at the Anglo-Saxon literature and practice, where even model documents are available[41]. As these documents and the connected economic and legal scientific literature is based on a different legal order, they cannot applied to Hungarian or even European legal conditions without significant modifications. The main reason for this is in the difference of company formations, detailed in the doctoral study's part V.3.

Evaluation of the hypothesis

Connected to the aims and scopes of the doctoral subject, we set up the following hypothesizes for the examination of the legal aspects of venture capital investments.

ad (1) The venture capital fund and the venture capital fund manager are separate and specific actors of the monetary intermediation system, which needs to be dealt and regulated independently. According to the fact that in the United States the literature of

[41] See the documents of BVCA or NVCA preparred directly for the practitioners of venture capital investors and target-companies.

venture capital investments is counted since the 1970's, and that the EU reacted to the expectations of the market only from 1998, and also that in Hungary the first regulation of venture capital activity appeared in 1998, we can state that the governments and regulators kept away from the venture capital investments for a long time. Even for long since then the role of the state was only to govern the basics of formal venture capital investors, i.e. the venture capital funds, and the regulation only covered the administrative and taxation minimums of these companies.

The other appearance of the state was to present itself as a sole actor on the venture capital market by managing state-affiliated venture capital funds, which brought up questions on competition law regulated primarily by the EU sources.Though the international scientific literature is dividend in the question of the suitable role of the state on the venture capital market, the authors unity that the most important task for the governments is to create venture capital-friendly market conditions, such as legal and administrative rules, investor's security rights, and most of all, international harmonization of laws. A sufficient step in this way is the preparation of European Venture Capital Fund as mentioned above. Also an important fact is that the accepted rules as answers for the current financial crises are showing approximation of laws in connection with the USA and the EU in terminology, but it is also fact, that both regions guarantees privileges for the resident actors. The current legislation and regulations of the venture capital activity shows the urgent and up- to-date demand for adequate rules of venture capital investments. The accepted regulations also shows that the venture capital contract are separate phenomena of the investment activities, and needs to be handled with different legal instruments, than other alternative investment actors.

ad (2) On the globalizing financial regulation system placing the venture capital investments in harmonized legal frames gives significant competition-advantage for the economic actors. A great part of venture capital transactions are realized on international field, except of those supported by national government to increase the available amount of capital for national small- and medium sized companies. These state-backed funds has both territorial and target- company restrictions.

But for the – basically European – market actors we can set out that most of them make investments across the borders, and among them the "regional funds" play important role. As for the target companies it can be an important factor to start negotiations with more than one venture investor to boost the negotiation position, and to lower the risks arising from informational asymmetry. The specialized or market segmented venture capital investors also benefits from international appearance, for example on a small market like the Hungarian a biotechnology-based venture capital investor could not exploit its potential.

Operating in international level also has several risks, among them increased administrative and financial liabilities. The international organizations as the EVCA or OECD stated that the harmonized legal rules are the most important task for national governments to increase venture capital investments. The desirable regulation's base should be that the investment funds or investment companies may channel their capital

free across borders, and this way seek for the best investment alternatives. Transparent tax system is essential for investors, and there is also a need for the termination of rules hampering the money and capital transfers. A basic need is to admit the foreign-established venture capital investment bodies, and to avoid double taxation. Among the question of intellectual property the international protection of these rights is a *sine qua non* of ventrure-backed companies. Every bilateral or multilateral agreement or contractual system is to be supported that facilitates to have the protection acquired in another country.

In the mirror of the uppers we can state that both the Dodd-Frank Act, both the regulation on alternative investment fund managers (AIMF)[42] in the EU, and also the prepared regulation on the European Venture Capital Fund is a milestone in the international legislation of venture capital investments. All three rules contains significant advantages and also much stricter rules than before. The Dodd-Frank Act introduces extra administrative duties and activity restrictions for foreign established companies, and the AIMF-directive lets the foreign investors to operate in the territory of the EU only by a passport-system in case they fulfill the strict criteria. In this field the further communication of the two parties cannot be sidestepped, as the interest-groups on both sides has already communicated their displeasure on discrimination of foreign market actors in the current regulations.

ad (3) Venture capital investment contracts represent a sole, unique type of private law contract with identifiable legal distinctiveness.The Anglo-Saxon legal practice writes down the venture capital investment contracts as a serial of legally relevant documents. As the agreements on terms born in different stages of investment, and sometimes the caching of capital in a firm is also made step-by-step, in almost all the cases the contractual relation of the parties lay down in more than one basic document. An exception can be the government-supported venture capital fund's investment agreement, which can occur in only one document according to the empirical study of Hungarian and European contractual practice, but we have to settle down, that these state- backed companies apply different terms and conditions than the market actors do[43].

Dogmatically the question is if the agreements or contract made by a venture capital investor and the target-company can be identified as a separate kind of contract in the private law, or is a mixed type with the features of other specified contractual types. In consideration of the content of the agreement is determined by a lot of factors like the age of the target-company, the number and relation of the investors, the transformation of the company caused by the investment, the author of the doctoral study states that the venture capital investment contract cannot form an independent kind of contract. In the

[42] 2011/61/EU Directive on alternative investment fund managers

[43] see eg. HIRSCH, J.: *Why do contracts differ between VC types? Market segmentation versus corporate governance varieties.* CFS Working Paper No. 2006/12; BAUER, E. – BURGHOF, H-P 2004: The economics of state subsidies in early stage venture capital investments. University of Hohenheim, Working Paper, 2004; KOVÁCS, B *Állami kockázati tőke a kkv-finanszírozásban.* PhD értekezés, SZE RGDI.

Hungarian legal practice studying the terms and substance of different contractual forms, the venture capital investments' contractual conditions are closest to the syndication contract, but we have to set down, that this contractual type is very different from the Anglo-Saxon type of syndication. The latter is used when there are more than one party on the subject side of investors, and they raise capital in the company in regard to the others, and often a bank is involved in the investment.

The venture capital contract as an atypical mixed contract contains duties both on diligence and on result, as in the contract the investor takes responsibility to raise capital in the company under certain conditions (duty on result) in exchange for realizing a certain financial or business development that have to bee achieved by the company's leaders by presenting the due foresight (duty on diligence). According to these, in the venture capital investment documentation we found the specifics of sale and purchase contract, the mandatory agreement, venture agreement, and the obligatory rules of company law also appear in the relation of the parties. It should be mentioned here that the agreement of the investor and the company cannot be opposite with the articles of association of the company.

According to the upper we can state that the content and conditions of venture capital investment contacts differ so much that the independent regulation of this kind of contract seems unsubstantiated. Although, the common contractual conditions give basis for the further examination of the agreements. For the upcoming research of venture capital investments it is obvious that the European Venture Capital Fund and its functioning is one important way to follow. The development of the industry and the increasing number of venture capital contacts shows the other important subject of further researches.

COMPLEX APPROACH TO THE ATYPICAL FORMS OF EMPLOYMENT CONTRACTS

FERENCZ, Jácint*

The primary subject of regulation under Hungarian and international employment law is the traditional, or typical, or standard employment relationship. This type of employment contract is of fundamental importance and is characterised by unlimited duration or open-ended term, full time employment, and the contract is entered into by a single employer and a single employee. The object of this contract is the work to be carried out at the place and time specified by the employer with the tools provided by the employer. The regulation of this type of contract under employment law plays a norm creating role, as this employment contract type represents the standard by which all different types are judged; and which are called atypical contracts[1]

The overall objective of this study is not just to present the atypical employment relationships in the light of employment law, but to present a complex approach to discussing them. The inception of atypical employment contracts and their increasing popularity can not be explained merely with the toolbox of Jurisprudence; in order to understand them; we must see the underlying social, economic and political processes. Introducing his own dissertation, Bankó states that atypical employment relationships have a unique complexity; they have touch-points with fundamental questions of legal dogmatics, the scientific literature of atypical employment relationships is vast and diverse, it is interdisciplinary, furthermore, the concept is well known all over the world and the fundamental questions of the field are the same, far and wide[2].

Certain atypical employment relationships can be traced back to the changing economic relationships, particularly to the inception of the globalised labour market. In this market, the employees must possess a different skillset to the previous, domestic labour market, which almost exclusively only set national expectations. The rise of the multinational corporations and their increasing role in employment act as an incentive for the employees to change[3]. This change has reached labour law as a discipline, because

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[1] GYULAVÁRI, T: A szürke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán. 2014, (manuscript) 105.

[2] Bankó, Z: Az atipikus munkaviszonyok. A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon. PhD Dissertation, Pécs, 2008 7.

[3] HÁRS, Á: Az atipikus foglalkoztatási formák jellemzői és trendjei a kilencvenes és a kétezres években. Közgazdasági Szemle, 2013./2 224-250; http://elorejelzes.mtakti.hu/_downloaddoc.php?docid=66&mode=articles (date of download:15.04.2014.)

it has to react to the new phenomena emerging in the multinational environment. Social changes associated with globalisation are also reflected in labour law, as the growing difference between the ones who are undeveloped and disadvantaged and the developed countries and social groups leads to the exclusion of certain regions and individuals from the world of work, and this has a significant impact on the entire society. The current political elite has to respond to this phenomenon, therefore a public policy answer has to be found to the changing nature of work. According to Attila Kun, one of the main dilemmas of labour law, whether it is to be considered as a right of social nature (worker protection) or rather, as a „servant" of economic rationality[4].

The main findings of the Thesis can be summarised as follows

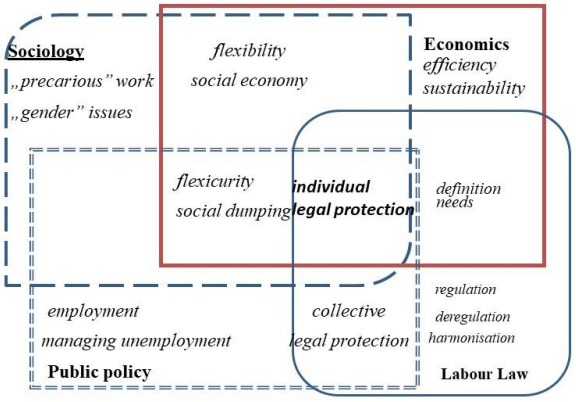
One of the key findings of the complex approach to the examination of atypical employment relationships is that the intersection of the results and preferences of various fields of science is very narrow. This difference in viewpoints is perhaps the reason why the results of professional and research groups hardly appear in the works of related disciplines, as it does not allow any deviation from the focal point. On the following figure, I strive to map out the network between the examined fields of science (labour law, public policy, economics and sociology).

Based on theoretical scientific literature, it can be concluded that the fields of science described above are examining overlapping issues as well, in the assessment of atypical forms of work. I have concluded based on the results of my research that, individual legal protection forms the intersection of the sets; which is, in practice, the assessment of the rights and obligations of an employee under his employment contract and the benefits and burdens thereof. However, in my opinion, the questions explored by collective labour law are hardly examined by the science of economics (unless as a negative factor of efficiency) whereas collective bargaining is particularly relevant to the protection of employee's interests. Similarly, it can be concluded that although the phenomenon of *flexicurity* lays outside the area of interest of classic labour law, it is studied extensively (and occasionally from a converse viewpoint) by sociology and economics and their results are built on by the political decision making bodies. „Precarious" or vulnerable legal relationships are mainly discussed in great detail in the literature of sociology as part of the study of atypical work and similarly, gender differences are also primarily studied in this field. The scientific results of sociology successfully promoted themes such as the question of how to increase employment or the question of unemployment to the field of public policy. These questions are not yet representing a research subject for labour

[4] KUN, A: Gazdasági racionalitás és munkajog: Az előreláthatósági klauzula esettanulmánya az új Munka Törvénykönyve tükrében. In. Publicationes Universitatis Miskocinensis. Sectio Juridica et Politica. Tomus XXXI.2013. 397.

law, and as they fall outside the world of employment relationships; and they also represent a peripheral area for economics. The questions on regulation and deregulation and the right proportion of these endeavours form the intersection of public policy and labour law. With the new Labour Code (Mt) which came into force in 2012, we can see that regarding atypical work, the regulatory approach is gaining traction. Legislative harmonisation represents a problem to be solved for public policy and labour law, which not only means a compulsion to comply with the ever changing EU legislation, but also an international pressure regarding the creation and maintenance of an open labour market. In connection with this, social dumping as an economic phenomenon represents an interesting question for economics, on the other hand, it represents an open question for decision makers whether these social processes need support or control.

