De iurisprudentia et iure publico
JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT
JOURNAL OF LEGAL AND POLITICAL SCIENCES
HU ISSN 1789-0446

Kiadja / Publishing:
Magyar Jog- és Államtudományi Társaság
Hungarian Association of Law and Political Sciences

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JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT

JOURNAL OF LEGAL AND POLITICAL SCIENCES

2024.

XV. évfolyam / Vol. XV

3. szám / No. 3

Kiadja a

Magyar Jog- és Államtudományi Társaság

Publishing

Hungarian Association of Law and Political Sciences

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XV. évfolyam | Vol. XV
2024/3. szám| No. 3./2024
Tanulmány | Article
www.mjat.hu

Parliamentary Resolution and Standing Orders – a Study from the Hungarian Legislative Framework*

ABSTRACT

The legal status and classification of parliamentary resolutions in Hungary, particularly those issued by the National Assembly, are complex and multifaceted. This text explores the distinction between internal and external resolutions, highlighting the unique nature of Standing Orders and their role in parliamentary practice. It discusses how these resolutions, while not always classified as formal legal norms, can still exert binding authority within the framework of parliamentary procedures. The text explores into the normative and individual nature of resolutions, explaining how their application depends on whether they regulate internal parliamentary operations or address external entities.

The requirement of legality in parliamentary procedures is emphasized, pointing to the need for state bodies to adhere to prescribed forms and maintain consistency to ensure legal certainty. The paper further examines the difficulty of categorizing parliamentary resolutions as legal sources, and the challenges of distinguishing between normative and individual acts.

KEYWORDS: *Parliamentary resolutions, Standing Orders, National Assembly, internal resolutions, external resolutions, legality, legal norms, political declarations*

* Supported by the ÚNKP 23-4-1 New National Excellence Program of the Ministry for Culture and Innovation from the source of the National Research, Development and Innovation Fund.

Introduction

It should always be borne in mind that the House was a living assembly and not a body tied and bound by its rules, which it made for itself"
Sir Stafford Northcote[1]

In Hungarian public law literature, the Standing Order is universally regarded as a legal norm with binding force. Accordingly, in the 20th century, Gejza Ferdinandy stated that the Standing Orders regulate the internal order of the parliament (both the House of Representatives and the House of Lords). According to him, the Standing Orders are considered special legal sources, as they apply solely to the internal functioning of the given house, to its members, officers, and the audience present in the house –that is, they normatively define the functioning of the parliament and "carry the same force within their scope as the law, albeit they cannot contradict existing laws."[2] He also notes that resolutions concerning the "life" of the house have legal force.

Károly Kmety writes that the creation and modification of the Standing Orders are part of the parliament's autonomy, based on both custom and law, and possess direct state authority, as the internal affairs of legislative bodies are matters of direct constitutional interest. The rules that define how the parliament is constituted into two bodies capable of deliberation and decision-making, how it passes resolutions, and how it disciplines its members, form part of constitutional law. According to Kmety, the Standing Orders should be considered as real legal sources, specifically public law sources. Although the legislation rooted in parliamentary autonomy does not reach the level of a statutory legal source, no one else may interfere in its creation; even courts and others must simply adapt to it. [3]

Győző Concha states that the state, representing the personality of the nation, in its supreme legislative authority, is primarily bound by the rules of morality and justice. At the highest levels of national life, the guiding principle is not law but the morality derived from the nation's ideals.[4] In contrast, members of parliament, as legislators who deliberate, propose, and vote, are bound by predetermined rules in their functioning, whether these are laws or autonomous Standing Orders. He emphasizes that while morality is paramount at the highest levels of the state, in the actual legislative processes, the Standing Orders have binding force. Although membership in parliament involves a high degree of individual rights regarding speech, proposal, and voting, the Standing Orders, as objective law, define the external framework for parliamentary functioning.[5] In other words, the Standing Orders predefine the functioning of parliamentary members, thus ensuring the order and efficiency of legislation.

According to József (Barabási) Kun, the Standing Orders are rules that define the procedure for the emergence of the sovereign will of the legislative body, constituting the formal law of parliamentary procedure. These rules can be written or unwritten—that is, either codified or based on custom (customary law). Kun views the Standing Orders broadly as the collection of written and customary rules that govern the internal workings and procedural methods of a legislative body. In a narrower sense, he refers to the written and codified rules that regulate the procedures of the house in a binding manner for all similar cases until they are repealed by the house, following certain prescribed formalities.[6] Kun emphasizes that the Standing Orders establish the process for the formation of the sovereign state will, and therefore they must encompass everything necessary for the articulation of this

[1] See: Joseph Redlich: The Procedure of the House of Commons: A study of a Its History and Present form. 1903. University Californa.144.
[2] Ferdinandy, Géza: Magyarország közjoga. Politzer Zsigmond és fia kiadása, Révai és Salamon könyvnyomdája, Budapest, 1902. 37. §, 94. (Own translation: „maguk körében ép oly erővel bírnak, mint a törvény, mindazonáltal a már fennálló törvénnyel nem ellenkezhetnek")
[3] Kmety, Károly: A Magyar közjog tankönyve. Ötödik javított kiadás, Grill Károly Könyvkiadó Vállalata, Budapest, 1911. 13. §, 54–56.
[4] Concha, Győző: Közjog és obstrukció, 424. In Jogtudományi Közlöny 1904. 52. szám, 423–426.
[5] Ibid. 425.
[6] Barabási Kun, József: Parlamenti Házszabályok – politikai tanulmány. Franklin-Társulat, Budapest, 1907. 21. and 22.

supreme will.[7] Furthermore, he points out that even the internal autonomy of the English Parliament—as one of the privileges of the parliament—can only be exercised within the framework of the law, as the freedom to form the supreme state will only requir that the houses set their own rules of procedure within the confines of the constitution. According to Kun, the requirement of internal freedom for the houses is that, as far as possible, they make their own arrangements through their Standing Orders, while the laws only regulate the election of senior officials and ensure public transparency.[8] Finally, one fundamental element of the Standing Orders is order, while the other essential element is freedom—that is, the creation of Standing Orders according to the sovereign discretion of the house.[9] Kun stresses that, by their nature, autonomous Standing Orders belong to the category of special legal sources, as they only apply within the given house and primarily concern its members, officers, and the audience present within the house.

According to Gusztáv Szászy-Schwarz, the Standing Orders are binding legal norms that cannot be circumvented, even by the majority. These rules define the basic norms for the functioning of the parliament, and deviations from them are only possible in certain cases with the full agreement of the members, by unanimous consent. This means that some provisions of the Standing Orders may be set aside without a formal resolution, if all members agree. However, Szászy-Schwarz points out that there are certain resolutions from which deviation in this manner is not possible, although determining these is a complex issue. It is essential that even the most lenient Standing Orders can only be disregarded if no one opposes this (notwithstanding unanimous consent). This ensures that the observance and modification of the Standing Orders always take place with the collective consent of the members, maintaining the order and legality of parliamentary functioning.[10]

Gyula Moór compares the Standing Orders to the statutes of autonomous bodies—what we would today classify among the regulations that may be enacted by independent regulatory bodies—and highlights their significance as sources of law. According to Moór, autonomous bodies, such as state administrative authorities (at this point, Moór does not yet classify municipalities as independent legislative entities but only as autonomous bodies) and churches, exercise legislative activity within their own competence, which can only be contradicted by law or government decree. He asserts that the parliamentary Standing Orders (both for the lower and upper house) operate similarly: both houses of parliament establish their own internal order, and these rules are ranked directly below the law. Moór emphasizes that while other forms of autonomous legislation are subject to government oversight, the Standing Orders are completely independent of executive power. This independence is based on the fact that both government decrees and autonomous legislation derive their legal status directly from the law and customary law with the force of law. Thus, there is a relationship of coordination, not subordination, between statutes created in autonomous authority and government decrees. The protection of autonomous authority is ensured by administrative courts against the government. With this analysis, Moór supports the argument that the Standing Orders play a role in maintaining the balance and harmony between autonomous legislation and government decrees, emphasizing the independence and importance of the regulatory authority of autonomous bodies.[11]

In summary, the Standing Orders in the Hungarian public law system are special legal sources with legislative power that regulate the internal order of parliament. While they do not possess the same legal status as laws, their normative force establishes the basic framework and order for parliamentary functioning. These rules are guarantees of parliamentary autonomy, regulating the legislative process, the behavior of representatives, and the internal organization and discipline of the parliament. The modification and application of the Standing Orders fall exclusively within the competence of the parliament, and these rules can only be changed with the unanimous consent of the representatives, thereby ensuring the maintenance of parliamentary autonomy and legality.

[7] Ibid. 23.
[8] Ibid. 35.
[9] Ibid. 36.
[10] Szászy-Schwarz, Gusztáv: Parerga – vegyes jogi dolgozatok. Athenaeum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1912. 262. and 263.
[11] Moór, Gyula: A különböző jogforrások, azok egyensúlya és rangfokozata a magyar jogrendszerben, 150–153. In Magyar Jogi Szemle 1932. 5. vol, 145–153.

Based on József Kun's thoughts, the Standing Orders define the procedure for the formation of the sovereign will of the legislative body, and as such, constitute the formal law of parliamentary procedure. These rules—whether written or customary—apply not only to the internal functioning of the house but also provide the framework for the formation of the sovereign state will. Consequently, one fundamental element of the Standing Orders is order, while the other essential element is freedom, which allows the house to formulate its own rules according to its sovereign discretion. For this reason, autonomous Standing Orders belong to the category of special legal sources, which are only applicable within the house but ensure the legality and autonomy of parliamentary functioning.
Furthermore, the Standing Orders can be regarded as part of autonomous legislation, independent of the executive power, and, as a special legal source, they create a balance between laws and internal parliamentary rules, as emphasized by Gyula Moór. Thus, the Standing Orders not only ensure the stability and order of parliamentary functioning but also contribute to the maintenance of the rule of law.

I. Standing Orders in general

"It is not a formal but fundamentally a political question how the relationship between the constitution and the Standing Orders is established. More specifically, whether the constitution leaves the regulation of parliamentary procedure to parliamentary autonomy, or whether it prescribes the fundamental provisions itself. In the latter case, the aim is typically to limit parliamentary autonomy, ensuring that its substantive legal and even significant procedural rules operate within predetermined frameworks. This situation holds true even when questions pertaining to parliamentary law are regulated not by the constitution but by other constitutional provisions based on constitutional authority."[12] In light of all this, determining the legal nature of Standing Orders remains an unresolved and much-debated issue in constitutional law. The various views, generally grounded in positive law, can be summarized as follows:

a) The Standing Order is a constitutional complementing legal norm**,** and as such, it ranks alongside constitutional acts in the hierarchy of legal sources. As an example, the Swedish Standing Order **(**Riksdagsordningen**)** can be cited, which, according to the 17th article of Chapter 8, Section 5 of the Swedish Constitutional Law [Regeringsform – Sweden 1974 (rev. 2012)][13], must be enacted as if it were a constitutional act. However, modifying the Standing Orders resembles more a constitutional amendment, as it must be passed through the same procedure as the constitutional laws constituting the four foundations of the constitution – except for the possibility of a referendum and the nine-month period between submitting the bill and the first reading, which are not applicable – and it cannot be amended by act either.[14] However, the bill can be passed in a single reading with a qualified majority (if

[12] Pikler, Kornél: Házszabályok. Budapest, 1971. 29. See: Josef Redlich: Recht und Technik des englischen Parlamentarismus: die Geschäftsordnung des House of Commons in ihrer geschichtlichen Entwicklung und gegenwärtigen Gestalt. Duncker & Humblot, Leipzig, 1905. 11..: „Die Geschäftsordnung und das Verfahren des Unterhauses sind unlösbar verwoben mit den fundamentalen politischen Tatsachen und Anschauungen, die den Kern des lebendigen englischen Staatsrechtes ausmachen." Own translation: *Nem formális, hanem alapvetően politikai kérdés az alkotmány és a házszabály közötti viszony. Közelebbről az, hogy az alkotmány a parlamenti autonómiára bízza-e működésének szabályozását, vagy pedig maga írja elő az alapvető rendelkezéseket. Utóbbi esetben a cél rendszerint az, hogy a parlamenti autonómiája korlátozott legyen és tevékenységének agyagi jogi, sőt jelentősebb eljárási szabályai is előre meghatározott keretek között mozogjanak. Ez az eset akkor is, ha nem alkotmány, hanem felhatalmazása alapján más alkotmányos szabály rendezi a parlamenti jogba tartozó kérdéseket*

[13] https://www.constituteproject.org/constitution/Sweden_2012
"The Riksdag Act is enacted as prescribed in Article 14, sentences one to three, and Article 15. It may also be enacted by means of a single decision, provided at least three fourths of those voting and more than half the members of the Riksdag vote in favour of the decision. Supplementary provisions of the Riksdag Act are however adopted in the same manner as ordinary law. The provisions of paragraph one also apply to the adoption of an act of law under Article 2, paragraph one, point 4."

[14] Ibid. "No law may be amended or abrogated other than by an act of law. Articles 14 to 17 apply with respect to amendment or abrogation of fundamental law or of the Riksdag Act. Article 17, paragraph one is applied in the case of amendment or abrogation of an act of law under Article 2, paragraph one, point 4."

three-quarters of the votes cast and more than half of the membership are in favor). Therefore, according to this definition, the form of the Standing Order is that of a constitutional act – Riksdag Act.[15]

b) The Standing Order is an act adopted in a legal form that ranks a step below the constitution and requires either a simple majority or some form of special majority. Whether this legislative act has a distinguishing feature is irrelevant from the perspective of legal source analysis. In my view, this is not a legal but a political requirement for regulating a given area.

c) The Standing Order, as an act of general validity that ranks lower than laws passed by a simple majority: Some opinions suggest that Standing Orders are legal rules of general validity that rank lower than ordinary laws. This view is not substantiated by positive legal provisions but appears in legal literature. Such Standing Orders do not need to be officially published and resemble internal regulations of state administration, i.e., internal rules regulating administrative processes. According to this view, Standing Orders do not have legally binding external norms but regulate the internal functioning of parliament and are therefore positioned at a lower level in the hierarchy of legal sources than ordinary laws.[16]

d) In terms of form, the Standing Order is not an external act (law) that regulates general compulsory behavior but rather an internal conventional rule (resolution)[17] adopted by the law-making and constitution-making body (both the lower and upper houses or either one). Article 1, Section 5 of the United States Constitution[18] and Article 58 of the Japanese Constitution[19] state that both houses [Senate and House of Representatives in the U.S., and the House of Councillors (参議院, sangi-in) and House of Representatives (衆議院, shūgi-in) in Japan] may determine their own procedural (therefore internal) rules, regulate the conduct of their members (normatively), and expel members with a two-thirds majority. More precisely, the two chambers, as the two houses of parliaments (Congress in the U.S. and 国会, Kokkai in Japan), have independent authority and autonomy to establish and amend their own internal (internal normative) rules—independently of one another. This constitutional authorization grants both chambers the power to create their internal regulations. This autonomy, both in the U.S. and Japan, stems from the legislative equality of the parliament. In other words, both chambers have separate authority to establish and maintain their own procedural rules. The handling of violations of the Standing Orders is, in every case, an "internal matter" of the respective house, where decisions on such issues are made by the members of the house in accordance with the procedural rules and mechanisms. In terms of form, the Standing Orders are "resolutions" (議決, giketsu)[20], whose authority is grounded in the

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[15] Besselink, Leonard – Bovend'Eert, Paul – Broeksteeg, Hansko – de Lange, Roel – Voermans, Wim (eds.): Constitutional Law of the EU Member States. Kluwer, Deventer, 2014. 1600. o.

[16] Pikler 1971: 30. o.

[17] See: Hatschek, Julius: Das Parlamentsrecht des Deutschen Reiches. Carl Heymanns Verlag, Berlin, 1912. 18–30.; Hatschek, Julius: Konventionalregeln oder über die Grenzen der naturwissenschaftlichen Begriffsbildung im öffentlichen Recht. In Jahrbuch des öffentlichen Rechts III. Bund. J.C.B. Mohr (P. Siebeck), Tübingen, 1909. See magyarul Búza László: A képviselőház Házszabályai. Államjogi Tanulmány. Sárospatak. Ref. Főiskola Könyvnyomdája. 1916. 27 and 28. Note: According to Hatschek, parliamentary practice is not based on legal norms but rather on conventional rules that develop through the practical application of laws. These rules do not have the official status of legal norms because they have not undergone the formal process of becoming legal sources, and they lack the essential condition for the formation of customary law, which is long-term usage. The purpose of conventional rules is to retrospectively justify practical procedures based on precedents, meaning they are applied on a case-by-case basis, unlike legal norms, which are always binding. Hatschek classifies these rules alongside parliamentary customs, as well as judicial and administrative practices.

[18] Constitution Annotated: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member." https://constitution.congress.gov/browse/article-1/section-5/

[19] 両議院は、各々その会議その他の手続及び内部の規律に関する規則を定め、又、院内の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多数による議決を必要とする

[20] The USA Senate Standing Orders:
https://www.govinfo.gov/content/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf#page=7
The USA House of Representatives Standing Orders:
https://rules.house.gov/sites/republicans.rules118.house.gov/files/BILLS-117hresPIH-hres7.pdf
The Japan House of Councillors Standing Orders:

constitution (as well). These rules define the technical requirements for parliamentary work and serve as tools for governance to meet the needs of the state. They are not considered fundamental, primary external norms, but rather secondary (practical) internal norms arising from actual political circumstances and the state's constitution. Therefore, the modification of the procedural rules is not a theoretical-constitutional issue but rather a practical-political matter, subject to flexible conditions. [21]

II. Procedural aspect of the Standing Order

Regarding procedure, two key differences can be found between a resolution-based Standing Order and a law-based Standing Order. First, the former is adopted without the involvement of the President of the Republic – thereby signaling the parliament's autonomy – whereas the latter involves a "control role," implying that no other approval is necessary for its "valid" creation. The second distinction is that the publication of resolution-based Standing Orders is ordered by the Speaker of the House, not by the President of the Republic.

The Fundamental Law of Hungary does not explicitly address the form of Standing Order provisions. As a result, there is no linguistic basis for concluding that such provisions must only be enacted either at the legal or resolution level. However, Article 5 (8) of the Fundamental Law contains a provision that the regulations ensuring the regular sessions of the National Assembly must be regulated by cardinal law. This creates the obligation to regulate this issue—that is, the provisions ensuring regular sessions – at the level of cardinal law.

This, however, raises the question of what exactly is meant by a cardinal law. The Fundamental Law provides a clear answer in its Article T), stating that a cardinal law is also a law, requiring a two-thirds majority of the members of the National Assembly present for its adoption and amendment. In other words, it does not break the hierarchy of legal sources, as it establishes a legal fiction that a cardinal law is simply a law—nothing more or less—that can only be amended with a different voting ratio. This leads to the further question of whether we can linguistically conclude that a cardinal law is a form, and thus all its content is also "cardinal," meaning that the two-thirds voting ratio is required for the amendment or enactment of all provisions contained within it. However, logic and practice dictate that it is not the "form" that needs to be "protected" by a higher voting ratio, but rather the content. Hence, the statement in the Fundamental Law that the adoption of a cardinal law requires the votes of the present members is misleading. A more accurate formulation would be that the votes of the present members are required for provisions classified as cardinal under the Fundamental Law. This would clarify that the constitution-maker intends to protect the content, not the form.

The way the Fundamental Law is phrased is already correctly reflected in the current Standing Order (resolution): "for the adoption or amendment of a provision classified as cardinal under the Fundamental Law."

Regarding the temporal validity of the Standing Order in Hungary, we can say that it is not limited in time, and thus it is not considered applicable only for a specific parliamentary term **(**Sessional Orders**).** As a general rule, they do not contain automatic deregulation. In the life of the British Parliament, this distinction was applied to certain provisions of the Standing Order, rather than an individual-normative pairing. Thus, they remain in force across multiple parliamentary cycles. This also means that their expiration requires an explicit act,[22] implying that the House may freely decide to repeal these provisions by simple resolution at any time. However, until such an explicit resolution is passed, these norms bind the House, the Speaker, and every member with the same binding force as if they were prescribed by law for citizens.[23]

These rules of procedure include provisions regarding the establishment, organization, sessions, order of deliberations, and interpellation of the National Assembly—that is, procedural matters. They also contain provisions related to the office of the National Assembly, committees, and the conduct of

https://www.sangiin.go.jp/japanese/aramashi/houki/kisoku.html
The Japan House of Representatives Standing Orders:
https://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryo/dl-rules.htm

[21] Redlich 1905: 801. és 802.

[22] Cf. op. cit. Barabási Kun 1907: 9.

[23] Redlich op. cit. 1905: 259.

sessions. These rules often detail the legislative process, including the submission, debate, and voting of draft laws, draft resolutions, and draft declarations, as well as interpellations.