FOCUSPOINTS OF THE SCIENTIFIC APPROACH TO ATYPICAL EMPLOYMENT RELATIONSHIPS



Novelties featured in Chapter XV of the Labour Code (Mt) include the introduction of new employment relationship types previously not regulated by the Code (split work or work for multiple employers) and the conversion of legal relationships into employment relationships which were not previously under the scope of the Code (working from a distance or outworking). Undoubtedly, if the management of legal relationships is left to the contractual freedom of the parties, it does not favour the employee with its more vulnerable position. However, in my opinion, the effectiveness of the protection of vulnerable employees, who is presumably the weaker party, is questionable under this laconic regulation. As an example of this, the regulation of outworking can be mentioned,

which previously had a more thorough regulation by means of secondary legislation, than the current regulation under the Labour Code. Tighter regulation meant that it left less room for the employers regarding the contractual terms and conditions, but it also meant that in case of dispute resolution, courts had less margin of discretion. Despite the above, in my opinion, precisely because of the comprehensive nature of the Code it is the right if not the best place to regulate atypical work relationships in, stating their position to the typical employment relationship and declaring that despite their different characteristics, these relationships collectively should be regarded as employment relationships. Furthermore, in the absence of different statutory provisions, all statutory guarantees contained in the Code should be applied to these relationships.

Job sharing and employment relationships created by multiple employers are newly introduced types of relationships in the Code, to which, according to the legislators, market demand gave birth. However, based on the findings described previously in the Thesis, the short spoken regulation of the Code not only did not simplify and legitimise these relationships at the same time, but the lack of detail in the regulation (in the absence of case law for the time being) also raised several controversial issues. *It is absolutely necessary to have the disputed points of law which emerged, settled in the Code.*

Self-employment as a generally accepted type of atypical work is entirely missing from the Code in force. Once we have established that featuring certain employment relationships in the Code primarily served declarative purposes, then we need to conclude that featuring self-employment is definitely a task for the future. The question of legislative support for the self-employed is on the agenda across the European Union, and in particularly, it is vitally important that in case of these workers, the legislature find a way to create real employment relationship status for the quasi self-employed, which is primarily to guarantee social rights for them.

In the context of simplified employment, a number of questions have been left open by the Code and the relevant Act of Parliament (Act XC of 2010, Chapter 1). Regarding the creation of the employment relationship, both legislative acts clearly state that work/employment can be created by verbal contract as well and that the employment relationship is created when a notification is sent to the tax authority. In my opinion, the fact that putting the employment contract into writing is no longer mandatory and that the relationship is created upon notification and not upon entering into contract, creates the possibility for abuse. According to the literal construction of the regulation, if the employer does not notify the tax authority about the employee, the relationship is not created. Neither the Code, nor the Act contains provisions regarding the legal consequences of the employer failing to submit the notification. Another problem is that if the parties created the relationship with a verbal contract and the employer fails to submit the notification, the employee with no written contract can not prove that the relationship was indeed created between them. In my opinion, even in cases of simplified employment, for employee protection in particular, it is justified to stipulate written employment contracts as a mandatory requirement.

A very large group, which until recently has completely been invisible for labour law is of the domestic workers. Despite the fact that their employment has been regulated on the level of primary legislation (Act XC of 2010, Chapter 1) their relationship is not to be considered an employment relationship but to *another relationship with the purpose of carrying out work*. In connection with the legislation, the question arises that since the law does not contain time constraints for domestic employment relationships, it allows for - through the registration process – a relationship, created within the formal legal framework, which is ongoing, full time occupation in a form of a *relationship with the purpose of carrying out work*, which is entirely free from tax and social security obligations burdening employed income. At the same time, this also means that domestic workers' position become very vulnerable as for their relationship the Labour Code will no longer apply, nor they acquire social security status, and they are entirely removed from the protection offered by social security systems. In my opinion, regulations covering casual workers could be extended to cover domestic workers too. In this case, the employee still does not qualify as an insured under the Social Security Act (Tbj), but they would qualify for benefits such as pensions, accidental health services, and job seekers' allowance.

Concerning the regulation of school cooperatives, the dual employment contract system raise number of problems in practice, and its dogmatic contradictions have already been brought to attention. In my opinion, the separation of the framework employment contract entered into with a member of a school cooperative from the „real employment contract" outlining the real tasks and duties of the job, raises a number of legal concerns (termination of relationship, protection against unfair dismissal), therefore revisiting these provisions is entirely justified.

LIABILITY FOR ENVIRONMENTAL DAMAGE IN INTERNATIONAL LAW

KECSKÉS, Gábor*

„Peace, development and environmental protection are interdependent and indivisible."
(1992 Rio Declaration on Environment and Development, Principle 25)

The Subject and Aim of the Research and Research Methods Applied

Subject and Aim of the Research

A for the subject, the thesis surveys the entire concept of environmental liability seizing its inherent substantial connections to the field of public international law. However, it must be stated that the roots of the subject are traced back to the fundamentals of domestic private law and particularly private international law. Subsequently, the research has necessarily and knowingly concentrated on the boundaries of (public and private) international law as well as the basis of environmental law.[1] As a matter of fact, the latter category regularly forms and focuses on the essential legal institutions and solutions on such a way that a model-like adaptable option could be transformed into the previous legal branches.

The analysis also embraced the examination and explanation of legislation concerning certain controversial questions, thus the aim was originally critical, even more critic-oriented, due to the gaps and lacunae of the given field, while it is worth mentioning that the issues of the incomplete institualization pervades the thesis. There was a defined aim during the research process that the emerging deficiencies of the analysed subject shall be emphasized page-by-page, line-by-line with an implicit and humble motive of the author

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[1] In the Hungarian legal language, the term "environmental law" has several meanings and translated versions; the author accepts the proven terminology assumed by some experts. From those experts and on their influential articles, see FODOR, L: A környezethez való jog dogmatikája napjaink kihívásai tükrében [Dogmatics of the Right to Environment in the Light of Challenges of Our Days]. *Miskolci Jogi Szemle*, Vol. 2 (2007) No. 1, 5-19. and BÁNDI, Gy: A környezethez való jog aktualitása [Actuality of the Right to Environment]. *Rendészeti Szemle*, Vol. 57 (2009) No. 1, 17-32.

to provide practical and beneficial opportunity for international and domestic actors being responsible for the improvement of numerous issues of the subject.

The realization and articulation of such kind of overlaps and obstacles may provide methods for solving and rectifying the anomalies enumerated within the single chapters. The international legal aspects of environmental liability determine and predestine self-standing controversies comparing with the domestic legal systems, notably contemplating administrative law and environmental law, as well. The causes, as outlined repeatedly, are at least two-folded:

firstly, several specific and distinctive characteristics of international law shall be taken into consideration in comparison with domestic legal systems (unique legislative issues, unique rules, unique forms of handling inter-State issues);

secondly, due to transboundary character of environmental damages, the attribute of bilateral, regional and universal damages may require different underlying rules and altered means of dispute settlement methods on the grounds of nature of damage and other criteria.

The thesis takes an in-depth scrutiny within the framework of the so-called *triad* established by i) *public and private international law*, ii) *environmental law* and iii) *responsibility- liability law*. The complexion of „matrix" and network being perceptible among the aforementioned three fields may determine the key legal anomalies accumulated herein and demanded by positive law. In addition to that and beyond positivist approaches, the customary international law and case-law (judge-made law) as well as didactic, for instance academic and scholarly, views can elaborate the "escaping way" in order to initiate efficient liability rules regarding the sophistication of specific areas of international environmental law suffering damages.

Before embarking upon a deep scrutiny and referring to the aim and task of the research, firstly, the thesis considers to be useful to posit and define the notion of environmental damage (including any other various phrases and layers within its own sphere such as adverse or negative effect, injury, harm, loss and impairment, etc.), upon which an added value of the dissertation may be clearly emphasized. The thesis takes a stand on ideal and holistic definition. The content and component of the term "damage" is a crucial issue, whether it incorporates only emerged, occurred, concrete and measurable damage or collateral costs and losses (such as costs of preventive measures, cost of restoration or evacuation, etc.) or indirect damages (such as damages exposing their effects in the sequel, after long time, as it is accepted in the case of health effects or contamination after decades) are included, as well. Leaving this question to be uncertain would be misleading and it was taken for granted that this issue has to be utterly expressed and elaborated.

Afterwards, within the diversified framework of international treaties, EU-law and judicial practice concerning the comprehension and exact notion of damage, the liability-responsibility debates considered here reflect and outline an essential role which is inevitable in order to describe the substance and added value of liability and responsibility

in a general way, as well as environmental liability v. (theoretically) environmental responsibility, specially. The entire issue must be founded on a predefined and accurate damage, which may be obligatorily required as having been incorporated into the sources and legal forms covered by the normative parts of the thesis. In a general consideration, environmental liability overwhelmingly dominates the analysed field, while, and in this regard it is well to note, the responsibility issue by itself has different subject and legal consequences. Permeability cannot be envisaged as a possible way or is thought to be the cause of further anomalies.

Referring to the liability-responsibility debates, as for the codification activities of International Law Commission (the Commission, hereinafter ILC, is an auxiliary body of the United Nations General Assembly being responsible for the promotion of the progressive development of international law and its codification), the distinction comes into the sunlight, upon the in-depth overview of draft articles and principles adopted by the body of experts of ILC. The term „liability" means the breach of primary norms, which is an obligate prerequisite of secondary norms being unfolded within the domain of responsibility. To abstract from breaching norms, the term „liability" can concentrate on and can be based upon lawful but harmful activities, as well. As opposed to this statement, the term „responsibility" shall be already based upon unlawful acts, thus firstly, it focuses on acts prohibited by international law and secondly, it reflects and, what is more, remedies the aftermath of breach of primary norms.

The thesis consciously exceeds the frames and regularly limited boundaries and interpretative domain of environmental law, thus the utmost forms and various layers of environmental damage are inherently considered and widely detailed, irrespective of their systematic "affiliation" (whether it is reckoned as typically environmental issue or not in a strictly speaking). For the sake of extensive argumentation and coherence, the environmental effects of armed conflicts are out of the scope, for the simple reason of eliminating the approach that would require an in-depth analysis of the rules of armed conflicts, which would excessively broaden and fragment the unity and consistency of thesis.[2]

After placing the "marking stones" of the research, firstly, the essential legal institutions had been examined with special regard to their legal historical roots, deriving from Roman law; secondly, the wide-spread theoretical, descriptive analysis in a detailed form is indispensable in order to reveal the whole subject of the given field. This method strongly features the whole structure of thesis and is dominantly capable not merely of reviewing but assessing the subject.

[2] On the early scrutiny relating to the issue of "ecocide" in the Hungarian legal literature, see BODNÁR, L.: Az „ekocídium" kérdéséről [On the Question of „Ecocide"]. *Jogtudományi Közlöny*, Vol. 29 (1974) No. 5, 230-239.

Research Methods Applied

Scrutiny of Codified Rules and Customary Norms

The ambitious aim of the thesis was to carry out an in-depth analysis on the relevant treaty- based and mainly universal regimes within the field of international environmental law and liability law. Otherwise, the civil liability-based regimes appreciably determine the complete topic, thus the review on liability-issue especially on liability-pillars and liability tiers was a core research aim to be conceived of at the beginning. Moreover, during the period of research it seemed to be inevitable that the State practice and domestic legal solutions, in due form, would be covered and included, as these norms and models not only supported but, in an effective way, induced international regulation.

In this regard, it must be stated that EU law – by means of its acts as primary and subsidiary EU norms – could and should provide and not only provide but point out forward- looking premises when the general environmental liability mechanisms and the EU"s modus are basically compared and overhauled.[3]

Besides, the *opinio juris sive necessitatis* may not have been left out of consideration. Due to the so-called embryonic and fragmented field of subject under scrutiny, an empirical and practical source of obligations must be conceived in such a way that this *opinio juris* can foster the evolution of norms and to offer efficient methods within the framework of regimes "suffering" from shortage and anomalies. International custom as evidence of a general practice accepted as law (as the point 1. paragraph b) of Article 38 of the Statute of the International Court of Justice follows) can solve numerous cases in which the basic issues and requirements of liability rules virtually lack.

On the ground of the aforementioned field, certain *soft law* documents are thoroughly construed and are capable to set standards on issues lacking precise and exact means and methods. There can be little doubt that the most important soft laws are the draft articles and draft principles adopted in the first years of the 21st century by the ILC.[4] The importance of these documents are verified by their roots being traced back to centuries in customary international law as existing practices, and the simple fact should be also noted that the International Court of Justice referred to these documents several times as compilations of international customs and the work of a brief and exact summary of *opinio juris*.[5]

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[3] As for underpinning this note, see *Directive 2004/35/CE* of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

[4] Cf. 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts; 2001 Prevention of Transboundary Harm from Hazardous Activities and 2006 Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities

[5] For instance, see the judgment delivered in the Gabčikovo-Nagymaros Dam Case in 1997, especially paragraph 58., 79., 83, 94., 122. and 123.

However, the normative parts of the thesis and its relevancy had priority in the making, but the author has to admit that neither hard law, nor soft law should not be underestimated within the sphere of environmental liability in international law; thus, these categories should be mutually adverted.

Scrutiny of Case Law

Under this research method the environmental-based practice of numerous international courts and tribunals are taken into consideration. A great number of major and celebrated cases had been awarded and delivered in the last century, which judgments/orders/awards have a serious impact on the given field. Strictly speaking, these cases are considered to be precedents, and it is needless to highlight that international law does not explicitly accept precedents (in such a way as the Anglo-Saxon legal system applies these sources).

The parts on scrutiny of case law concentrate on memorable argumentations concerning stare decisis and ratio decidendi, which have high levels of importance in several cases within the field of international environmental law or liability law, such as arbitrational awards (1938 and 1941 Trail Smelter Case, 1957 Lake Lanoux Case) and the in-depth scrutiny of case-law of the Permanent Court of International Justice, the International Court of Justice (high number of pending cases), the International Tribunal for the Law of the Sea, the European Court of Human Rights as well as the American and African equivalents (mainly mild connecting points) and last but not least the European Court of Justice relating to such cases in which the environmental or liability concerns could frame an "added value" to the evolution, articulation and development of environmental jurisdiction. The so-called "flagship-cases" can ameliorate and promote not only the unified and universal jurisdiction and practice but also the approximation of divergent regimes. The conclusions of judge-made Scrutiny of Legal Literature opinions drawn in such flagship-cases had provided considerable assistance to the author in the selection of argumentation and regarding the course on the subject.

Scrutiny of Legal Literature

As the subject had been embedded, the main task was to treat utterly the pertinent Hungarian legal literature and to elaborate the question with the utilization of the foreign legal literature (mostly the monographs and articles written in English) citing them profusely. The author endeavoured to focus on relevant approaches and lateral thinking.

Three influential works were "black lines" which were seemed to be orientation points in case of uncertainty or contradictory issues. Beginning with a Hungarian connection, the Hungarian-born Alexandre KISS‟ and his fellow author‟s, Dinah SHELTON‟s

work (*International Environmental Law*) must be mentioned[6]. Besides, the books of Patricia BIRNIE and Alan BOYLE (*International Law and the Environment*)[7] as well as a summarizing all-round handbook edited by Daniel BODANSKY, Jutta BRUNNÉE and Ellen HEY[88] were among the sources and didactical samples which could give considerable assistance to the author during the process of writing.

Structure of the Thesis

The thesis consists of four separate parts, then each part is divided into chapters referring to the interconnected and coherent issues in conjunction with measures, while the chapters are parted and further specified into points and sub-points, where it seemed to be effective and remunerative for the sake of transparency and easy understanding.

The *first part* of the thesis deals with the notion of damage and its relevancy within the framework of liability-based regimes. After delineating the essential fundamentals of research, the work reviews the numerous versions of environmental adverse effects adopted in several international instruments. The classification of regimes bearing importance is strict, serves as an orientation point and advances the systematisation of the given field.

The thesis points out that the analysed subject has at least four problematical factors related to the definition methods, which simultaneously impede the unification and efficiency of environmental liability. The causes or factors are multi-fold, having been read in the followings:

a) the latency of detrimental effects of environmental damages is extremely probable (such as health effects), thus the causal link between the accident and the effect can be easily receded, while several other impacts can intercept and bewilder the causation. The environmental damages can be, in the meanwhile, either intensified or diminished by inputs derived outside the causal linkage;

b) the *components of contamination* are heterogeneous, most of them are unattached to the given activities (*vis maior*), thus the identification of the liable part is fairly cumbersome, because exact delimitation between indirect and direct causes of damage is often considered to be unreachable;

c) the *spatial factor* of environmental damages is relevant, most of damages have a long-range and transboundary character irrespective of boundaries and continents, thus

[6] KISS, A. – SHELTON, D: *International Environmental Law*. Third Edition. Transnational Publishers, New York, 2004. 837.

[7] BIRNIE, P. – BOYLE, A: *International Law and the Environment*. Second Edition. Oxford University Press, Oxford, 2002. 798.

[8] BODANSKY, D. – BRUNNÉE, J. – HEY, E. (eds.): *The Oxford Handbook of International Environmental Law*. Oxford University Press, Oxford, 2007. 1080.

the roots and origin of contamination or accident are, severally, hardly to be allocated and retraced[9] and

d) certain activities threat only the environment of future generations and not the present generations" environment. The lack of scientific certainty is also a crucial question, which should not be underestimated. Consequently, it can easily appear that tangible dangers and negative effects are not occurred in the present (which is a prerequisite to liability issues to be ascertained).

Amidst the research, the author applied two approaches based upon two conceivable regimes on the subject. *Sectoral* and *intersectoral* approach can emphatically provide several solution- ways in the lack of universal and generic notion of damage by fragmenting a given regime to sub-regimes with capable measures and legal institutions separately. The sectoral field (containing treaties on elements such as flora, fauna, water, air, soil, landscape and man-made environment, as well) and intersectoral way (for instance, interdependence between the aforementioned elements) can guarantee such research methods and separate textual base, upon which the main question of the first part, scilicet the definition of environmental damage, is to be convincingly clarified.

The *second part* analyses the positivist and norm-centred substance of the aimed research subject as well as object proposed. The definitive anomalies should have been inevitably remained in the focus, while it is dubious to draw an obvious distinction between liability and responsibility, thus it deeply determines the whole issue. The main task was to examine the frames and borders of notion and scientific, theoretical content and standard of the two terms seeming akin to each other without profound scrutiny. The author made the conclusion that rules of environmental liability as a field determined by primary norms may be acquired from public and private international and domestic law as well as from EU law. Strictly speaking, the scope of environmental liability has its origins in domestic civil laws irrelevant of international law. The international actors, after long time, concluded in the 1960s that the regimes containing civil liability rules (nuclear liability and oil pollution) should adopt and implement the rules, the causation, the exemption methods, the legal institutions and the sanctions of liability rules of civil laws based upon Roman law. The result is clear, this original composition and long-living concept thoroughly affects the net of liability regimes (irrespective of whether it is sectoral or intersectoral regime) both in existence and under development, as yet.

[9] For a long while, causing environmental damage had been considered as an issue being relevant only within neighbouring States. The real paradigm shift was due to the 1972 Stockholm Conference, where the 1972 Stockholm Declaration had been adopted with the crucial word of the extended term of *environment* instead of using the tightened term of *area*, which „morphological fine-tuning" has great relevance in the given field. Cf. BRUHÁCS, J: *Nemzetközi vízjog. A nemzetközi folyóvizek nem hajózási célú hasznosításának joga* [The Right of Water in International Law. The Law of Non-Navigational Uses of International Watercourses]. Akadémiai Kiadó, Budapest, 1986. 158

The author accepts *Bibó*"s opinion, published in 1934, that public international law cannot recourse the means of sanctions (then public international law and comparing with the domestic legal systems – the author).[10] It must be stated that the old wine (symbolizing liability-concept) remained in old bottles (representing the legal environment of international law); however, numerous significant shifts had been attained, such as the slight decline of absolute sovereignty of States with special regard to their decreasing immunities in case of damage; besides, new categories and non-fault forms of liability were also explicitly materialized in a certain way. The liability channelled to non-State actors (multinational firms or private plants located near borders producing harmful wastes, stuffs), concretely obliged to operators, suppliers, owners, etc. determines the most regimes in the given field; in addition, legal consequences of transboundary environmental harms shall not impose liability on the direct side of States. The "escaping ways" of States from liability are well known owing to the layers of *raison d'État*. There is no treaty applying State liability (except for the 1972 Liability Convention for Damage Caused by Space Objects) entered into force, which was a direct consequence of decades-long State practice and attitude having been manifested in the forbearance of stipulating treaties covering State liability. The practical interest and reason of ignoring State liability may have induced such a situation therein the term civil (non-State) liability determines almost exclusively all fields of environmental liability. The residual liability of States, in the lack of the liable part or in case of inadequate financial pools on the side of the liable part, is a potential but rarely applied option.

However, the linear way of channelling liability remains simultaneously within the framework of private international law and domestic civil law.[11] It is worth mentioning that it reflects the generally accepted view as the international environmental law includes the norms of international law being applicable to environmental problems and threats.

The *third part* summarizes the connected and subject-oriented judicial practice, therein the survey embarks upon to analyses not only the leading-cases of international environmental law but the thesis has the aim to alight on an added value of international judicial fora by fostering the institualization of environmental jurisdiction in the light of damages. To simplify, the judicial practice serves as a (secondary or subsidiary – the author) source of international law, as Paragraph 1. d) of Article 38 of the Statute of the International Court of Justice refers to its role in applying these sources to decide in accordance with international law such disputes, which are submitted to the Court.

[10] Cf. BIBÓ, I.: *A szankciók kérdése a nemzetközi jogban* [The Question of Sanctions in International Law]. Szeged Városi Nyomda és Könyvkiadó Részvénytársaság, Szeged, 1934. 5.

[11] A notable source states that international environmental law also includes not only public international law, but also relevant aspects of private international law, and in some instances has borrowed heavily form national law. See BIRNIE – BOYLE: *op. cit.* 1. On the prominent overview of its concerns with private international law, see BRUHÁCS, J.: A határon túli környezeti károk orvoslásának problémája: nemzetközi magánjogi egyezmények [The Problems of Remedies of Transboundary Damages: The Treaties Relating to Private International Law]. *Jura*, Vol. 11 (2005) No. 1, 48-60

The international community could manifestly witness proliferation of international judicial fora, thus the number of arbitral awards had been decreased in spite of the popularity and acknowledgement that these processes could garner between the world wars, especially in the 1930s. The symbolical and celebrated Trail Smelter case was the first international judicial case wherein the subject of debate was embraced by the embryonic norms and requirements of environmental law (but rather liability-responsibility approach was cardinal). However, proliferation is an obvious process of self-evident development and institualization of entities; which, on the other hand, may increase the number of cases and demand the specific proficiency on the side of courts and tribunals entailing the added value of this procedure, namely the (organic) evolution of environmental jurisdiction.

The thesis reveals that several pending environmental cases can be found on the lists of ICJ and ITLOS (and the situation is similar as for the human rights fora in a certain way), these judgments or other kinds of awards will be delivered either in the future, but it has to be stated that the *stare decisis* (or *ratio decidendi*) as well as the argumentation of those awards will notably develop the domain of international environmental law and liability for damages with several debated issues to be theoretically resolved. Certain international judicial fora delivered awards and judgments as well as these bodies declared principles, which are regarded to provide for sources and favourable background to customary norms, thereupon these norms and soft law documents had auspiciously promoted the development of substantive norms of international environmental law.

The *fourth part* provides for a single and separate section to draw the relevant and established conclusion having been unfolded in the previous parts. The original purposes and the scientific results attained are particularly compared in a summary-like manner. As a synopsis, this part synthesizes the main aspects of environmental liability, in witness thereof the notion of (environmental) damage, the legal domain of evolving liability and the jurisdiction of relevant courts and tribunals had been explained and examined.

Summary of the Scientific Results and Their Practical Applications

Summary of the Scientific Results

The thesis embraced the notion of environmental damage and its all relevant implications within the sphere of international law, besides the main part devoted a prolonged analysis on liability-based treaties. The sectoral and intersectoral approach and classification had favoured and provided a remunerative forum for surveying the liability field in its own unity or, as for the sake of pertinence, in its own fragmented system.