Every country's rules of procedure regulate different aspects in detail, such as the status of representatives, the appointment of the government, and other important state activities. The rules of procedure must have a normative character and apply in the hierarchy that determines legal sources. These rules of procedure regulate not only internal operations but also have an outward effect on other bodies and institutions. There are various types of resolutions within the rules of procedure, some of which are comprehensive and intended for long-term application, while others are internal resolutions with shorter duration and specific issues.

In summary, rules of procedure determine the order of operation and activity of state organs and are important legal sources within countries.[24]

A further question arises concerning government members and ministers who are not representatives.[25] Are they not bound by the autonomous Standing Orders? Are they only subject to the rules of parliament that are published at the "act level"? Consequently, does the Speaker not have the authority to apply the internal disciplinary order of the House to them? Based on Article 7 (2) of the Fundamental Law, a representative of the National Assembly is legally entitled to address questions to individuals who are not representatives. This raises the question of who is considered a member of the government. Generally, the government is defined as the body of ministers – those leading ministries and ministers without portfolio together. The government typically represents one or more parliamentary factions, but there is a hypothetical case where a secretary of state – even a parliamentary secretary of state –may not belong to the ruling party and may not hold representative status. Consequently, such a secretary of state cannot be considered part of the government or a member of the government. It should be noted that, according to the 2018 Government Administration Act (kormányzati igazgatásról szóló törvény), a secretary of state is considered a senior political leader (politikai felsővezető), but this legal provision does not imply that the secretary of state belongs to the government or is a member of the government –neither in a legal nor political sense.

Nevertheless, if we accept that an individual belongs to the "government," the next question arises. If, under the Fundamental Law, a member of the National Assembly is entitled to submit an interpellation or question to the individual on any matter within their scope of duties, this must mean that the individual is obliged to respond – either personally or, in exceptional cases, through a deputy, according to the Act XXXVI of 2012 on the National Assembly (hereinafter: Na Act.).[26] Section 42(2). Section 42 (4) of the Na Act further stipulates that the individual in question must answer at a session of the National Assembly. This raises several important questions. If we assume that the interpellated individual is not a government member, then based on this section of the law, arrangements must be made to ensure their access to the Parliament building and the opportunity to respond to the interpellation posed to them there. Furthermore, the issue of disciplinary authority, already discussed in legal literature, is also not clear. This leads to the conclusion that resolutions concerning an individual's behavior, conduct, and obligations (whether to act, refrain from acting, or tolerate), which are not defined by law (in the Na Act.) but by internal normative acts (Standing Orders) – even if these internal normative acts derive their "authority" from a law or the constitution – raise constitutional concerns and call for a reevaluation of the theory of legal sources. Moreover, if we accept this duality, it also means that there can be a Standing Order both at the legal level and at the resolution level simultaneously, and that it is not defined that only one Standing Order may exist. This means that the Standing Order can appear in multiple legal sources. From this logic, we can conclude that there is a distinction between the formal and material sense of the Standing Order. That is, any provision related to the functioning of the National Assembly is considered part of the Standing Order in a material sense, while in a formal sense, it is a resolution adopted by the National Assembly, named the Standing Order, and passed with the two-thirds majority defined in the Fundamental Law, regardless of the specific content of the provision. This also means that this does not need to be regulated within a single legal source, and thus it can be addressed in multiple parliamentary resolutions. Nevertheless, a key procedural aspect of adopting the Standing Order, whether in law or resolution, is the voting ratio.

[24] Bihari, Ottó: Az államhatalmi képviseleti szervek elmélete. Akadémiai Kiadó Budapest, 1963. 212.
[25] Lásd: Fayer, Gyula: Nem képviselők a házban, 447–448. o. In Jogtudományi Közlöny 1907. 52. szám.
[26] Az Országgyűlésről szóló 2012. évi XXXVI. törvény

III. The sui generis nature of the Standing Order

The debate surrounding the rules of procedure or Standing Orders (*Házszabály, Geschäftsordnung*), which regulate the internal order of parliaments, originates from multiple sources. The first can be captured in the notion that a law can only be enacted with authorization, and if we choose this form, the head of state could potentially have a say in creating this Standing Order. Furthermore, the question arises whether the laws enacted by the National Assembly bind the National Assembly itself when it creates its internal procedures. In other words, does the sovereign remain sovereign if it relinquishes its sovereignty? More trivially: can a sovereign enact a provision that it cannot change without losing its sovereignty? All this is related to the theoretical legal question that the supreme authority of the legal order cannot be subject to judicial review – *quis custodiet ipsos custodes?* The fact that the supreme legislator is without legal responsibility does not mean that it is without legal obligations. The National Assembly in Hungary solved this problem by previously enacting the Standing Order not in the form of an act but in the form of a resolution.

The powers of the National Assembly – like in democratic systems –cannot be limited by law. As a result, even the powers and duties defined in the Fundamental Law are merely exemplificative. Consequently, the National Assembly can decide on any state matter – here it is worth mentioning that the exercise of this power can also be regulated by procedural limitations. For example, the National Assembly could previously issue guidelines and general resolutions, thereby interpreting the laws it had enacted, which, in this respect, would have been *interpretatio authentica*. However, if these interpretations were not surrounded by appropriate procedural guarantees, the content of substantive legal provisions could be altered through interpretations, disregarding the constraints of law-making.[27] In other words, "this is not interpretation, but – formally flawed – law-making through interpretation," [28] which is why the National Assembly can no longer enact such interpretative provisions. These resolutions can have external or internal effects and can have general personal and territorial applicability.

It is also worth mentioning the view that the provisions to which the country's representatives must adhere should be surrounded by the same safeguards as those that apply to ordinary citizens.[29]

Based on all this, the Standing Order can be regarded as a *sui generis* legal source that cannot be described by the formal or material requirements of any other legal source. While it could be aligned with another sui generis legal source, it cannot form a particular part of it due to its unified nature.[30] Consequently, it is not part of the Fundamental Law – because it exists in a unified structure – and there is no stipulation in the constitutional authorization[31] regarding the form in which the Standing Order must be enacted. Before the 2012 Na Act, the form was that of a resolution, considering that this form choice ensures the parliament's (National Assembly's) autonomy from any other power. This is because the signature of the President of the Republic is not required in this case.[32]

On the other hand, if we attempted to choose the form of a decree for the creation of the Standing Order, we would face the problem that it is not enacted by the executive power – meaning that the people would have a say in its adoption –even if, due to the mixed nature of the "Honorable House", the two branches of power intertwine in terms of personnel. For this reason, two further options are available for regulating the internal affairs of the House.

In the case of the executive power, the main bodies are authorized by law or decree to create public organizational regulatory tools for the bodies under their direction and supervision. According to

[27] Constitutional Court Decision 60/1992 (XI. 17.); Constitutional Court Decision 50/2003 (XI. 5.); and Constitutional Court Decision 121/2009 (XII. 17.) on the annulment of the (old) Act on Legislation. [a (régi) jogalkotásról szóló 1987. évi XI. törvény]
[28] Constitutional Court Decision 41/1993. (VI. 30.)
[29] Eugène, Pierre: Traité de Droit Politique Électoral et Parlementaire. Librairies-Imprimeries Réunies, Paris, 1893. 433.
[30] See : Constitutional Court Decision 45/2012. (XII. 29.)
[31] Fundamental Law Article 5, (7) The National Assembly shall establish the rules of its operation and the order of its debates in the provisions of the Rules of Procedure adopted with the votes of two thirds of the Members of the National Assembly present. […]
[32] 46/1994. (IX. 30.)OGY resolution.

current scientific opinion, given that the Standing Order is named in "resolution" form – and, according to Legislation Act. Section 1 (1) (b),[33] it is a normative resolution – it is also part of the range of public organizational regulatory tools. The difference, although not immediately apparent, is still significant. The authorization for regulating the internal affairs of the House is not derivative but original – whereas the authorizations for creating public organizational regulatory tools are exclusively derivative, and it would be tautological to speak about it here, as the authorization comes from the parliament, so an explanation of self-authorization is unnecessary. Furthermore, external provisions can be formulated in the Standing Order, which contradicts the definition of public organizational regulatory tools.

The sui generis nature of the Standing Order as a legal source is further strengthened by the fact that its regulatory scope and form cannot be placed within a formalistic legal hierarchy. We cannot determine its relationship to laws (because the power to enact laws, according to Kelsen's norm pyramid, derives from the Fundamental Law, as does that of the Standing Order or emergency decrees or laws), decrees, or other public organizational regulatory tools. However, we can establish that the power to create it originates from the Fundamental Law – based on the principle *of nemo plus iuris* – so it cannot rank higher than the authorizing provision. [34] Nevertheless, Jakab argues that the legal source of an act cannot be determined based on the authorizing provision, as this could lead to the conclusion that the Standing Order stands above the Fundamental Law, since the process for adopting the Fundamental Law is laid down by the Standing Order. Jakab's analysis reinforces that it is impossible to determine the exact place of a legal act in the hierarchy based on the concept of authorization alone, as this would result in contradictions. Therefore, the Standing Order cannot be clearly integrated into the traditional hierarchy of legal sources.

The right to create the Standing Order is exclusive, and its content – its material scope –cannot be removed. However, the inalienability of the material scope of this legal source means that it is limited – just like the decree-making power of the Hungarian National Bank – so it cannot extend to the legislative domain of others. From this logic, we can conclude that the Standing Order is a sui generis legal source, which, while placed under the Fundamental Law within an autonomously delegated authority, cannot be modified by law.[35]

Another question is what should be called a *sui generis* legal source. The Latin term *sui generis* means "of its own kind"—more precisely, it is derived from the possessive pronoun *suus, sua, suum* (meaning "one's own" or "its own") and the noun *genus* (meaning "kind," "type," or "class"). Thus, it refers to something unique in its own kind or class. In the context of legal sources, sui generis must therefore mean something unique in its category.

In my opinion, considering that the Standing Order is the second legal source (after the Fundamental Law) in Hungary that, while not considered a formal legal source in the sense of a law, still meets the formal requirements of laws in its structure and form (and possesses the formal validity elements of laws) –being divided into a preamble, titles, subtitles, and sections, with amendments made in accordance with the requirements of the ministerial decree on legislative drafting. and the legislation act just like laws – it follows that it behaves like any other law. Furthermore, from the perspective of the theory of the separation of powers, it plays a prominent role in the system of legal sources. Therefore, we must necessarily conclude that something that looks like a law and behaves like a law, according to the rules of logic, must be treated as a law. However, since it cannot be classified as either a law or a decree, it must be regarded as unique in its category.