The lack of unifying mechanisms and purposes clearly demonstrated that the States as well as the relevant policymakers and actors are not interested in creating norms of permitting of the unification of regimes with higher and developed efficiency. The endeavours for constituting a unified, universal and all-round regime within the domain of environmental issues shall evidently discourage and deflate the interest and

activity of States in the preparatory works. Thus, the *corpus* of international environmental law henceforward commands diversified mechanisms on definition, causation, liability-channelling, sanctions and dispute settlement, hereby extinguishing those positive and auspicious methods that would easily accommodate the incomplete regimes. In addition, „intersectoralism" shall be considered as the key issue in this process, as the obligate and accepted sectoral means objected and encumbered the unification and the paradigm shift toward the approximation of the single regimes entailing considerable advantages. The failure and fiasco of this efforts had been proved by the case of *1993 Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (not in force) that contains a wide-range notion of damage and beneficial but unusually far-gone rules on liability (as for causation, channelling and exemption, as well). These facts are already sufficient to obstruct the entry into force of the convention for almost two decades. Albeit, it is necessary to note that the novelty of the convention is uncontroversial and model-like. It is well to note that in the compilation, the major liability regimes by themselves lack the capacity to set high standard which could be regarded as precise and sufficiently capable of promoting the development of the given field.

There was a widely accepted opinion at the dawn of classical period of international law that responsibility of States (at that time, liability was also included into the concept of responsibility)[12] must be based upon a certain fault on the side of the responsible (liable) part. This fault-based concept was presumed on an axiomatic paradigm that responsibility-liability of States with unbounded and unlimited sovereign peculiarity (at that time, absolute monarchs) shall have been imposed on fault (intention and *culpa*) of States. However, to describe the law of State responsibility as based on fault is misleading and liable to confuse.[1313]

The aforementioned paradigm was prevailing until the end of 19th century. The legal thoughts within the period in question presupposed the view of the ground of State responsibility-liability that this fault-based responsibility must have been attached to the exclusive territorial jurisdiction of the single States. The real paradigm shift has occurred due to the altered scope of the authority and jurisdiction of States, which favoured the legal environment to set up new responsibility and liability clauses. Bearing in mind, for instance, the occurrence of these new clauses has even covered the newly created rules

[12] See GROTIUS, H-: *A háború és a béke jogáról* (*De iure belli ac pacis*) I-II-III. [On the Law of War and Peace: Three Books]. Fordította [Translated by]: HARASZTI, Gy. – BRÓSZ, R. – DIÓSDI, Gy. – MURAKÖZY, Gy.. Akadémiai Kiadó, Budapest, 1960. II. könyv (Second Book), XVII. fejezet [Chapter XVII] és XX. fejezet [Chapter XX] 2.

[13] See BIRNIE-BOYLE: *op. cit.* 183. The term "fault" is overwhelmingly covered by domestic civil laws, and owing to its analogous aspects and the experience lurked in its practical application. Furthermore, this legal phenomenon shall govern the similar institutions of international law, as well. International law has no (and needs no) own and proper variation for fault; therefore, the domestic legal frames of fault suit well and shall be borrowed and adopted without further complications.

on environmental liability and responsibility for internationally wrongful acts. The spread of the consequent influences proves the unique and specific area of environmental liability. The various layers of liability had been stamped as predetermined pillars and criteria by the first liability regimes, such as nuclear and oil pollution liability. These regimes of the 1960s have primarily prompted a radical change on liability aiming to harmonize the domestic solutions of participating States under the „lowest common multiple" of non-fault based civil liability with exemptions, which was an admissible option unifying the specific needs and essential interests of member States.

The further causes of paradigm shift were several:

a) as for the public and State actors, the approach of the protection of environment had been notably changed from the 1970s;
b) the number of treaties stipulating numerous fields of protection of the environment had significantly increased;
c) the frequency of the claims before international judicial fora signs an unequivocally cumulative trend; and
d) the altered scope of States and their jurisdiction has deeply leveraged the given subject.

However, the judicial practice exemplifies the viewpoint that the sovereignty of States is no longer exclusive as this criterion is – more or less – circumscribed by codified and/or customary norms. For instance, it is included to 1972 Stockholm Declaration (Principle 21 and 22) and 1992 Rio Declaration (Principle 2), which (the latter) reads as follows: "*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*"

As for the illustrating quotes of previous paragraph, the international community is explicitly witnessing the trend that „the practice of channelling environmental liability towards private actors in national law is now a widely developed alternative to the international liability of states in cases of pollution damage[14]."[14]

The thesis draws the cardinal and substantive conclusion that the traditional liability concepts, particularly the civil liability concepts could and should be harmonized with and adopted, transformed or applied favourably to the international liability and responsibility theories with an intention for advancing the codification of State liability and State responsibility in a developed manner, because these rules are still evolving and in a deep need of further institualization. Furthermore, the judicial practice with its argumentation has a noteworthy role in the form of *communis opinio doctorum* by

[14] See BIRNIE-BOYLE: *op. cit.* 182

means of availing the main courses of legislation as well as the State efforts in their international relations.

The responsibility or liability of States is no longer a futuristic and utopian way, the States can be widely obliged, albeit it must be stated that the preservation and „dominance" of civil liability within the framework of treaties of environmental concerns seems to be a certain and permanent solution henceforward due to *raison d'État* of excluding methods, which can theoretically jeopardize their relative "immunity" or exemption from liability and responsibility issues.

Bearing in mind the numerous statements and conclusions, in the hope that the legislators as well as readers have the possibility to understand some crucial but controversial issues, the thesis explicitly considers aims, means and development prospects through introducing international regimes with an outlook on EU and some domestic appropriate aspects.

Practical Applications of the Conclusions

The theses concluded could handily promote both the dissemination of scientific and academic results achieved and the solution of domestic and international legislation on such a field that is deeply influenced by anomalies detailed in the main parts. The public may benefit from the conclusions drawn; and in addition to that, the analysed issues and controversial problems had not been symbolically summarized in a form of monographic way in the Hungarian legal literature.

The requirement of unifying the notion of environmental damage as well as the clarification of liability rules supported by compensation techniques should create a developed legal background, therefrom Hungary can profit and benefit referring to a number of several cases, which are under discussion and are inducing as well as maintaining tensions in its inter-State relations regarding environmental concerns. Bearing in mind the *Gabčikovo- Nagymaros Case*, the *Chernobyl accident*, the *Tisza cyanide pollution*, the *pollution of River Rába* and the *case of wastes exported to Hungary*, which were stored and dumped in Hungary; these cases require of applying and resorting efficient rules, ways and fora of the utmost importance for dispute settlements. The solution cannot be imagined and accomplished without some concerning norms of international law and it is worth mentioning that the official State actors must consider henceforth the accession of Hungary to several treaties dealing with issues, which are akin to aforementioned current affairs of Hungary. It goes without saying that this attitude and act shall be depended on and reactive to the accession of the neighbouring States to such treaties. Furthermore, in a general way, the outcome of such resolutions shall be in accord with the scientific results and conclusions drawn by the thesis.

COMMUNIST TRIALS OF 1919 IN NORTHERN TRANSDANUBIA

NAGY, Szabolcs*

Introduction of Research Objectives

Since the change of regime, research into the history of the Hungarian Soviet Republic has almost completely ceased. Until the centenary of the events, both the revaluation of works produced under the previous regime – which were, due to the subject, strongly "ideology-driven" – and the exploration of new topics took a long time to complete, but fortunately several new works containing research results were published in connection with the centenary. As a historian, I have been dealing with the period for a decade and a half, previously I used to do research on the Székely Division, Károly Kratochvil and the Romanian invasion of 1916. In the course of my legal studies, I discovered the subject of criminal liability after the Soviet Republic, which I also touched upon in a monograph dealing with the events in Pápa in this era. My doctoral research has also focused on these. The proceedings I analysed – which were conducted in the counties of North Transdanubia – were largely initiated by the actions of the defendants committed as officials of the commune. For this reason, the legal classification of each act obviously also depends on whether the defendants complied with the legal provisions governing the powers and procedures of their position. However, the decision on this issue seems easy at first glance only, so the rather unusual nature of the state organization of the Soviet Republic led me to extend my research to the organization of the territorial bodies of the proletarian dictatorship, the system of norms regulating their operation and the established practice.

The countrywide, comprehensive and objective analysis of the criminal proceedings which is the subject of my work, despite the fact that it took place a century ago, is still to be carried out. This does not mean, of course, that there are no historical works on individual proceedings or specific trials. For example, although the papers written in the past system may not satisfy the needs of today's ordinary interested parties in every respect, it doesn't mean that they cannot be used today – approaching them with the appropriate methodology. In fact, they have serious resource value, with very considerable potential for researchers. On the one hand, the authors have usually collected the relevant sources very thoroughly, so these papers can be very useful in compiling the bibliography.

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On the other hand, they very often contain remarks, critical comments intended for readers of the age (who are sympathetic to these), not realizing that after a possible change of regime these can reveal several things about the true situation. In my dissertation – striving to apply the appropriate source critique – I also used these works in large numbers.

On the 50th and then on the 60th anniversary of the proclamation of the Soviet Republic, the national cultural policy placed special emphasis on keeping alive the memory of the first Hungarian communist dictatorship, among other things by supporting the preparation of historical works. In 1969, a book by Erika Rév, candidate of legal science and practising judge, was published, dealing with the "show trial" and the prosecution of the second-line leadership of the commune (since the main protagonists, led by Béla Kun, mostly emigrated). This work was (and, thanks to the related debts of legal history research, still is) the origin from which the authors following Rév discussed the topic. Rév's principle can be summarized in one sentence: the "trial of the people's commissars" and the similar parallel proceedings were clearly show trials, they were actually part of the white terror.

The question is, by examining the phenomenon today, can we accept that the prosecution of the leaders of the commune lacked all legal regularity and was an integral part of the white terror? The analysis of the trials in Fejér, Győr, Komárom, Moson, Vas, Veszprém and Zala counties, which will be presented in my dissertation, provides important indications for answering this question. A common feature of these procedures is that actually, most of them were previously unknown to the public opinion. Their conduct was not accompanied by national interest, and the attention of legal historians was largely avoided. However, in many respects for the subject, their examination would have been very useful. As the actions formed the basis of the proceedings were generally less “sensational” – such as those committed by Ottó Korvin or József Cserny –, they shed more light on the questions that the legislators and law enforcers of the time had to answer. How to judge the status of the commune, was its statehood even acceptable? In this context, could the legitimacy of the actions of its former officials acting in an official capacity be called into question? What is the law on which the acts of the defendants are to be judged? What about types of crime that have not occurred before, so that their inclusion into the framework of the criminal justice system in force did not seem justified? In my work I try to give examples of the answers to all these questions in the "communist trials" of the age, and whether these answers can really be compared to the actions of the Prónay and other detachments and the show trials of the period following the Second World War.

In the 20th century Hungarian history, several regime changes took place, in connection with which the representatives of the new system demanded the prosecution of the leaders and officials of the previous system. The fundamental problem in each case was that, on the basis of a positivist (or at least of the legislation in force at the time of the offence, taking into account the principles of nullum crimen sine lege, nulla poena

sine lege) legal interpretation of the acts to be sanctioned, it was difficult to conduct proceedings that would have met the political needs of the successor power (which certainly coincided several times with the expectations dictated by the moral sense of the public). This contradiction was resolved in different ways by politicians of different eras. In 1918, no legal prosecution was made for political reasons. The iconic figure of the previous regime, Prime Minister István Tisza, was shot dead in his home by unknown assailants, in front of his family. This act was later perceived by many as a fitting embodiment of the 'people's anger', and the events were interpreted as the execution of a death sentence by a 'collective court of society'. After 21st March 1919, the new regime – actually accepting itself as the successor to the previous one – did not hold the actors of the previous era guilty. However, a large number of politically motivated criminal convictions were handed down by its judicial bodies, not against the replaced system, but against the leaders and members of supposed or real counter-revolutionary conspiracies.

After 1945, however – partly following the international examples – there was a clear need on the part of the leaders of the new Hungarian Republic to punish certain actors of the Horthy and the Szálasi regime. At the same time, as we know, this was not easy in Hungary or elsewhere. Some of those who were later convicted of war crimes did not commit any offence at the time of their crimes that would have violated the provisions of the law (or international law) in force in their countries. Thus, as the crimes committed in the Second World War generally provoked the need for severe retaliation in surviving communities, lawyers were forced to ignore the previously generally applied (and already mentioned) criminal law principles. The solution was to break with the prohibition of retroactive effect. Thus, for example, by questioning the legislative legitimacy of dictatorships before the Hungarian People's Courts, instead of the positive law requirements, the accused were prosecuted on the basis of the rules of natural law, in fact, partly based on a sense of justice. So this was one way of taking on the "conflict" (the other actually gives the topic of the whole dissertation), which, however, looking back from today – strictly through legal and non-moral spectacles – does not seem, cannot be seen perfect. Especially since it has been shown in many cases that retroactive application of the law does indeed involve serious risks, and that it is easy to make bad mistakes, whether in procedural or substantive law, if we step outside the framework of the rule of law. Thus, in many cases after 1990, Hungarian courts have been forced to set aside earlier judgments, whether or not the substantive justice system justified it.

The recent regime change then raised the issue very sharply again. In the previous system – especially before 1956 and during the retaliation after the revolution – there were many acts that certainly exhausted the scope of the category to be criminally prosecuted. However, the draft law of Zétényi and Takács, adopted by the Parliament on 4th of November 1991, which sought to make these acts punishable by excluding the statute of limitations, could not enter into force due to the decision of the Constitutional Court. Although the members of the pro-government faction of the first Parliament tried

again two years later, no consensus decision was reached on the issue that divided the public back then and today.

As we can see, 20th century Hungarian history is full of situations where political acts have been judged in ex-post criminal proceedings. Hungarian law has changed in parallel with international law in this matter, and has often preceded it. In international law, the prosecution of "sinners" arose for the first time after the First World War, and finally the German emperor, William II – who was considered one of the main perpetrators (since he was not extradited by the Netherlands) – avoided it. In 1921, in the so-called Leipzig War Crimes Trials, only certain officers were prosecuted (by internal proceedings). Meanwhile, in 1919, the proceedings were abandoned in Hungary only due to the proclamation of the Soviet Republic and the absence of potential defendants. From 1945 onwards, the trials before the People's Court took place at the same time as the trials in Nuremberg and Tokyo, although it is also important to emphasize that the acts adjudicated in the proceedings did not coincide in all respects.

It is fair to say that the 'losers' of the regime changes in Hungary, as well as those who were independent of the side in power, often criticised these proceedings. The trials were presented in a way that made them look like show trials, they were called witch-hunts. The recurring element of the criticism, as Károly Bárd expressed it, was the following: *"In fact, the system must be prosecuted, the personification of a complex social event, its reference to the individual level, is nothing but scapegoating."*

But even with the emphatic and constant presence of the opposing side's opinions, neglecting the issue does not seem to have brought relief. Although László Sólyom envisioned the Constitutional Court as the creator of the invisible constitution, as a kind of missionary body above all other institutions of democratic power, it is obvious that he failed to persuade the parties to the dispute to abandon their efforts aimed to judge the crimes of the past regime in criminal proceedings. Csaba Varga, for example, put it this way: *„By defying the German and Czech solutions, the idea contained that a criminal state shall not declare the crimes (that remained persecuted due to violent miscarriages of the same state) committed by itself statute-barred was rejected as unconstitutional, but that the reconstruction of the rule of law may establish a statute of limitations for this period."*

In light of this, resolving the conflict of values of legal certainty and justice is probably not about subordinating one completely to the other. There is an obvious danger that subjective elements may play too large a role in political criminal trials, leading to unlawful outcomes and abuses. It is not the purpose of my dissertation to take a stand on the topic. Linked to the thought of the Italian philosopher Giorgio Agamben – according to which the state of emergency cannot be imposed either inside or outside the legal system – one of the main questions of the work is, in fact, how a state considered unlawful by posterity can be captured by the means of law. In contrast to the retroactive application of law, the proceedings conducted on the ground of legal continuity have provided, could

they provide more reassuring answers to the questions arising in connection with the justice system after the regime changes?

The Process of Exploring the Sources of the Research and Methodological Issues

As with the subject of the Soviet Republic as a whole, the examination of the subsequent process of "legal retaliation" is also a rather harshly treated area of the Hungarian science of history after the change of regime. This is perphaps somewhat understandable, given the resources available. Relevant contemporary documents of the judicial bodies were significantly destroyed as a result of the fighting in Hungary in 1944/1945. Under the new system, the Institute of Labour Movement launched a program aimed to collect the remaining documents between 1952 and 1953, during which a large number of documents were collected from the archives of the country's judicial authorities. For a decade, between 1964 and 1967, the work was repeated by the Institute of Party History, and this "campaign" significantly expanded the collection. In connection with the two proceedings, it was unfortunately revealed that out of the 23 courts and prosecutor's offices operating in the country in 1919, the archives of 9 courts and 16 prosecutor's offices have been almost completely destroyed.

During the "campaign" conducted by the Institute of Party History and its predecessor, the documents collected in a central location on the basis of the principle of pertinence, in connection with the change of regime were "distributed" among the competent public collections, keeping in mind the principle of provenance. Thus, the collections of documents examined by me, previously brought out from the content of their judicial and other funds, were also returned to the competent bodies of the National Archives of Hungary.

Unfortunately, of the royal courts of Győr, Székesfehérvár and Veszprém, which were the subject of my investigations, only the relevant documents of the first judicial body left to us seems rather complete. Due to the change in the borders of the country, the jurisdiction of the Royal Court of Justice of Győr at that time extended not only to the areas of jurisdiction of the district courts in Győr and Moson counties, but also to the District Court of Nagyigmánd and to the District Court of Tata in Komárom County. The fund thus contains nearly one hundred trials from Győr County, more than eighty from Komárom County and three dozen from Moson County. This amount, even when broken down by county, is an order of magnitude bigger than the surviving records of the other two courts. Based on several circumstances, we can assume that the vast majority of the relevant cases left upon us, so it is known, for example, that the volume of cases involved represents more than 10% of the criminal proceedings carried out before the court in 1919 and 1920, but this view is also supported by the fact that the verdicts including the custodial sentences in a total sentence has survived in the case of almost all of those people who have been convinced in multiple proceedings.

However, only about a tenth of the Győr county material remained to us from Fejér and Veszprém counties. This is compounded by the fact that, although the Institute of Party History returned the documents to the relevant archives, including the former Veszprém County Archives, after the change of regime, these trials can no longer be found there either. The silver lining of this dark cloud, however, is that several works have been published in connection with the local history movements of the Kádár regime, which describe at least some of the data fragments of the missing trials. In addition to the above, I carried out research in the Vas County Archives of the National Archives of Hungary, where the trials I got to know and mentioned in the dissertation did not differ from the already mentioned in terms of their main characteristics. During the extension of the sample, the works of Aurél Bíró and Csaba Káli also helped me a lot, the former provided a database of the trials held by the Budapest City Archives, while the latter processed the trials of Zala.

It is also very important that the local press (for example, the press in Pápa, considered one of the most developed on a countrywide basis) usually reported in detail on the course of all local communist trials. Although they cannot meet all the needs of a legal historian due to their genre, but at least they do provide data for each ctiy that sheds light on how the entire magistrate system may have been affected by the criminal prosecution. It is also very important that a small number of records of certain criminal cases – other than those already mentioned – have been preserved in other archives. Although these were not carried out by the competent courts in the areas examined, but local events were discussed here and crimes of such seriousness were charged to the accused (e.g. intentional homicide) and so serious sentences were given (death penalty, life imprisonment), which in any case justify my attempt to further nuance the picture by presenting them, even if they do not represent a mass of data that would be suitable for examining trends.

With regard to secondary sources, it is also a lucky circumstance that the official ideology of the Kádár regime – especially since its 40th anniversary in 1959 – has devoted much space to presenting the history of the Soviet Republic, which was considered as a predecessor (of course, from a Marxist point of view). Thus, numerous studies, articles, and even entire volumes have dealt with, among other things, the subsequent criminal prosecution of the commune's officials. These, even if today they are no longer suitable for objectively informing those who interested in the subject, are definitely suitable for a professional who is able to apply appropriate source criticism to get to know the basic data. They quote or cite sources which, unfortunately, are no longer available.

The acts investigated in the trials had been committed in most cases by the defendants acting as officials of the Soviet Republic. It was therefore essential to describe and evaluate the functioning of the organs of the Soviet Republic and to outline the legal framework. Since my research was mainly limited to the North Transdanubian region, it is obvious that during the presentation of the state institutional system I focused primarily on rural bodies. I experienced even greater devastation in relation to the relevant primary sources

than in the case of the trials. So this was the area where I had to rely most on the legal and local history literature.

It is also necessary to analyse the relevant legislation in order to be able to meaningfully evaluate the procedures. As is well known, the first Hungarian Criminal Code in the period, Article V of 1878, often referred to in the literature as the Csemegi Code, provided for criminal offenses and the penalties imposed on them. From the point of view of our topic, it is important that – in preparation for the coming war – the Act LXIII of 1912, which deals with exceptional measures in the event of war and lays down the rules applicable in the event of a state of emergency, was also considered to be in force for the duration of the acts. In the trials investigated, cases of violence against the authorities were adjudicated on the basis of Act XL of 1914 on the criminal protection of authorities. On the procedural side, the Act XXXIII on the Code of Criminal Procedure, the short story of this, the Act XVIII of 1907 and the Act XIII of 1914 amending the provisions on proceedings before a jury and on appeals in cassation were in force at the time of the acts. The Prime Minister's Decree No. 4039/1919 on the Accelerated Criminal Procedure, adopted in the autumn of 1919, was of utmost importance in respect of the affected trials. This, in addition to further restricting certain procedural rights and opportunities of the accused compared to the ones laid down in the above-mentioned legislation, stated, among other things, that the political leaders of the Soviet Republic *"committed an act in violation of criminal law, usurping or pretending to have official authority"*.

The application of the above legislation to acts committed during the Soviet Republic has been the subject of intense debate almost since the beginning of the first trials. I present the main lines of this controversy in my work. I also touch upon the one-sided criticisms that can be found in the "mass papers" of the past system. In the present fortunate age, however, the synthesis of the system of opinions, which is clearly opposing in two essential respects – for reasons not free from ideology either –, has been lagging behind until now. Since the change of regime, new works have been written on a smaller scale and to a lesser extent only, on some special topics.

What all works agree on, including mine, is the fact that the "weakness" of the Csemegi Code was a fundamental problem for the political will wishing to take actions against the cadres of the commune. The state system and social conditions, which were quite stable in Csemegi's time, did not suggest that political crimes should be sanctioned with extreme care and severely in the foreseeable future. The relevant facts of the Code were tailored to "gentlemen" whose "entertainment" included parliamentary obstructions and insults. Csemegi was not (could not be) prepared for violent nationalization, seizures (looting) or the death sentences handed down and immediately executed by the "martial law tribunals" of Chern and Samuely's detachments. And to the main dilemma that arises from all these events; who, to what extent, are liable for cases not committed by them but was carried out on their instructions or only with their tacit consent.

As I pointed out above, the Csemegi Code sanctioned political offences rather lightly. The Code only provided for the death penalty in one form of the crime of high treason (in the case of killing the king), in the other two cases, "it was satisfied" with life imprisonment. There was, however, also a form of high treason that was sanctioned by law with a state imprisonment only! For the crime of infidelity committed against the Hungarian state by conspiring with the government of another state, a prison sentence of up to 10–15 years (in a qualified case, life imprisonment) could be imposed. Members of a group that threatened the parliament, the government, or interstate commissions, or forced them to act involuntarily, who thereby committed the crime of rebellion with their act, depending on their form, were usually also sanctioned only by state imprisonment. The various forms of violence against the authorities were usually punished by imprisonment, and various forms of agitation by state imprisonment. In addition to the fact that in most cases the above sentences only reached the level of a standard robbery punishable by imprisonment for a term of 5 to 10 years, it is also noteworthy that the confinement was not usually carried out in a prison or jail, but in a state prison, which was in fact set up by the Code to sanction political offenses. This was in many respects a much lighter degree than the first two, and in fact, as it is clear from the explanatory memorandum to the law, the legislator introduced its institution specifically because it did not consider perpetrators of political crimes as dangerous to society as common criminals.

Ferenc Finkey wrote the following about all this, the original intentions of the legislator and the changed circumstances due to the events of 1918–19: *"As for the conceptual aspect of the issue, the milder judgment of political criminals, so setting up a completely different punishment for them, is based on the right idea that political criminals are mostly not committed their offenses out of vile emotion but out of a morally and socially understandable motive –those misdemeanors which often do not involve external harm or damage, but only infringe on intellectual property, and perhaps it's even true for the objectively serious crimes. Political criminals are usually individuals with exalted spirits, sometimes ideal-minded patriots, philanthropists, otherwise reckless people who easily flare up due to existing governmental or social shortcomings, the troubles and miseries of the poor; those, who are otherwise men of honor, perhaps high-value individuals with excellent talent, whose punishment or imprisonment on equal footing with ordinary criminals, thieves, robbers would be ignorance and inhumanity.* […]

As correct and satisfactory this reasoning was at the time, and as correct and necessary is the maintenance of state imprisonment as a custodia honesta as a specific punishment for political crimes committed with an honest heart, especially press offenses and so-called opinion delicts (Äußerung-delikte) as a means of punishment, it was just as obsolete; it is no longer so appropriate for certain groups of today's world political criminals."