This hypothesis is reinforced by the fact that, in a material sense, the Standing Order also has the characteristics of a law, expanding the range of generally binding rules of conduct defined in Article T) of the Fundamental Law, as the Standing Order, like government resolutions, is not considered a law

[33] A jogalkotásról szóló 2010. évi CXXX törvény

[34] See Jakab András: A magyar jogrendszer szerkezete. Dialóg Campus Kiadó, Budapest - Pécs, 2007 107.. Note: The question remains whether the non-compliance with a parliamentary resolution could result in the invalidity of a law. See: the non-compliance with the provisions of Parliamentary Resolution No. 10/2014 (II. 24.). This raises the further question of what the relationship—potentially a hierarchical one—between parliamentary resolutions and laws, particularly acts of law, might be

[35] The same line of reasoning is developed by László Búza as well, and I mostly agree with the incorporation of his conclusions into the current legal system See: Búza1916. 54.

under Article T) of the Fundamental Law, yet it contains provisions that apply to individuals who are not members of the National Assembly.

At this point, I feel it necessary to elaborate that I consider the enumeration of legal sources in Article T) of the Fundamental Law to be flawed. The essence of laws is that they establish generally binding rules of conduct. However, the Fundamental Law names acts, government decrees, prime ministerial decrees, ministerial decrees, decrees of the president of the Hungarian National Bank, decrees of the head of an independent regulatory body, and municipal decrees as legal sources. Therefore, the Fundamental Law imposes a formal requirement on the "form" of legal sources but not a substantive one. Nevertheless, Article T) does not omit the material side of laws, as it specifies that generally binding rules of conduct can be established by the Fundamental Law and legal sources created by a body with legislative authority, as defined in the Fundamental Law, and published in the official gazette. Thus, we could lean back and say that everything is in order, as the Fundamental Law has closed the open question.

In line with the accusatorial approach, I propose a more in-depth analysis.

(1) Generally binding rules of conduct may be established by the Fundamental Law and by a legal source created by a body with legislative authority as designated in the Fundamental Law, and published in the official gazette. […]

Thus, paragraph (1) tells us that the authority to establish generally binding rules of conduct is vested only in the Fundamental Law and the body with legislative authority designated therein. Primarily, this means that the Fundamental Law itself contains generally binding rules of conduct (and also that the Fundamental Law may expand the number of legislative bodies). Secondarily, it means that generally binding rules of conduct may be created by the body with legislative authority, provided that the designated bodies comply with two formal requirements: that they are bound by the form of legal norms, and that they must be published in the official gazette.

Nevertheless, practice shows that not only the legal norms bound by form contain generally binding rules of conduct, but also statutory decrees, council of ministers' decrees, and certain acts created by the European Union. In alignment with the views expressed by Csaba Erdős, I neither find it necessary nor a good solution for the Fundamental Law to specify what can be considered a legal norm.[36]

In summary, the first argument is that the Standing Order does not meet either the formal or material requirements of legal sources, and thus cannot be clearly placed within the traditional hierarchy of legal sources. This makes the Standing Order unique, as it does not fit into the usual categories of legal sources. The second argument concerns the difficulty of determining the rank of the Standing Order as a legal source, as it cannot be clearly established how it relates to other legal sources such as laws or decrees. This uncertainty also suggests that the Standing Order is unique in its category, as traditional categories cannot adequately describe it. The third argument pertains to the autonomous manner in which the Standing Order is created, which differs from traditional forms of legislation, as the signature of the President of the Republic is not required. This autonomy further strengthens the uniqueness of the Standing Order, as such autonomous law-making is not characteristic of other legal sources. The fourth argument, based on András Jakab's assertion, is that it is not possible to accurately determine the hierarchy of legal sources based on the concept of authorization, as this could lead to contradictions. [37] This reinforces the idea that the Standing Order cannot be categorized within the traditional legal hierarchy, as it falls outside the logic of that structure. The fifth argument is that the legal nature of the Standing Order does not fit into the traditional taxonomy of legal sources, as it encompasses regulatory subjects that are not found in other legal sources, and thus cannot be interpreted within the traditional formal framework of legal sources.

[36] Erdős, Csaba: Kritikai megjegyzések az Alaptörvény jogszabály-fogalmával kapcsolatban. In SZOBOSZLAI-KISS Katalin – DELI Gergely: *Tanulmányok a 70 éves Bihari Mihály tiszteletére.* Győr, Universitas, 2013. 2013, 134–137.
[37] Jakab op. cit 145.

IV. Types of resolutions of the National Assembly

In my view, it is essential to distinguish between internal and external resolutions of the National Assembly – particularly concerning whether the provisions of the Standing Orders are internal or external. This distinction means that external resolutions regulate the outward relations of the National Assembly, not involving government members, the President of the Republic, the Ombudsman, or ministries. In such cases, the act of publication is necessary for the resolution to be valid. On the other hand, internal resolutions (organizational regulations) govern the internal affairs of the parliament, establishing internal guiding principles for its members. In this case, the resolution becomes valid upon its adoption alone.

In practice, however, resolutions generally take effect upon adoption when they concern the election of individuals external to the National Assembly, meaning those resolutions that, in my opinion, have an external nature.[38] From this, we can infer that something else underlies this distinction. We can see that moments related to the election of officeholders are specific and non-normative, so they do not have the characteristics of legal norms. Therefore, publication is not necessary for their validity, as they are not addressed to the general public but to designated bodies and authorities, and the act of adoption itself is sufficient to bring them into force. These legal acts contain no normative content. Typically, they relate to the establishment of bodies or specific functions but do not contain general provisions like legal norms. As such, internal and external resolutions can be distinguished among these individual resolutions. Examples of internal resolutions include those concerning the election of parliamentary officers or the agenda of a session, while external resolutions pertain to the tasks and operations of bodies elected by the National Assembly. These individual resolutions do not contain general provisions and are characterized by their specificity, tailored to particular situations and issues. [39]

There is generally no mandatory requirement for the publication of individual resolutions, and in most cases, they are not published, as they do not have a normative impact. If such resolutions are published, the primary purpose is to inform, and their validity – unless another condition is specified – begins *ex nunc* from the moment of their creation, which, in the case of collective bodies, is the moment when the result of the vote is determined, and for single-person bodies, the moment when the resolution is expressed either orally or in writing. The validity of individual resolutions is not contingent upon publication, and their enactment is generally determined by other factors, not by the date of publication, but by, for instance, the date of adoption.

According to the general understanding, normative provisions that have an outward effect can only be formulated in external acts, as such provisions extend beyond the regulatory scope of the given organization.

In the case of resolutions of the National Assembly, we cannot separate original (autonomous) and delegated (derivative) authority, as applied to laws and government resolutions. This is because the

[38] The resolutions related to the Constitutional Court and the judiciary address the election of the leaders of the Constitutional Court and other important judicial institutions. For example, the 16/2024. (VI. 11.) OGY határozat az Alkotmánybíróság elnökének megválasztásáról, while the 18/2023. (VII. 5.) OGY resolution az Alkotmánybíróság új tagjainak megválasztásáról. Further examples include the 33/2019. (XI. 5.) OGY resolution, which also pertains to the election of a new constitutional judge, and the 30/2020. (X. 20.) OGY resolution, which governs the election of the President of the Kúria. In addition, the election of the President of the National Judicial Office is covered by the 47/2019. (XII. 11.) OGY resolution. The resolutions in the topic of the President of the Republic and the government deal with the election or resignation of the President of the Republic and the Prime Minister. For instance, the 3/2024. (II. 26.) OGY határozat a köztársasági elnök megválasztásáról, while the 1/2024. (II. 26.) OGY határozat a köztársasági elnök lemondásának elfogadásáról. There have also been several resolutions regarding the election of the Prime Minister, such as the 13/2022. (V. 16.) OGY resolution, which records the election of the Prime Minister, as well as the 6/2018. (V. 10.) OGY resolution and the 14/2014. (V. 10.) OGY resolution.

[39] See Redlich op. cit. 258.: „Verfahrens ausdrücklich gefassten Beschlüsse sowie der auf Grund dieser Beschlüsse ergangenen Verfügungen (Orders) zur Ordnung seiner Geschäfte. Der Begriff der Orders umschließt nun ein Zweifaches; nämlich erstens konkrete Verfügungen und zweitens abstrakte Normsätze in betreff der Geschäfte des Hauses. In ersterer Hinsicht ist die Order die allgemeinste Form der Tätigkeit des Hauses, sie ist der Motor für die ganze Summe konkreter, positiver Arbeit des Hauses. Als solche hat sie uns hier nicht zu beschäftigen, sondern wir haben es hier nur mit einer Order im Sinne der abstrakten Norm zu tun."

National Assembly, as the legislative branch, is empowered to create such resolutions, and it would be a misinterpretation to delegate or make such power dependent on another branch of power. Thus, a resolution of the National Assembly can only be created under its original jurisdiction, meaning that every resolution of the National Assembly must rest directly on the supreme norm of the legislative branch. If a legislative act derived its authority from a regulation enacted by the executive branch, it would be considered invalid under the requirements of democratic legitimacy and the rule of law.
In my opinion, a resolution created by the legislative branch cannot be based on a regulation issued by the executive branch because the legislative branch has the independent right to create it. A resolution of the National Assembly can be enacted based on the authorization of the Fundamental Law or the cardinal provisions determined by the Fundamental Law.[40]

If an act contains both normative and individual provisions, the entire act (for the purpose of its amendment) must be considered normative – following a similar logic as when an act contains both external and internal provisions, the act must generally be considered external.[41] However, when distinguishing between individual and normative acts, we cannot follow the differentiation based on the scope of subjects – i.e., that one type of act has an open scope of subjects, while the other has a closed one. This is because the scope of internal norms is not closed, and neither is that of external norms, as even the workforce of the given body changes in the case of internal norms. Based on all this, I believe that the Constitutional Court, which has so far been inconsistent in its practice, would undergo a fundamental change if it were to define its act review authority according to this theory. [42] Nevertheless, based on this logic, we can also conclude that an entire resolution must be considered normative if it contains both individual and normative provisions. "A necessary element of a normative act [...] is that the scope of its addressees is broader, not directly or specifically defined as one or more persons, meaning that the provision does not concern a specific individual case. If the legislator bypasses the application of existing law or the normative amendment of a legal norm by framing an individual decision in legal form, the solution becomes abusive." [43]

The problem arises when the legislator wishes to amend an individual provision within an act that is generally considered external. This is because the requirements for amending individual provisions and normative provisions are different. Thus, the question arises whether the normative amendment form should be applied to the entire resolution when amending an individual provision, or only the form specific to the individual provision. That is, when modifying an individual provision, there is no need to stipulate the enactment of the amending resolution, while in the case of normative provisions, this is necessary – since individual provisions are revoked and not repealed. This hypothesis is reinforced by László Búza's thoughts – because the Standing Order is also a normative resolution, and according to him, "the closing resolutions of the House of Representatives' Standing Orders contain specific provisions regarding the amendment of the Standing Orders and the enactment of the amended Standing Orders. These provisions only apply to the Standing Orders in the formal sense; simple house resolutions, even if they are Standing Orders in the material sense, can be adopted and brought into force at any time." [44]

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[40] See: 14/2021. (V. 19.) OGY resolution**,** which was enacted based on Section 87 (1) of Act CLXXXV of 2010. These provisions are classified as cardinal laws pursuant to Article IX (6) of the Fundamental Law.