Without going into a more serious explanation of constitutional law or international law here, it must also be pointed out that by 1919, many of the relevant facts of the

Csemegi Code had become extremely difficult to interpret. Charles IV's declaration of 13 November 1918 in Eckartsau was even conceivable as the resignation of the king, in which the ruler agreed to the future change of the state form of the country in advance. Three days after the declaration, the First Hungarian Republic was proclaimed in Budapest on the 16th of November. In addition to the further feasibility of the high treason, the assessment of the other forms was also questionable, because, due to the separation of the two states, the state system of disputed legitimacy in Hungary (I am thinking here in particularly of the Soviet Republic, which was born six months later as a secret pact between two parties) and the citizens living in the occupied territories – not yet known on what legal basis –, it was not easy to decide that to whom do they owe loyalty, against whom do they could incite and provocate "legally".

In addition to the restriction of the rights of the defense, Regulation 4039/1919 ME, which has caused the most controversy over its application, also contained another much-contested provision, because it stated that the political leaders of the Soviet Republic had committed their actions in violation of criminal law by *"usurping or pretending to have official authority*". However, the application of this passage did not become general. Many courts did not take it into account as a qualifying circumstance in adjudicating individual acts. Thus, finally, on December 14, 1920, the Curia was forced to create a decision on legal unity in the matter. In this, they explained that "*the bodies of the dictatorship does not committed their acts of extortion by pretending to be public officials"*, because *"according to the Hungarian constitutional law, the status of a public official is legally valid only if it is originated from the public law source indicated by law, and also because the bodies and medium of the dictatorship, who in this way and according to the provisions of Section 461 of the Criminal Code, were no public officials, they did not even seek the status of a Hungarian public official, they did not demand it for themselves, all efforts to make them look like Hungarian constitutional public officials were far from them."* This, undoubtedly not entirely convincing resolution was also opposed by György Auer (who presented the above), who said that, for example, during the war, in the case of requisition officers belonging to German troops stationed in Transylvania, belonging to the Hungarian state was not a condition for getting the status of a public official either. However, this decision on legal unity calls into question the qualification of certain criminal offenses in the trials described in my dissertation, even if the judgments were largely given before the decision on unity was taken, and there was no appeal under Prime Ministerial Decree 4039/1919.

In addition to what was stated in the explanatory memorandum, there may have been a very important reason why the decision on legal unity found that the defendants had not committed their acts by pretending to have public authorities. The fact that some of the acts found to be unlawful were punishable was achieved by the fact that an official of the Soviet Republic was considered to have acted as a "civilian". This was certainly a somewhat convoluted perception, and resulted in strange facts compared to the "ordinary" ones, but this was the only way they could avoid the incorporation of new

passages on "communist crimes" with retroactive effect into the Criminal Code. Thus, for example, if someone was requisitioned, they were treated as if they had blackmailed or robbed someone as a "civilian". (And as can be seen from the relevant parts of the dissertation, similar analogies have been applied to all other possible types of acts.) In practice, this was the legal-technical solution that was an alternative to retroactive legislation, and although legal policy decision makers of the age felt it much more "elegant" than the other, they also clearly saw its imperfections. However, the creators of the past system have, of course, sharply attacked the procedures conducted on this basis.

As in all cases where the legitimacy of an entire system is called into question and thus the judges actually sentence the system itself through individuals, the issue of offender forms was also very important in the proceedings. From the beginning, a much higher level of responsibility for the perpetrators of specific acts, often in a moral sense, has been a priority in international criminal law; and in this context, the rescuer circumstances, such as the superior's order, coercion and threat, which could have been considered in order to mitigate the perpetrator's actions In the context of "show trials" (such as the trial of the People's Commissars mentioned above), the authors often refer to the show trial nature of the proceedings as some kind of "proof" that the courts have in almost all cases found the commune leaders guilty as accomplices. Thus, they were convicted as instigators or accomplices of multiple counts of counterfeiting, murder, extortion and other crimes. While it is a fact that it is much more difficult to prove who knew what, who gave (verbal) instructions, the above argument cannot be considered valid. Although it is a fact that it is much more difficult to prove who was aware of what, who gave instructions (orally), the above argument cannot yet be considered valid. According to the principle of purification, the accomplice must be treated in the same way as the perpetrator, and it is also contrary to moral principles to "punish only the hand instead of the head".

A very nice example of this dilemma – specifically, who should bear the weight of the specific actions and to what extent – is the trial of the members of the revolutionary court of Pápa described in detail in the dissertation. Fortunately for the accused, all the witnesses – even those who were once punished by the current defendants – testified that the three judges, István Novák, István Réfi and Lajos Varga, handed down their sentences in fear of the terrorists sitting behind them and of political commissioner Gergely. The judges, who, by the way, really meant to be lenient, suspended the custodial sentences one after the other. In addition, the defendants – by their own admission – tried to sabotage the operation of the "tribunal"; if they could do it, they did not meet for up to a week and a half. As a result, the public prosecutor dropped some of the charges. In the remaining charges, the court considered separately their penalties imposed for offenses covered by the Csemegi Code, and separately the sentences handed down on the basis of the decrees of the Revolutionary Governing Council. In the former cases, due to the fact that although they did not act as a legally operating body, but acted in accordance with the current Criminal Code, they were not found guilty. The judgment therefore charged

the defendants only with the penalties imposed for breach of the prohibition and with similar charges, and therefore it contained far fewer offenses than the actual number of penalties imposed. Their relatively mild judgments were also assessed as a mitigating factor.

This example also shows very well that how difficult was the situation of the legislators and the law enforcers under these circumstances. As György Auer wrote: *"Issues of legal unity have arisen in previously unnoticed abundance in communist trials."* Or as Miklós Degré puts it: "*During the 1920s, those factors of destruction came before their judges who created or supported the robber rule. In this way, issues that have not been addressed to the courts so far have been resolved. Criminal courts have found themselves in a completely unknown field of law. They had to decide on issues on which neither the forty years of practical application of the Criminal Code nor the legal literature provided support.*" Even the majority of civilian radicals, independence politicians and thinkers (such as Rusztem Vámbéry), who were considered to be supporters of the Aster Revolution, agreed that the crimes committed against persons and property during the communist period should be punished. By the end of 1919, the Soviet Republic and the acts committed under it and on its behalf were considered to be a matter of law by a few people only. The main debate was over which acts and persons should or could be punished at which level of the bureaucratic system of the time, and especially by what legal means and under what legislation.

The Results of the Research Work

The general characteristics of the examined procedures can be well presented through the analysis of the data of the Győr County trials. There are nearly 250 defendants in the nearly 100 lawsuits, which is actually 169 different people, as many of them were involved in several different proceedings. Among them, two stand out; Zsigmond Kósa, Commissioner for Agricultural Policy of Győr County, who was involved in ten cases, and Mihály Rainer, a member of the Ecclesiastical Property Management Directorate of Győr and Győr County, who was also charged in eight different proceedings, and then his sentences were included in an overall sentence in a separate proceeding. But, for example, Red Guard Detective István Stiener was also charged with four different main proceedings. As can be easily calculated from the data above, trials were filed against an average of two and a half defendants. However, this is not just the arithmetic average that came from the equalization of extremes. Most trials had two or three defendants, the "monstre" – proceedings against more than ten defendants – were considered exceptional, but there were not many single-defendant trials.

Examining the subject of the trials comprehensively, the proceedings were initiated mainly for acts committed in two different "forms". There were procedures in the cases that were initiated because of the actions of people acting as individuals, although not too many. Such is the Case B.455/1919 before the Royal Court of Justice of Győr, in

which the prosecutor's office charged the victim, because, in January 1919 (that is, before the proclamation of the Soviet Republic), after a pub quarrel, the two defendants took the victim's hunting weapon and hunting bag. Or the No. B.2252/1919, in which Lajos Taschner was accused of reporting counter-revolutionary spirited people. Of course, however, there were far more defendants who have been prosecuted for acts committed in some official capacity. However, these charges can still be divided into two parts. In many cases, there is, in fact, no close connection between the defendant's position and his actions. For example, Gyula Tóth, a member of the Győrújfalu directorate, was prosecuted for his leftist statements. However, most of the trials were against a person acting in an official capacity during the existence of the Soviet Republic for acts related to that capacity (requisition, arrest, prosecution, etc.).

Looking at the positions held by the defendants during the Soviet Republic, it can be seen that almost all the county and municipal red bodies operating in Győr County at the time had one or more officials who were the subject of legal proceedings. On the other hand, it was a rarity that all officials of a body became accused, this occurred mainly in the case of municipal directorates. These was, for example, the proceedings against the members of the village council of Táp or the national council of Gyömöre. However, the lack of certain persons and positions is also striking. For example, among the members of the Győr County Directorate or the Győr City Directorate, only second-line persons were prosecuted, but not all officials of the Győr Revolutionary Court became an accused of the cases. It is difficult to give an exact answer to the question of what caused the deficiencies; in the absence of registers, it is not possible to determine the completeness of the surviving litigation documents with respect to the "communist trials". However, referring to a newspaper article in Pápa quoted in the dissertation, we can say that we probably cannot go far from the truth if we assume that several high-ranking people, afraid of the expected impeachment, left the country in time to prevent it. Nevertheless, it can be said that the existing documents also provide a sufficiently representative picture of the prosecution of the officials of an entire county under the proletarian dictatorship. They provide a very well-structured data set, both in terms of the number and proportion of potential detainees, as well as in terms of penalties and acquittals imposed.

The state of affairs of the Criminal Code, which were the subject of the charges, were consecutively repeated in all the courts examined. The most common allegations were extortion, theft, agitation, violation of personal liberty, but there were, for example, conspiracy to murder, violence against authorities, slight bodily harm, rebellion, violation to property, defamation, advocacy, abuse of office, seizure of property, blasphemy, trespassing, violence against private individuals, damage to the property of others, possession of stolen property or embezzlement.

Contrary to the suggestions of processing written in the past system, the courts under investigation did not convict all defendants of the charges brought by prosecutors. In Győr, for example, a partial acquittal was handed down in 27 cases and a total acquittal in 89 cases, which meant that the court dropped 116 charges against the 170 charges

against the defendants in the judgments, so only 60% of the charges were considered to be well founded. (Although it is certainly important to note that the full acquittals were mostly not granted immediately after the events, but in trials that began in the 1920s.).

Based on the lessons learned from the analysis of trials, even in the case of the types of acts that seem to be persecuted, depending on the political perception, there were a good number of "real" public law cases. Nonetheless, I have examined the offences in the various categories of facts, grouping them according to their apparent political nature and giving preference in the order of their trial to those groups to which offences that could be considered as public law offences in the ordinary sense of the word actually belong. My choice was justified by the fact that, according to the critics of the proceedings, the relevant facts of the Csemegi Code were "violated" the most by law enforcers in these cases. Thus, a kind of arc can be created for the presentation of the examined groups of the committed crimes, which, based on what they suggest, leads from the seemingly most ideologised procedures to the less conceptual ones.

The categorization of the charged crimes does not only seem justified in terms of their nature but also in terms of the ex-post evaluation of convictions. Judgments imposed among financial gain-related delicacies are the most uncertain, and may largely depend on the tastes of posterity. As I have pointed out in my dissertation, in order to establish the execution of both theft and extortion, the legitimacy of the Soviet Republic - and consequently of its officials - had not to be legally recognised by the courts. Even today, the opinion about the Republic of the Council is not uniform, and the issue is not free from political crosstalks. It is difficult to determine the legitimate or illegitimate forms of the exercise of state supremacy. It is clear, that by today's standards neither the dualistic state nor the Kingdom of Hungary of the Horthy era can be considered a modern democracy or a state system exercising public power based on the empowerment of the large masses - just as no European state of the age was like that. Yet their legitimacy is not usually called into question. The Soviet Republic, on the other hand, was seen as a "quasi-state" that came to power in a coup, took advantage of an interregnum, and was ruled by a few people, thus, it was clear that its officials could not be considered as holders of public power.

In addition, it is also a fact that it happened the first time that during the Soviet Republic, Hungarian citizens (much more presumed than declared) were jailed en masse because of their political opinion (they were "taken hostage" in contemporary parlance), whole classes were treated as suspects and were plundered. Or that, in a way that has been unique in Hungarian history so far, in the opinion of some representatives of the power, the raid of "terror" groups and the murders they committed were necessary in order to maintain the status quo. In any case, all this shows that even the leaders of the commune were not calm about their legitimacy.

Such a political arrangement was almost necessarily followed by retaliation. Criminal prosecution was an important part of "restoration" – in addition to the "white terror" came as reaction, that does not form the subject of my dissertation, and in addition to

the verification and disciplinary procedures that took place in workplaces. The process of this was hampered by a several factors, some of the results of which were called into question by the same circumstances. In the works of the past system, these procedures were consistently considered totally illegitimate.

Even if we disregard political overtones, the legal philosophical environment obliged law enforcers to find some kind of solution. In that age, there were "civilian", stable conditions in Hungary in the sense of ownership rights, which were completely ruined by the Soviet Republic. The former owners rightly expected legal reparation (and, if possible, financial compensation) for the earlier compromission of their once-recognized ownership rights. And they had to receive this reparation (in the absence of retroactive legislation) within the framework of the existing Criminal Code.

However, it should not be forgotten that, although the legitimacy of the proceedings has hardly been questioned by anyone, yet significant debates have already taken place at this age in connection with trials against the officials of the commune. Contrary to the condemnation of murderers – such as members of the Cserny detachment – who have committed horrific crimes even in the eyes of today's people, many trials and proceedings have provoked resentment among some legal scholars of the age. As I have already mentioned, it is obvious in several cases that the trials took place after the escape of the "ringleaders" abroad, as a "displacement activity", meaning not the legitimacy of the proceedings but their role in the symbolism of the "revenge". This circumstance is particularly striking, of course, in the "trial of the People's Commissioners", where Béla Kun and his associates could not be prosecuted, thus, politics was forced to keep proceedings in the spotlight that were initiated against former second-line political actors whose insignificance was obvious to the general public. In the cases I have examined, this „displacement activity" character cannot be convincingly demonstrated. In Veszprém county, for example, Arnold Lusztig, the most dreaded leader of the commune, could not be brought to justice due to his escape, but his successor, Gáspár Szabó – who was guilty of the same offenses as his predecessor – could be subject to prosecution. Likewise, the defendants from Mór and some of the defendants from Komárom and Moson counties were also members of the elite of the local leadership during the era of the Soviet Republic. In many cases, this "displacement activity" character can therefore be interpreted more as a "replacement" for the escaped national first line.

However, legal thinkers of the age felt that the anomalies which arose from the limited applicability of the Criminal Code to the cases concerned were a much more important problem. Its main proof is the enactment of Article 3 of 1921 on the more effective protection of the state and social order. In connection with the Article, it was clear to all that the legislature intended to provide the means for "more effective" criminal actions against the participants of possible future revolutions. The difficulty of the situation is also indicated by the opinion of the civilian radical Rusztem Vámbéry: *"More specifically, is the Criminal Code suitable for preventing or retaliating subversive efforts for communist purposes? This question allows an alternative answer only. Either the*

Hungarian Criminal Code does not provide the option for the repression of communist revolutionary facts and then the legal basis of the criminal judgments handed down in communist trials since August 1919 becomes at least doubtful, or there is no question of the legality of these judgments and then the basis of the proposal (for a more effective protection) falls apart."

Vámbéry's words are refuted by Erik Heller - although he also introduces his thoughts by mentioning possible doubts. In the introductory part of his work, he points out both the shortcomings of the Csemegi Code in relation to political crimes (I also mentioned these in the introductory part of this work) and to the public will aimed to tighten the relevant norms. But Ferenc Finkey also analyzes these shortcomings in his opinion on Article 3 of the Act of 1921 on the more effective protection of the state and social order, which has changed the Criminal Code. According to him, supplementing the articles on rebellion and agitation was very necessary in the light of the events of 1919, as they pointed out that the social conditions and world order on which the Csemegi Code was based had changed forever.

Elsewhere, he argues for stricter actions against the elements building dictatorships, considering international perspectives: *"In my view, three main groups can be distinguished among the political criminals. The first is the class of the already mentioned idealistic individuals, exalted in spirit, but acting out of sincere patriotism or love of humanity, these people commit unlawful acts for truly altruistic purposes.*

The other group is the opposite of them, fanatical political criminals driven by a purely egoistic motive to be condemned morally: personal or class hated, or a desire to subvert the society. […] *Such publicly dangerous individuals, who subvert society, even if they attack or destroy political objects for political purposes, so even if we have to classify them as political offenders in the criminal sense, they shall in no case be treated in the same way as the former and shall not be worthy of the custodia honesta. Otherwise, such antisocial criminals are usually not satisfied with pure political crimes, but also commit ordinary crimes in order to satisfy their individual selfish interests and passions, which, even if they are related to political crimes, but are subject to more serious adjudication, because they are committed under the pretext of a change of political regime by intimidating and terrorizing more peaceful members of society."* [It is not difficult to recognize the celebrities of the Soviet Republic in this group - the Author.]

Finally, the third group of political criminals is the class of grandiose political swindlers, the nation-destroying, political power-hungry people."

On the basis of all this, it can be said that although the relevant legislation was considered "imperfect" by the vast majority of contemporary jurists in the present case types, its application was not rejected in principle and in general. However, most of them (with the exception of Vámbéry) pointed to the need to prepare for the "new situation" and to develop more appropriate standards for the related cases in the future.

At the same time, in the described trials, there are conspicuously few allegations that cannot be justified by legal-positive means. One of the reasons for this, of course, is the

undeveloped legal system of the Soviet Republic described in my dissertation. Neither the powers of the individual officials nor the procedure of the bodies was particularly specified, nor the possible scope of the relevant legislation of dualism in many cases. Because of the lack of ideologically well-prepared masses and trust, they actually wanted to run the state manually from Budapest, but even with the much more advanced communication and transport infrastructure, this was only feasible with severe pitfalls. Thus, they were forced to operate the proletarian dictatorship through a system of political and governmental commissars with vague mandates, which was clearly not even suitable for the realisation of the state they wanted according to their own conception of law.

And if we do not base ourselves on the foundations of positive law, but morality and natural law, almost all judgments "stand". This view may be supported both by the weight of the convictions and (perhaps more significantly) by the acquittals given in respect of certain charges and by their reasoning. By no means can we say that the foundations of the judges' decisions or the accusations were similar to the show trials of the' 50s, the convictions were handed down in all cases on the basis of real acts, applying the Criminal Code deemed to be in force.

In the fields not related to financial gain – except in cases of violation of personal liberty –, the ex-post evaluation of convictions is usually not complicated by the resolution of the above dilemma. Most of the delicts committed are analogous to the crimes of "peacetime". Although they sometimes stemmed from the public conditions disintegrated by the proletarian dictatorship, in the end, the establishment of the existence of a criminal offence has been justified without political will. Overall, the guiding principle followed by the former "communist crimes" selection committee itself can be criticized in several respects, whereas it is clear that in some cases the Soviet Republic should have taken action against the perpetrators (I am thinking in particular of crimes against individuals), while at other times, under normalizing conditions, it became obviously necessary to penalize certain acts even without political intentions (e.g. in the described case of official misconduct).

Based on these, it can be said that the above acts committed during the Soviet Republic were investigated rigidly by the courts adjudicating them within the framework of the criminal crimes described by Jaspers – of course, the relevant theory was not yet known at the time. Analyzing the communist trials, numerous errors can be attributed to the underlying legislation and to the authorities conducted them. However, looking at the events with sensitivity towards the law, it cannot be said that this flow of trials had largely the same characteristics as the Hungarian show procedures of the 20th century, let alone that it should be interpreted as a part of the white terror. Based on my subjective evaluation, this flow of trials was rather another series of actions with more or less stumbling in the rigidly structured Hungarian "gentleman's world" – framed and written by Mikszáth with a greater, and by Móricz with a lesser understanding. This "Gentleman's Hungary" gave answers to the questions caused by a completely new

phenomenon in the 19th century without understanding the rapid, revolutionary changes of the 20th century. Thus, examining the trials, I cannot question the purity of the intention, but the implementation seems to be is forced in many respects from today's point of view. But the need for legal prosecution after the regime changes and wars arose for the first time in world history during this period, and in the hundred years since then, no fully accepted answers have been found. In my view, procedural shortcomings can be attributed to this circumstance.

All in all, it can be said that my research can provide many legal and constitutional additions, but their usability in the field of history cannot be neglected either. The ex lex situations are the most difficult areas for (positive) law to deal with. The era of the Soviet Republic was considered like this in the counterrevolutionary system, and cannot it be said that, during the short existence of the proletarian dictatorship, it managed to develop its new legal system at least in accordance with its own expectations. All this has raised problems (including but not limited to the following, for example: examination of the validity of legislation in circumstances other than the general, the question of statehood, the origin of the legitimacy of revolutionary power) that have long occupied the above-mentioned fields of jurisprudence, and the topic I have examined can provide important new and not least Hungarian examples for the related scientific discourse.

As I will show in my dissertation, these issues were most vigorously discussed in the Hungarian constitutional law and legal theory in connection with the regime change of 1989, however, the actors of the polemic mainly based their position on theoretical foundations, they did not study the examples of similar problems in Hungarian history. The topic I have studied is suitable to make it contrast with the events and debates after 1944 and 1989, so the problem of criminal liability after regime changes can be examined in connection with three completely different legal technical solutions. Although number of works, sporadically published in many organs, have appeared in the past system about the operation of local bodies of the Soviet Republic, getting to know the system of contemporary rural administration is quite difficult for today's researchers. As the reconstruction and evaluation of the rural institutional and magistrate system was essential in connection with the main direction of my research, I also collected the most important information about the contemporary public administration in my dissertation, which can be valuable not only to the professionals who deal with the history of constitutional and administrative law, but also to professionals in the field of history in the general sense.

THE GROUNDLINES OF THE STATES ARMED DEFENCE AND ITS EVOLUTION AFTER THE AUSTRO-HUNGARIAN COMPROMISE

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Summary of research objectives

The doctoral dissertation is examining the state's ability to use institutionalized force, as well as its theoretical, historical, and systemic questions. The dissertation concludes that this subject has been neglected in many respects by the Hungarian political science and jurisprudence, therefore, in the present changing security environment the legislature is compelled to amend and reform this field in the absence of considerable academic background. The subject is especially relevant in view of the adversely changing, dynamic security environment, the shifting international relations, the new types of security challenges and based on this, the development and reform of the state's defence abilities.

In the field of armed defence, despite the actualities in the last decades, ad hoc changes responding to specific challenges were dominating, although the system of armed defence established in 1989 also needs to be reviewed for some time now. The reason for this is the fact that the 1989 construction was established in a completely different security and international environment and internal political milieu. However, such a review necessitates the comprehensive evaluation of the armed defence as well as supporting the decision makers with scholarly findings where Hungary was found to be lacking regarding theoretical, systemic, and historical aspects. This research wishes to contribute to reducing this gap by using the results of the last years' academic studies, the practical experience acquired at the Legal Department of the Ministry of Defence and the synthesis of the these.

I have started this research at the end of an era where, apart from the major powers – particularly their leadership –, it was considered to be a premise in the Western civilization that state violence and armed defence are a subsystem that needs to be maintained only to the minimum extent. The idea has held up long that the post-Soviet Union world is not warranting armament and reformation, instead, underlining the economic relations, it promises a more peaceful, open and inclusive world, for which it is enough to have a state with minimum classical power characteristics involving the deduction of defence costs based on the shrinking significance of the function. The

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interrelation of state and violence, the self-defence capability and the necessary and periodic development of the concerning regulation as basic premises seem to have left the European thinking.

At the beginning of the new millennium, it became apparent that this type of approach has failed. Involving a high toll of victims, the military settlement of the Yugoslav crisis, the terror attacks in the early 2000s in the United States of America, the 'Arab Spring', the collapses in North-Africa and the Middle-East, the Syrian civil war and the rise of the Islamic State, the Ukrainian crisis, the following Russian hybrid warfare, the renewed European terror threat and the migration have highlighted that the 21st century is not as peaceful, safe, and rejecting regarding the necessary defence as expected by many in the early 90s (in order to increase financial gain and welfare services).

The most significant proofs of this are not only the nation states' specific steps and efforts, but also the decisions of the North Atlantic Treaty Organisation regarding the need to enhance military capabilities, the strengthened presence in the Eastern part of the Organisation, and the recognition of cyberspace as a domain of operations. However, this involves certain budgetary challenges as well as significant theoretical, organizational, and ultimately, political and jurisprudential challenges for those states where the exact opposite of this trend was observed in the last decades. Based on this, the research required the review of several fundamental issues before presenting a systemic approach.