[41] At this point, I find it necessary to mention that I consider András Jakab's assertion, formulated in footnote 88 of his doctoral dissertation, to be erroneous. According to Jakab, an act should be regarded as normative even if it consists solely of individual provisions. (Jakab András: A magyar jogrendszer szerkezete. Doktori disszertáció, 2005, 30)

[42] Erdős, Csaba: Parlamenti autonómia – Aktustani elemzések az Országgyűlés jogállásáról és hatásköreiről. Gondolat, Budapest, 2016. 126–127.

[43] Own translation. 3057/2015. (III. 31.) Constitutional Court Decision, Kiss László [96] cites 183/2010. (X. 28.) Constitutional Court Decision. […] normatív aktus szükségképpeni eleme az, hogy a címzettek köre szélesebb, s nem közvetlenül és konkrétan meghatározott egy vagy több személy, vagyis a rendelkezés nem valamely konkrét egyedi ügyre vonatkozik. Ha a jogalkotó a hatályos jogszabály alkalmazását vagy a jogszabály normatív módon történő módosítását kerüli meg az egyedi döntés jogszabályi formába öntésével, a megoldás visszaélésszerűvé válik.

[44] Own translation. Búza László: *A képviselőház Házszabályai.* Államjogi Tanulmány.Ref. Főiskola Könyvnyomdája,Sárospatak,1916. 24.: […] képviselőházi házszabályok záróhatározatai ugyanis a házszabályok módosítására, illetőleg a módosított házszabályok hatálybalépésére nézve bizonyos rendelkezéseket tartalmaznak.

If we follow the logic that the form determines the nature of an act, then we can say that every normative act, even if it contains individual provisions, can only be amended as if the individual provisions also had a normative form –regardless of whether only an individual provision is being amended, and not a normative one. If, however, we consider the material content of the provision as the determining factor, then in this case, when an individual provision is amended, it should be modified in an individual manner, regardless of whether the act also contains normative provisions. This question can be traced back to Heraclitus's theory, which examines whether something should be defined by its form or by its material substance – essentially, what constitutes the identity of an act.

Furthermore, when resolutions of the National Assembly take on an external character, the question arises as to whether we should speak of publishing a resolution or promulgating it. After 2010, legal scholarship uniformly agreed that public organizational regulatory tools are published, not promulgated, but before 2010, the enactment of some resolutions of the National Assembly was tied to the moment of promulgation [see 70/1993 (IX. 16.); 51/1994 (X. 19.); 31/1995 (III. 24.); 43/1995 (IV. 13.); 62/1996 (VII. 9.); 61/1997 (VI. 5.); 36/1999 (V. 7.); 66/2000 (IX. 13.); 5/2001 (II. 15.); 68/2004 (VI. 22.)]. In my opinion, when resolutions of the National Assembly take on an external character, they acquire (normative) effect upon publication, in contrast to when they regulate an issue with a simple internal character, where they take effect upon adoption. In my view, it would be entirely unnecessary to tie the effect of an internal resolution of the National Assembly to its publication, as it would impose rules on the same individuals (the entirety of those involved) who created them and who are also responsible for applying those rules.

Additionally, it is worth distinguishing between approval resolutions and political declarations of the National Assembly, as follows:

Approval or rejection resolutions, or briefly, acceptance-type resolutions (these are related to the activities or normative acts of other bodies): These are decisions that record the approval of various reports, accounts, draft laws, and political statements—although, in my view, the latter should be presented in the form of a political declaration rather than a regular resolution. These approval resolutions ensure the supervisory function of the National Assembly, as they allow parliament to formally express its opinion and position on the operation of governmental and state institutions, as well as on international commitments. These resolutions reinforce the framework of the rule of law by imposing limits on the activities of the executive branch and ensuring the transparency of democratic processes. Approval resolutions can cover a wide range of topics. In the areas of national security and political matters, the National Assembly frequently decides on the approval of reports that directly affect the security and political interests of the country.

Political declarations: "A statement by the National Assembly on a political issue requiring an independent decision, adopted in a form other than a bill or resolution proposal."[45] The topics of political declarations issued by the National Assembly reflect the changes occurring in the given period, and thus are closely linked to the most important political and social events of the time. For example, among international and foreign policy issues, there is the 1/2022 (III. 10.) OGY political declaration (*politikai nyilatkozat az orosz–ukrán háborúról*), which reflects on the Russia-Ukraine war, and the 3/1997 (XI. 5.) OGY political declaration (*politikai nyilatkozat Magyarország NATO-tagságának elősegítéséről*), which concerns facilitating Hungary's NATO membership. The issue of migration has particularly come to the forefront in recent years, as illustrated by the 1/2023 (V. 3.) OGY political declaration (*politikai nyilatkozat a migráció elutasításáról és a kibocsátó országok helyben történő támogatásáról*), which addresses the rejection of migration and the support of source countries locally, as well as the 3/2021 (XII. 14.) OGY political declaration (*politikai nyilatkozat a migráció elleni nemzetközi fellépésről*), which dealt with international action against migration. Declarations on security policy and terrorism have also played an important role, such as the 2/2023 (X. 25.) OGY political declaration (*politikai nyilatkozat a terrorizmus elítéléséről és az áldozatok melletti kiállásról*), which condemns terrorism and expresses solidarity with the victims. Among the declarations related to European Union relations and international organizations, notable examples include the 2/2013 (X. 22.) OGY political declaration (*politikai nyilatkozat a rezsicsökkentés védelméről az európai uniós bürokrácia nyomásgyakorlásával*

Ezek a rendelkezések csak a formális értelemben vett házszabályokra vonatkoznak; egyszerű házhatározatok, ha materiális értelemben házszabályok is, bármikor hozhatók, és bármikor léptethetők hatályba.

[45] Házszabály 158. § 22.

szemben), which addresses the protection of utility cost reductions against pressure from EU bureaucracy, and the 2/2020 (V. 5.) OGY political declaration (*politikai nyilatkozat az isztambuli egyezményhez való csatlakozás elutasításáról*), which rejected Hungary's accession to the Istanbul Convention. Human rights and social issues have also been reflected in political declarations, such as the 1/2005 (III. 10.) OGY political declaration (*politikai nyilatkozat a cigány holokausztról*), which deals with the issue of the Roma Holocaust, and the 1/2004 (IV. 6.) OGY political declaration (*politikai nyilatkozat a Holocaust Emléknapjáról*), issued on Holocaust Memorial Day.

Based on the available statistics, since 1997, the National Assembly has issued a total of 28 political declarations, which means that on average, one to two such declarations were made annually. However, there was significant variation between individual years, depending on the political changes of the given year.

The requirement of legality clearly demands that every state body creates its acts within its own authority and in the form prescribed by law. This is because the constant switching or improper application of forms and types of acts creates uncertainty among citizens regarding whether the given act is binding. Therefore, the creation and application of acts in the prescribed form are essential for maintaining legal certainty and legality. Although there are normative resolutions in current Hungarian parliamentary practice that have legal significance for citizens, these are relatively rare, and their necessity is questionable.[46] However, if such a resolution is adopted, citizens are obliged to adhere to its provisions just as they would with laws—until a competent body determines its unconstitutionality. Conversely, there are views that resolutions not made within the framework of legislative authority ("simple parliamentary resolutions") carry political significance but do not have the legal binding force of law. [47]

In the case of normative resolutions, the will of the National Assembly must be the same as for laws—the fact of publication seems to confirm this. Based on these arguments, it is necessary, for the sake of maintaining legality and legal certainty, that state bodies strictly adhere to the prescribed forms and the proper application of acts, including normative resolutions, which are binding on citizen. [48]

Conclusion

Defining the resolutions of the National Assembly as legal sources is as challenging a task as defining government resolutions as independent legal sources – distinct from other legal sources and having absolute value. This is because, just as we distinguish legal rules issued by the executive branch, categorizing them into those that are integrated into the system of legal sources – such as government decrees – and those that are not – such as government resolutions.

From a purely formal perspective, we can also observe that draft laws, like the “proposals” for resolutions of the National Assembly, are considered motions within the framework of parliamentary procedure—more precisely, they are seen as collections of motions, each of which requires separate consideration and voting. As Joseph Redlich metaphorically described, these motions are like “building blocks,” and draft laws are the entirety formed by these blocks – the corpus. Indeed, an organization (or organism) can only be understood if we know its components, its building blocks.[49]

In my opinion, it is unconstitutional to tolerate any practice that essentially enforces regulation or legislation disguised as internal normative acts. Therefore, every internal normative act cloaked in this disguise is both unlawful and unconstitutional.

Individual acts (resolutions) of the National Assembly can have both internal and external characteristics. This is because what defines whether an act is internal or external is not whether it is individual or normative, but rather whether it is directed internally within the organization or externally. Thus, there are individual resolutions with external characteristics – because they are directed outside the organization—such as the purchase of a building or the issuance of a supporting document. And

[46] See: 9/2011. (III. 9.) OGY resolution: az új Alkotmány elfogadásának előkészítéséről.
[47] Badura, Peter: Staatsrecht. C.H. Beck’sche Verlagsbuchhandlung, München, 1986. 360. és 361.
[48] Lásd: Bihari, Ottó: Az államhatalmi képviseleti szervek elmélete. Akadémiai Kiadó, Budapest, 1963. 210–211.
[49] Redlich, Joseph: The Procedure of the House of Commons: A Study of Its History and Present Form. Archibald Constable & Co. Ltd., London, 1903. 12.. See: Redlich 1905.

there are individual acts that are characterized by internality, such as assigning tasks to a specific body or individual. Based on this, I disagree with the view that individual acts can only have external characteristics.[50]

As I previously explained regarding the normative nature of government resolutions, my assertion is that when an authority appoints or invites a person to a position, these acts should be considered normative (and not individual!), because the act does not specify the individual but the role or position—thus, the task assignment goes beyond the individual and is general in nature. I apply the same approach when determining whether the resolutions of the National Assembly are individual or normative in nature.[51]

It is also worth noting that this "creative authority" to designate positions can have both internal characteristics (such as assigning new duties to a government official, like a government commissioner or ministerial commissioner) and external characteristics (such as the election of constitutional officials by the National Assembly, such as the President of the Republic, the Chief Prosecutor, the President of the Supreme Court, or the President of the Constitutional Court).

[50] Erdős op. cit. 2016: 67.
[51] See: Balássy, Ádám Miklós: Kormányhatározat – tanulmány a magyar közigazgatásból. In Jogelméleti Szemle, 2022. 3. szám, 2–26.

Bibliography

1. Badura, Peter: Staatsrecht. C.H. Beck'sche Verlagsbuchhandlung, München, 1986.
2. Balássy Ádám Miklós: Kormányhatározat – tanulmány a magyar közigazgatásból. In Jogelméleti Szemle, 2022. 3. szám, 2–26. o.
3. Barabási Kun József: Parlamenti Házszabályok – politikai tanulmány. Franklin-Társulat, Budapest, 1907.
4. Besselink, Leonard – Bovend'Eert, Paul – Broeksteeg, Hansko – de Lange, Roel – Voermans, Wim (eds.): Constitutional Law of the EU Member States. Kluwer, Deventer, 2014.
5. Bihari Ottó: Az államhatalmi képviseleti szervek elmélete. Akadémiai Kiadó Budapest, 1963.
6. Bihari Ottó: Az államhatalmi képviseleti szervek elmélete. Akadémiai Kiadó, Budapest, 1963.
7. Búza László: *A képviselőház Házszabályai.* Államjogi Tanulmány.Ref. Főiskola Könyvnyomdája,Sárospatak,1916
8. Coke, Edward: The Fourth Part of the Institutes of the Laws of England: Concerning the Jurisdiction of Courts. M. Flesher, for W. Lee and D. Pakeman, London, 1644. 14. o.
9. Concha Győző: Közjog és obstrukció, 424. o. In Jogtudományi Közlöny 1904. 52. szám, 423–426. o.
10. Erdős Csaba: Kritikai megjegyzések az Alaptörvény jogszabály-fogalmával kapcsolatban. In Szoboszlai-Kiss Katalin – Deli Gergely: Tanulmányok a 70 éves Bihari Mihály tiszteletére. Győr, Universitas, 2013. 2013, 134–137.
11. Erdős Csaba: Parlamenti autonómia – Aktustani elemzések az Országgyűlés jogállásáról és hatásköreiről. Gondolat, Budapest, 2016.
12. Eugène, Pierre: Traité de Droit Politique Électoral et Parlementaire. Librairies-Imprimeries Réunies, Paris, 1893.
13. Fayer Gyula: Nem képviselők a házban, 447–448. o. In Jogtudományi Közlöny 1907. 52. szám.
14. Ferdinandy Géza: Magyarország közjoga. Politzer Zsigmond és fia kiadása, Révai és Salamon könyvnyomdája, Budapest, 1902.
15. Josef Redlich: Recht und Technik des englischen Parlamentarismus: die Geschäftsordnung des House of Commons in ihrer geschichtlichen Entwicklung und gegenwärtigen Gestalt. Duncker & Humblot, Leipzig, 1905.
16. Joseph Redlich: The Procedure of the House of Commons: A study of a Its History and Present form. 1903. University Californa.
17. Kmety Károly: A Magyar közjog tankönyve. Ötödik javított kiadás, Grill Károly Könyvkiadó Vállalata, Budapest, 1911.
18. Kilényi Géza: Az alkotmányozás és a „kétharmados" törvények. In Jogtudományi Közlöny. 1994. 4-5. 201-
19. Hatschek, Julius: Das Parlamentsrecht des Deutschen Reiches. Carl Heymanns Verlag, Berlin, 1912. 18–30. o.; Hatschek, Julius: Konventionalregeln oder über die Grenzen der naturwissenschaftlichen Begriffsbildung im öffentlichen Recht. In Jahrbuch des öffentlichen Rechts III. kötet. J.C.B. Mohr (P. Siebeck), Tübingen, 1909.
20. Jakab András: A magyar jogrendszer szerkezete. Doktori disszertáció, Miskolc, 2005.
21. Jakab András: A magyar jogrendszer szerkezete. Dialóg Campus Kiadó, Budapest - Pécs, 2007
22. Moór Gyula: A különböző jogforrások, azok egyensúlya és rangfokozata a magyar jogrendszerben, 150–153. o. In Magyar Jogi Szemle 1932. 5. szám, 145–153. o.
23. Pikler Kornél: Házszabályok. Budapest, 1971.
24. Redlich, Joseph: The Procedure of the House of Commons: A Study of Its History and Present Form. Archibald Constable & Co. Ltd., London, 1903.
25. Szászy-Schwarz Gusztáv: Parerga – vegyes jogi dolgozatok. Athenaeum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1912.

De iurisprudentia et iure publico
JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT
JOURNAL OF LEGAL AND POLITICAL SCIENCES
HU ISSN 1789-0446

Kiadja / Publishing:
Magyar Jog- és Államtudományi Társaság
Hungarian Association of Law and Political Sciences

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XV. évfolyam | Vol. XV
2024/3. szám| No. 3/2024
Tanulmány | Article
www.mjat.hu

The European Union and Central Asia: A Comprehensive Analysis of Legal Frameworks of the Relationship

ABSTRACT

This paper provides an in-depth analysis of the legal frameworks governing the relationship between the European Union and the countries of Central Asia. Since the collapse of the Soviet Union, Central Asia has emerged as a region of strategic importance due to its geopolitical location, abundant energy resources, and potential for economic cooperation. The EU's engagement with Central Asia has evolved over the past three decades, characterized by the establishment of bilateral agreements and the adoption of strategic approaches toward the region. The legal foundation of the EU's relations with individual Central Asian countries includes Partnership and Cooperation Agreements and Enhanced Partnership and Cooperation Agreements, which cover a wide range of areas such as trade, investment, and human rights. Additionally, the EU has implemented various strategies aimed at enhancing cooperation with Central Asian countries, focusing on areas such as economic development, energy, environmental sustainability, and security. The paper conducts an analysis of the agreements signed between the EU and Central Asian countries, as well as the strategies adopted by the EU towards Central Asia.

KEYWORDS: *EU, Central Asia, legal frameworks, PCA, EPCA, Strategy*

Introduction

After the fall of the Soviet Union and the end of the bipolar international system, the geopolitical landscape underwent significant changes. These changes led to the creation of many new independent states on the Eurasian continent. In Central Asia, five new republics became independent: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Since ancient times, the Central Asian region has attracted significant attention from both Western and Eastern countries due to its crucial geopolitical and geo-economic position as a bridge connecting Asia and Europe. In the 1990s, these Central Asian countries began to shape their foreign policies and establish their geopolitical positions. These new countries faced many challenges, one of the biggest being how to establish their own foreign policies. During the Soviet period, Moscow was in charge of implementing foreign policy on behalf of all Soviet Socialist Republics, and most newly independent countries lacked experience in conducting their own foreign policies and had to start from scratch. Central Asia's role in international politics is progressively growing due to its geopolitical location, vast energy reserves and natural resources, and potential for economic cooperation. Russia, the United States, China, the European Union, and other regional powers are all striving to maintain and strengthen their positions in the region, albeit from different starting points.

EU policy towards Central Asia has undergone evaluation over the past 30 years. The European Union's approach to the region took shape relatively later compared to other actors. Among the key factors contributing to the European Union's sustained interest in Central Asia, several noteworthy aspects emerge: the region's geostrategic significance, positioned at the nexus of global powers' geopolitical interests; Central Asia's considerable transit potential for trade between Europe and Asia; the abundant energy and natural resource reserves present in Central Asia; and the proximity of Central Asian states to Afghanistan, heightening the risk of security threats such as terrorism, religious extremism, drug trafficking, and substantial transit migration. Since 1991, relations between the EU and the independent states of Central Asia have progressively developed. The EU has sought to strengthen its engagement with Central Asian countries through various channels, including political dialogue, economic cooperation, and development assistance. Presently, the legal framework for cooperation is established through the signed Enhanced Partnership and Cooperation Agreement (EPCA) with Kazakhstan and Partnership and Cooperation Agreements (PCA) with Kyrgyzstan, Tajikistan, and Uzbekistan, as well as an Interim Agreement on trade and trade-related matters with Turkmenistan. The EU signed an EPCA with Kyrgyzstan in 2019, pending ratification, and a PCA with Turkmenistan in 2010, also pending ratification. The EU started consultations with Tajikistan and Uzbekistan to upgrade the PCA to EPCA.

Regionally speaking, from the early years of Central Asian countries' independence until 2006, the EU cooperated with countries of the region through its Technical Assistance to the Commonwealth of Independent States program, which covered not only Central Asian countries but all post-Soviet countries. In 2007, the EU upgraded its relations with Central Asian countries and adopted its Strategy towards Central Asian countries. On July 20, 2007, the Council of the European Union adopted *The EU and Central Asia: Strategy for a New Partnership*.[1] In 2019, the EU upgraded its Strategy towards Central Asia, and a Joint Communication on *The EU and Central Asia: New Opportunities for a Stronger Partnership*[2] was adopted by the European Commission and the High Representative in May 2019. On June 17, 2019, the Council adopted conclusions on a new EU strategy on Central Asia.[3] Considering the changing geopolitical situation in the world, discussions have commenced within EU institutions to update the Strategy in Central Asia in the coming years, aiming to adapt EU policy to current geopolitical changes.

[1] Council of the European Union: The EU and Central Asia: Strategy for a New Partnership, 2007. https://data.consilium.europa.eu/doc/document/ST-10113-2007-INIT/en/pdf (May 10, 2024).
[2] Joint Communication to the European Parliament and the Council: The EU and Central Asia: New Opportunities for a Stronger Partnership, 2019. https://www.eeas.europa.eu/sites/default/files/joint_communication_-_the_eu_and_central_asia_-_new_opportunities_for_a_stronger_partnership.pdf (May 10, 2024).
[3] Council of the European Union: Central Asia: Council adopts a new EU strategy for the region, 2019. https://www.consilium.europa.eu/en/press/press-releases/2019/06/17/central-asia-council-adopts-a-new-eu-strategy-for-the-region/ (July 12, 2024)

The primary aim of this paper is to analyze the legal framework of the EU's relationship with Central Asian countries. To achieve this, a content analysis was conducted on legally binding documents signed between the EU and individual Central Asian countries, as well as an examination of EU adopted strategies. After this introduction, the first part of this paper analyzes the bilateral legal frameworks that governed relations between the EU and individual Central Asian countries. The second part presents the EU's adopted strategies regulating EU-Central Asia relations. Lastly, a brief conclusion of the research topic and recommendations are presented.