In light of the above, the dissertation's starting point is the historically and theoretically fundamental character of the state's capability to use force as well as the state- violence relationship. On this basis, I have assessed the nature of armed defence as an organizational and regulatory function. In this scope, regarding the regulation's systemic nature, I found it necessary to review the Anglo-Saxon and German models and construct concepts for the institutions representing the capability of state violence. I have labelled them *bodies of military character* in order to apply theoretical classification and a systemic approach. I have described the national subsystem and totality of functions as the *state's armed defence system*. The latter also serves the national transformation of the Anglo-Saxon 'national system of security' approach based on which I have assessed the possibility of legal replication and potential directions of development of the armed defence. The first part of the dissertation covers the theoretical and systemic analysis.

I found it necessary however to conduct a wider historical overview, which forms the second part of the dissertation. The main conclusion of it was that armed defence as a national subsystem built up from differentiated defence functions is a result of the last 200 years of state development. The reason for this is that the military dominated armed defence (based on the armed forces) has been replaced by a differentiated national armed defence system divided into several defence sectors, internal and external defence tasks and bodies only in the 19-20th century because the complex security conception has started to strengthen only at time of the Cold War.

Between 1967 and 1944 in Hungary, the development and regulation of military defence served as the basis of reform since this time the system of national defence was

tantamount to level of comprehensive protection. Therefore, I believe it is vital to review the civil development of national defence and thereby underline the conclusions of the first part.

In summary, the objective of this dissertation is to highlight the fundamental relationship between state and institutionalized violence, to assess their conceptual, theoretical, institutional, and regulatory characteristics according to the rule of law criteria, and taking into consideration the civil background of national legal history as well as to propose the elaboration and adoption of a new, systemic approach.

The hypostheses research methods and structure of the dissertation

The triad of state – power – violence relationship is to be reconsidered and renewed in which it seems reasonable to specify a type of violence that is further refined in its criteria: the qualified violence as a rule of law criterion.

The legal subsystem of armed defence is fragmented and contradictory because of the lack of academic structure and systemic approach. Against this background, it is necessary to establish new conceptions and principles on the basis of which by further long-term research, the field's theoretical system can be developed. In this sphere, I suggest the introduction of a three-way – subsystem, sectoral and organizational – approach within which the system of armed defence can be conceived as a national subsystem, i.e. a common set. Within this common set, certain defence sectors can be represented as subsets comprising more organizations and defence functions of similar character. Within the sectors, the level of specifically regulated armed defence organizations can be set as a specific level.

The theory of the system of armed defence should be complemented with a legal foundation. In this area, a legal approach of subsystem level as well as a system able to display the specificities of the certain sectors' legal representation shall be developed which can be useful in the reform of the regulation. It is appropriate to widen this systematic approach with a conception that is better suited for the specificities of the system of armed defence in the typology of rule of law control. *Utilizing the results of the theoretical and systemic approach, the major direction of future development regarding the regulation of armed defence can be well established* - determining the subjects of further research at the same time.*The established theoretical-methodological system of armed defence and its legal representation can be determined by the organic development tendencies and solutions of the similar regulation of civil state development between 1867 and 1944*, and these can be utilized for both filling the existing gaps and establishing theoretical results.

The methodology of the research

The research regarding the armed defence of the state had to assess complex challenges. The subject of the research as a sum of state and legal institutions is not an end in itself

but it exists – like the state – for the society. Therefore, it is necessarily linked and adjusted to the change of the social environment.

Based on the above, it was necessary to apply a *phylosophical and political-philosophical outlook* regarding the questions of violence as well as violence and state development. The *legal theory perspective* is built on this, since the inherent nature of violence in certain supposedly predominant state and legal concepts had to be revealed, too. These theoretical conclusions have been synthetized by the *systemic approach*, mostly through *constitutional and functional assessment*. This enabled the institutional and functional mapping of national armed defence as a state subsystem. All these have been based on a wide literature review of certain disciplines supported by the outlook focusing on academic and sectoral results linked to certain sectors of armed defence. Therefore, it was necessary to include *the results of security-, science-, military-, and law enforcement-related science* into the dissertation, containing the results of certain fields' historical study, too. The comprehensive assessment of the concerning national regulation is built on theoretical-systematic conclusions. In this regard it was necessary to consider and assess the constitutional, statutory, organizational, and in the defence sector, internal regulatory levels.

Apart from the theoretical and systematic analysis, the dissertation's character is clearly determined by the *historic approach* and the *systemic review of constitutional history*. In the view of present author, avoiding or handling superficially the historic background of certain fields in the area of reform and development can lead to confusion just as much as overdoing or poorly interpreting the reform of historic traditions. In order to avoid this, in the research I focused on the armed defence-related regulatory tendencies in the first civil era (1867-1944), prioritizing the major sources of law as well as the main conclusions of the *contemporary literature*.

The structure of dissertation

The most important topics of the dissertation:

- the characteristics of violence and its national and power-related aspects;
- defining state violence as qualified violence;
- the appearance of qualified violence in the armed defence system;
- historic and functional simplification of armed defence and its basic principles;
- state's and law's relationship to institutionalized armed violence;
- the separation of armed violence regulation in the Anglo-Saxon and German development of law;
- conclusions regarding the legal representation of national armed defence;
- control typology regarding national defence;

- an outline and the possible development directions of contemporary national armed defence, and the background of armed and especially military defence before the legal development in the civil era of 1867-1944;
- the 1848 basis of the civil development of military defence;
- the determinative context of the first civil era's armed defence development;
- the legal framework and characteristics of armed and especially military defence development;
- major regulatory and development trends in the national armed and especially military defence between 1867 and 1944.

The structure of the dissertation is following a line of reasoning along the above topics which – based on theoretical conclusions and assumptions – outline the armed defence system and its boundaries (with a contemporary outlook), and which are supported by the historical analysis regarding the first civil era's armed and especially military defence. In doing so, apart from treating armed defence as a separate state subsystem, the historical analysis outlines obvious civil development tendencies, which cannot be found in the existing regulation, Therefore, its critical transposition can be regarded as a possible development direction taking into consideration the contemporary challenges and state development factors.

Summary and applicability of the scientific results of the research

One of the major objectives of the research was the theoretic elaboration of the state armed defence system taking into consideration the Anglo-Saxon model of 'national system of security'. To that effect, I have introduced violence as an attribute essential but not sufficient enough for the state. The institutionalized framework of violence is provided by the state armed defence system. *I have approached the national armed defence system in a historic and functional scheme.* As a result, its development into a subsystem and the general and specifically Hungarian character of the structure and division was perceivable. *The dissertation concludes that within the system of armed defence, the national defence, law enforcement and national security sectors can be regarded independent and within these sectors also certain bodies of military character. However, it has to be highlighted that regarding technological developments and new types of security challenges one has to consider the legitimacy of inter-sectoral functions and bodies*, especially in the fields of fight against terrorism and cyber defence as well as – with certain reservations – in the fields of border surveillance and border protection.
Following this system, one can establish the legislative structure of (state) armed defence in which subsystem, sectoral and organizational regulation are to be separated, and based on that, the most significant regulatory fields can be identified. These fields are for example the right to armed defence, the right to national defence, the right to law enforcement, the right to national security and within these, certain organizational rights

and special fields on subsystem and sectoral level, which – based on their regulatory extent or distinctive features – cannot be fit into the subsystem or sectoral regulations.

In the next step, *certain principles are establish with regards to the (state) armed defence system,* which penetrate the subsystem, sectoral and organizational levels and are theoretically and historically justifiable. Based on the research, these principles are the following:

- the principle of same violence,
- the principle of the division of powers,
- the principle of civilian control,
- the principle of rule of law,
- the principle of operability.

A review has been prepared with the help of this theoretical system, or rather, *a map of the Hungarian system of armed defence. Based on this, I have concluded that in the field of national regulation of armed defence, this systemic nature exists only fragmentally and the different levels are confused.* These defects may raise the question of loss of efficiency and amplify the regulatory trend according to which mostly the current answers to ad hoc challenges determinate legislation. In order to rectify it, among the possible directions of regulatory development, I have proposed the following: the review of defence constitution; regulation according to the levels of armed defence and the revision necessary for this purpose; and legislation covering exercise of functions in peace-time or ordinary legal order, crisis management in ordinary legal order as well as exercise of functions in special legal order. The related institution development proposal – following the regulatory directions – aims at subsystem level coordination and supervision improving the Government's cabinet system; to support this, the establishment of a subsystem-level professional apparatus/administration with an appropriate governmental status, i.e. the reform of defence administration; the reconsideration of presidential powers concerning control; and the separation of bodies intended to handle new types of threats.

The other objective of the dissertation was the historical analysis of the armed defence system focusing on its civil precedents. The historical analysis does not only fill a gap, it also serves the historical support of the theoretical and systemic conclusions. In the historical overview, the focus is on military defence. This was justified by the historical objectivity according to which at the beginning of the first civil era, military defence had been the archetypical and major form of resorting to state violence. The other armed defence sectors had only started to become independent, nation-wide and subject to detailed national legislation. In comparison, the regulation of military defence has already had significant legislative foundation and was on an innovative development path, which extended the state's armed defence system by a whole range of military basic laws that fit into the historical constitution and which included several law enforcement and national security functions, too.

The historical analysis therefore has reviewed the emergence of military defence in the era's public law system and the constitutional characteristics of the concerning legislation as well as the major subjects of regulation. This approach has been complemented by the defence constitution and an inter-sectoral outlook concerning the establishment of the armed defence system, i.e. by the outline of institutional development concerning the law enforcement sector as well as by recognizing the signs of the secret service sphere to become independent.

The main conclusions of this analysis

The question of armed defence had been a constitutional matter following the compromise, and the development of this field has continued in spite of the debates. Several requirements of the parliamentary rule of law have appeared in the legislation as well as the strengthening of the division of powers and the requisite of laws regarding fundamental rights.

At first, legislation was characterized by fragmentation, by the dominance of organizational regulation and acts dealing with special matters together with the implementation of the principle of same violence. The latter has appeared mostly in involving military power in internal defence tasks. The legislation regarding military defence has covered areas not constitutionally regulated at the end of the 19th century (e.g. military criminal procedures és military criminal law) and reforms stemming from state and technological developments (e.g. special power in time of war or the regularizing air defence), too. Act II of 1939 on National Defence has represented a comprehensive, sectoral legislation completing the development of military legislation in the civil era *The third objective of the dissertation was complementing the theoretical and systematic conclusions with a historical overview in a way to present the historical foundations of the proposed theoretical construction and its integral development precursors.* In this regard, the main conclusion was that the state's armed defence system as a state subsystem is fundamentally an achievement, result of the civil state development. Its development therefore serves the progression and strengthening of civil statehood and the support of contemporary defence.

The practical applicability of the research results

The primary objective of the research was to promote the academic reception of the systemic defence approach. It is the view of present author that without a systemic approach and defence organization, no state can be sufficient and efficient in a world where the complexity of security intensifies constantly and network-related challenges are increasingly blending with certain security challenges. A state's competitiveness requires therefore performing systematic defence functions and a comprehensive defence organization of a network level. In this regard, apart from the need to carry out further

research, the applicability of the research results set forth also the following development and intervention directions:

The comprehensive review of the state's armed defence regulation and its reform is to be considered. This has to be infused by a systemic regulation approach adapting to the changing security environment which takes advantage of the subsystem, sectoral and organizational levels of legislation.

It is suggested to review and improve the different types of regulation regarding the armed defence cooperation, i.e. the solutions for enforcing the principle of same violence. More particularly: It would be advisable to consider the possible cooperation forms justified by the security environment in the short, medium and long term from a holistic perspective of armed defence. The review of the crisis management legislation for normal legal order shall be considered. Following the above, the legislation dealing with special legal order shall also be revised. One should re-evaluate the question of defence administration from the academic, regulatory and organizational standpoints in order to replicate the administrative system of armed defence.

The control system of armed defence should be re-evaluated. In this regard: I suggest being more flexible regarding the static (regulatory) control in relation to armed defence, especially along the development of certain inter-sectoral regulations. Proportionately to making static control more flexible, I suggest strengthening dynamic, i.e. political, supervisory, internal monitoring and judiciary control, too. In this regard, I find it important to reconsider the reform nof the presidential powers, options and apparatus. Regarding synthetic control (working from dynamic towards static), it is essential to further academic research and their institutionalization, as well as their communication and raising awareness for these results amongst the general public and decision makers.