I. Foundations of relations: TACIS and bilateral agreements

The cornerstone for developing political and economic ties between the EU and the five Central Asian republics was the Technical Assistance to the Commonwealth of Independent States (TACIS) program. Between 1991 and 2006, the European Union primarily offered technical assistance aimed at economic and commercial reforms, state-building processes, and fostering foreign investments. While TACIS was intended as an aid program for the entire Commonwealth of Independent States (CIS), it didn't cover all countries uniformly. Economic and technical assistance varied based on European strategic priorities: Russia, being the largest CIS country, received the most aid, followed by Eastern European countries set to join the EU, with Central Asian countries receiving less attention. Throughout the program's activities from 1991 to 2006, the EU allocated a total of 537.8 million euros to the Central Asian countries. Kazakhstan received financial support amounting to 166.2 million euros, Kyrgyzstan 94.9 million euros, Tajikistan 51.0 million euros, Turkmenistan 57.5 million euros, and Uzbekistan 168.2 million euros.[4]

Established under a Council Regulation in 1991, the TACIS program aimed to provide assistance for economic reform and the transition of newly independent republics of the former Soviet Union to market economies and democratic governance. As a result, technical assistance became a priority, focusing on training management personnel for both public and private sectors, financial services, energy, transportation, and food trade.[5] With the Council's Regulation adopted on July 19, 1993, assistance shifted towards implementing economic reform and restoration in beneficiary states, concentrating efforts in specific sectors and regions crucial for supporting reforms.[6] The Council Regulation adopted in 1996 expanded technical assistance to support economic reform measures in partner countries, emphasizing the transition to a market economy and the strengthening of democracy.[7] Similarly, the Council Regulation adopted in 2000 aimed to facilitate the transition to a market-based economy, strengthen democracy and the rule of law, and promote knowledge transfer, vocational training, industrial cooperation, and institutional building partnerships between the EU and partner countries.[8] This Council Regulation marked a new stage in the TACIS program's implementation from 2000 to 2006, building upon the achievements of the previous decade while incorporating adjustments based on accumulated experience and the increasingly diversified development of partner countries. The TACIS program officially concluded its activities in 2006, and the decision to conclude the program was influenced by several factors. One of the primary reasons was the changing geopolitical landscape and the evolving needs of the countries in the CIS region. The program had been in operation for more

[4] Raszkowski, Andrzej: *Program TACIS w państwach postsowieckich (TACIS program in post-Soviet countries)*. In Ekonomia Vol. 16, 2011. pp. 436-445.

[5] Council Regulation No 2157/91 of 15 July 1991 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics, 1991. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31991R2157 (May 15, 2024).

[6] Council Regulation No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia, 1993. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R2053:EN:HTML (May 15, 2024).

[7] Council Regulation No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, 1996. https://eur-lex.europa.eu/eli/reg/1996/1279 (May 15, 2024).

[8] Council Regulation No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia, 2000. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000R0099 (May 15, 2024).

than 15 years, and during that time, significant progress had been made in terms of economic and political reforms in many of the CIS countries. As a result, the European Union deemed it appropriate to transition to new approaches that could better address the emerging challenges and priorities facing the region.

During the early years of cooperation, active negotiations were conducted, and several agreements were signed. The EU first established diplomatic contacts with Central Asian countries in early 1993, and its initial regional mission was opened in Almaty, Kazakhstan.[9] The legal framework of EU-Central Asia relations has its roots in the PCA signed between the EU and the Central Asian countries in the 1990s and early 2000s.[10] A PCA is a legally binding arrangement between the EU and non-EU countries. Through a PCA, the EU aims to foster democratic and economic development in the partner country. These agreements are comprehensive, establishing a fundamental framework for cooperation and dialogue. The PCA with Kazakhstan was signed on January 23, 1995, and entered into force in 1999, setting the political dialogue between the parties and establishing a system of consultations on mutually interested issues, including those of global concern.[11] On February 9, 1995, the PCA between the Kyrgyz Republic and the European Union was signed in Brussels, which came into force on June 1, 1999.[12] Diplomatic relations between the Republic of Uzbekistan and the European Union were established on November 16, 1994. On June 21, 1996, the parties signed the current PCA, which came into force in 1999.[13] This document, like other similar agreements concluded by the EU with post-Soviet countries, provides for cooperation on a wide range of issues: political dialogue, trade, business and investment activities, protection of intellectual property, legislative cooperation, economic cooperation, and interaction on issues related to democracy and human rights. On May 24, 1998, the EU initialed a PCA with Turkmenistan, but the European Parliament has delayed the ratification of this PCA, citing concerns over Turkmenistan's human rights record as a pivotal factor in this decision. The Interim Agreement on trade and trade-related matters, which entered into force in August 2010, is the main legal basis of the relationship between the EU and Turkmenistan.[14] The EU and Tajikistan signed a PCA on November 11, 2004, which entered into force on January 1, 2010.[15] PCAs cover a broad spectrum of issues such as trade, economic cooperation, investment, human rights, democracy, energy, environment, transport, tourism, financial cooperation, and cross-border supply of services. These agreements laid down the foundation for cooperation in various areas, including political dialogue, trade, investment, and development assistance.

In 2015, Kazakhstan signed an EPCA, marking a significant milestone in its relations with the European Union. This agreement came into force on March 1, 2020.[16] The EU-Kazakhstan EPCA covers 29 areas of cooperation, expanding collaboration in sectors like investment, environment, energy, transport, research, and education, with a strong emphasis on human rights, the rule of law, and good governance. This agreement reflects a deeper level of engagement compared to traditional PCAs. This transition from the PCA to the EPCA marks a significant deepening of EU-Kazakhstan relations, highlighting the EU's commitment to supporting Kazakhstan's development and aligning it with European standards and practices. In 2019, Kyrgyzstan signed an EPCA with the European Union,

[9] Zhunissova, Madina: *The European Union's Soft Power Dynamics in Kazakhstan*. In Journal of Balkan and Black Sea Studies Vol. 11, 2023. pp. 75-102.
[10] Rakhimov, Mirzokhid: *The European Union and Central Asia: challenges and prospects of cooperation*. In Discussion papers / Zentrum für Internationale Entwicklungs- und Umweltforschung, 47, 2010.
[11] Kembayev, Zhenis: *Partnership between the European Union and the Republic of Kazakhstan: Problems and perspectives*. In European Foreign Affairs Review Vol. 21, no. 2, 2016. pp. 185-203.
[12] EEAS: EU-Kyrgyz Republic relations, 2023. https://www.eeas.europa.eu/eeas/eu-kyrgyz-republic-relations_en (May 10, 2024).
[13] EEAS: EU-Uzbekistan relations, 2018. https://www.eeas.europa.eu/node/11047_en (May 10, 2024).
[14] EEAS: EU-Turkmenistan Relations, 2023. https://www.eeas.europa.eu/eeas/eu-turkmenistan-relations_en (May 6, 2024).
[15] Ministry of foreign affairs of the Republic of Tajikistan: Bilateral relations of Tajikistan with the European Union, 2024. https://mfa.tj/en/main/view/160/bilateral-relations-of-tajikistan-with-the-european-union (May 20, 2024).
[16] EEAS: The European Union and Kazakhstan, 2023. https://www.eeas.europa.eu/kazakhstan/european-union-and-kazakhstan_en?s=222 (May 20, 2024).

which is expected to be ratified soon, while Tajikistan and Uzbekistan started consultations with the EU to upgrade their PCAs to EPCAs.

In July 2005, the EU Council established the position of EU Special Representative for Central Asia to ensure coordination and coherence of the EU's external actions in the region.[17] This representative directly reports to and operates under the leadership of the High Representative for EU Foreign and Security Policy. In each of the Central Asian countries, there is a Delegation of the EU, representing and developing relations between the EU and the Central Asian countries.

II. Advancing cooperation: EU's strategies towards Central Asia

For a long time, the EU lacked an effective policy towards Central Asia. In the first half of 2007, Germany took the presidency of the EU Council, and one of its primary tasks was the revision and clearer formulation of EU policy in Central Asia. On May 31, 2007, the first strategy, *The EU and Central Asia: Strategy for a New Partnership*, was adopted.[18] This document served as the main EU program for interregional cooperation from 2007 onward, laying the groundwork for stable political relations between Central Asian countries and the EU, and fostering closer ties between the region and the Western world as a whole.

This strategy emphasized multidisciplinary cooperation in areas such as economic development, transportation, regional security, environmental protection, and energy resources. High-level political dialogue further strengthened exchanges and cooperation between the two sides, enhancing the EU's standing and political influence in the region. Since 2007, EU-Central Asia ministerial meetings have taken place, alongside multilateral dialogues such as the High-Level Political and Security Dialogue and operational working groups like the Working Group on Environment and Climate.[19] The strategy underscored the importance of human rights, democratization, good governance, and poverty eradication in the EU's relations with Central Asia. The EU's goals in the region, as outlined in the strategy for 2007-2013, included ensuring the stability and security of Central Asian countries, contributing to poverty reduction and improving living standards in line with the Millennium Development Goals, and promoting regional cooperation both among Central Asian states and between these states and the EU, particularly in the fields of energy supply, transport, higher education, and environmental protection.

The 2007 EU Strategy for Central Asia also emphasized the region's role as a vital link between Europe and Asia. The strategy's main priorities included:

- Upholding human rights, promoting the rule of law, good governance, and democratization.
- Investing in the future through youth and education initiatives.
- Promotion of economic development, trade, and investment.
- Strengthening cooperation in the energy and transport sectors.
- Promoting environmental sustainability and managing water resources.
- Addressing common threats and challenges.
- Fostering cultural dialogue to build bridges between communities.[20]

As a strategic approach, the EU proposed maintaining regular political dialogue at the level of foreign policy agencies, introducing initiatives like the *European Education Initiative* and the *EU Rule of Law Initiative*, establishing focused dialogues on human rights with each Central Asian state separately, and conducting ongoing energy dialogues with regional countries. However, this document faced ample criticism for treating Central Asia as a homogeneous entity and disregarding the specific characteristics of individual countries, rendering it abstract and ineffective. One of the main

[17] EEAS: EU Special Representative for Central Asia. https://www.eeas.europa.eu/eeas/eu-special-representative-central-asia_en (May 21, 2024).
[18] Council of the European Union: op.cit.
[19] Ministry for Environment, Land and Sea Protection of Italy: European Union Strategy for Central Asia, 2023. https://www.mase.gov.it/pagina/european-union-strategy-central-asia (July 12, 2024).
[20] ibid.

achievements of the 2007 strategy, despite not being fully realized, is that it helped the European Union establish its presence in the region by opening its delegations in all five Central Asian countries.
Energy cooperation has been a significant aspect of EU-Central Asian relations. The EU has been interested in accessing Central Asia's vast energy resources to diversify its energy supplies and reduce dependency on other sources, particularly Russia. The EU launched the *Sustainable Energy Connectivity in Central Asia (SECCA)*, aiming to enhance energy security, promote sustainable energy policies, and facilitate investments in the energy sector. Over the years, the EU has supported various projects in Central Asia, such as the *European Union – Central Asia Water, Environment and Climate Change Cooperation (WECOOP)* and the *Transport Corridor Europe-Caucasus-Asia" (TRACECA)*. These initiatives aim to improve regional infrastructure, facilitate trade, and enhance connectivity between Central Asia and Europe. Furthermore, the EU has been engaged in promoting human rights, democracy, and the rule of law in Central Asia and supporting the *Central Asia Rule of Law Programme*.[21] It has advocated for reforms, civil society development, and respect for human rights through various channels, including political dialogues, human rights dialogues, and financial support for civil society organizations.[22]

In 2017, the European Union recognized the need to explore the Central Asian region more thoroughly and formulate a new diplomatic strategy in response to evolving circumstances. This led to the EU's resolution in 2017 to develop a fresh strategy for Central Asia, driven by political reforms, the promotion of regional integration, and the increasing global significance of the region. On May 15, 2019, after two years of efforts, the European Commission and the EU High Representative for Foreign Affairs and Security Policy presented the Joint Communication *The EU and Central Asia: New Opportunities for a Stronger Partnership* to the Council of the EU.[23] This document, which became the new EU Strategy for Central Asia upon its adoption by the EU Council on June 17, 2019, aims to form a stronger, modern, and inclusive partnership with the countries of Central Asia.

Notably, it retained key ideas from the previous 2007 EU policy document for Central Asia, such as interconnectedness, sustainability, inclusivity, and adherence to rules. In contrast to the 2007 Strategy, the 2019 EU policy document for Central Asia did not establish specific thematic platforms to maintain flexibility and long-term relevance. This strategy, built upon three interconnected pillars of collaboration, reflects the EU's commitment to engaging with Central Asian countries across various fronts. At the core of this strategy is the concept of *Partnering for Resilience*. This pillar underscores the EU's dedication to promoting democratic values, protecting human rights, and upholding the rule of law in Central Asia. The EU aimed to collaborate with the region on issues affecting their socio-economic development and to promote reforms, focusing on democracy, human rights, the rule of law, and gender equality. Security cooperation remained important, including effective border management, migration, combating drug trafficking, countering violent extremism and terrorism, cybersecurity, disarmament, non-proliferation of weapons of mass destruction, and addressing hybrid threats. The EU also intended to enhance cooperation in environmental matters, such as managing water resources efficiently and adopting principles of the green economy and renewable energy sources. In parallel, the *Partnership for Prosperity* pillar focuses on enhancing the economic landscape of the region. This included developing a competitive private sector, fostering a favorable investment environment, boosting trade, enhancing dialogue between business communities, improving transport, energy, and digital connectivity, promoting people-to-people exchanges, and fostering intra-regional and interregional education cooperation. Additionally, the EU aims to facilitate the integration of Central Asian countries into the global economy by supporting their accession to the World Trade Organization. By promoting economic development and trade, this pillar seeks to contribute to the long-term prosperity of the region. Furthermore, the strategy emphasizes the significance of *Working Better Together* between the EU and Central Asian countries. This involves strengthening political dialogue and expanding the involvement of civil society in decision-making processes. By fostering closer ties

[21] EEAS: Central Asia, 2022. https://www.eeas.europa.eu/eeas/central-asia_en (July 12, 2023).
[22] Qodirov, Nosirkhon*: The EU's engagement with Central Asia: assessing achievements and prospects for cooperation.* In Eurasian World Journal, Vol. 13, 2023. pp. 75-79.
[23] Joint Communication to the European Parliament and the Council: op.cit.

and cooperation, the EU aims to enhance mutual understanding and collaboration on various regional and global issues.[24]

While most priority areas of the updated EU strategy remained unchanged, the focus was on supplementing it with necessary elements while maintaining the basic concept of relations. The EU aimed to tailor its approach to each Central Asian state's specific interests, deepening ties with those willing and able to intensify relations. An innovative aspect of the strategy was the emphasis on enhancing connectivity between Europe and Central Asia. This aimed to strengthen regional cooperation to manage interdependence, address vulnerabilities, tackle common challenges, unlock economic growth potential, and enhance international standing while preserving independence and identity. Considering the sudden onset of the global coronavirus pandemic, the Russia-Ukraine war, and the changing geopolitical situation in the world, achieving the goals outlined in the Strategy may prove challenging. In light of these challenges, preparations are ongoing within EU institutions to update the Strategy.[25] Research is needed to assess the extent to which these strategies were successful and how many of the plans were implemented. Nevertheless, the strategies adopted, and agreements signed opened a new phase and upgraded the relationship between the EU and Central Asian states.

Conclusion

Over the past three decades, the European Union has made significant efforts to strengthen its relationship with the countries of Central Asia. The EU's engagement with the region has been guided by a desire to promote stability, prosperity, and connectivity while addressing common challenges such as security threats, economic development, and environmental sustainability. The legal framework governing EU-Central Asia relations has evolved through the signing of bilateral agreements and the adoption of strategic documents. PCAs and EPCAs have provided the foundation for cooperation in various areas, including trade, investment, human rights, and democracy. These agreements have facilitated political dialogue and economic cooperation between the EU and Central Asian countries, contributing to the development of mutually beneficial relations. In addition to bilateral agreements, the EU has adopted strategies to guide its engagement with Central Asia. These strategies have emphasized multidisciplinary cooperation in areas such as economic development, energy, environmental protection, and security. Despite facing criticism for treating Central Asia as a homogeneous entity, these strategies have helped to establish the EU's presence in the region and promote dialogue and cooperation on key issues.

Looking ahead, the EU must continue to adapt its policies and strategies to the changing geopolitical landscape and emerging challenges. By deepening cooperation in areas such as economic development, energy, and security, the EU can contribute to the stability and prosperity of Central Asia while advancing its own interests in the region. As the EU seeks to strengthen its engagement with Central Asian countries, the implementation of strategic initiatives should be guided by a thorough understanding of the cultural, religious, and social context of Central Asia. This involves integrating cultural sensitivity and contextual awareness into policy-making processes to ensure that initiatives resonate with the local population and contribute to sustainable development. By recognizing and accommodating the uniqueness of Central Asian cultures, religions, traditions, outlooks, and mentalities, the EU can foster inclusive and effective cooperation that promotes mutual prosperity and stability.

[24] ibid.

[25] The Astana Times: European Parliament Report Calls for Updated Central Asia Strategy, 2024. https://astanatimes.com/2024/01/european-parliament-report-calls-for-updated-central-asia-strategy/ (May 22, 2024).

Bibliography

1. Council of the European Union: Central Asia: Council adopts a new EU strategy for the region, 2019. https://www.consilium.europa.eu/en/press/press-releases/2019/06/17/central-asia-council-adopts-a-new-eu-strategy-for-the-region/ (July 12, 2024)
2. Council of the European Union: The EU and Central Asia: Strategy for a New Partnership, 2007. https://data.consilium.europa.eu/doc/document/ST-10113-2007-INIT/en/pdf (May 10, 2024).
3. Council Regulation No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, 1996. https://eur-lex.europa.eu/eli/reg/1996/1279 (May 15, 2024).
4. Council Regulation No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia, 1993. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R2053:EN:HTML (May 15, 2024).
5. Council Regulation No 2157/91 of 15 July 1991 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics, 1991. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31991R2157 (May 15, 2024).
6. Council Regulation No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia, 2000. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000R0099 (May 15, 2024).
7. EEAS: Central Asia, 2022. https://www.eeas.europa.eu/eeas/central-asia_en (July 12, 2023).
8. EEAS: EU Special Representative for Central Asia. https://www.eeas.europa.eu/eeas/eu-special-representative-central-asia_en (May 21, 2024).
9. EEAS: EU-Kyrgyz Republic relations, 2023. https://www.eeas.europa.eu/eeas/eu-kyrgyz-republic-relations_en (May 10, 2024).
10. EEAS: EU-Turkmenistan Relations, 2023. https://www.eeas.europa.eu/eeas/eu-turkmenistan-relations_en (May 6, 2024).
11. EEAS: EU-Uzbekistan relations, 2018. https://www.eeas.europa.eu/node/11047_en (May 10, 2024).
12. EEAS: The European Union and Kazakhstan, 2023. https://www.eeas.europa.eu/kazakhstan/european-union-and-kazakhstan_en?s=222 (May 20, 2024).
13. Joint Communication to the European Parliament and the Council: The EU and Central Asia: New Opportunities for a Stronger Partnership, 2019. https://www.eeas.europa.eu/sites/default/files/joint_communication_-_the_eu_and_central_asia_-_new_opportunities_for_a_stronger_partnership.pdf (May 10, 2024).
14. Kembayev, Zhenis: *Partnership between the European Union and the Republic of Kazakhstan: Problems and perspectives.* In European Foreign Affairs Review Vol. 21, no. 2, 2016. pp. 185-203.
15. Ministry for Environment, Land and Sea Protection of Italy: European Union Strategy for Central Asia, 2023. https://www.mase.gov.it/pagina/european-union-strategy-central-asia (July 12, 2024).
16. Ministry of foreign affairs of the Republic of Tajikistan: Bilateral relations of Tajikistan with the European Union, 2024. https://mfa.tj/en/main/view/160/bilateral-relations-of-tajikistan-with-the-european-union (May 20, 2024).
17. Qodirov, Nosirkhon: *The EU's engagement with Central Asia: assessing achievements and prospects for cooperation.* In Eurasian World Journal, Vol. 13, 2023. pp. 75-79.
18. Rakhimov, Mirzokhid: *The European Union and Central Asia: challenges and prospects of cooperation.* In Discussion papers / Zentrum für Internationale Entwicklungs- und Umweltforschung, 47, 2010.

19. Raszkowski, Andrzej: *Program TACIS w państwach postsowieckich (TACIS program in post-Soviet countries).* In Ekonomia Vol. 16, 2011. pp. 436-445.
20. The Astana Times: European Parliament Report Calls for Updated Central Asia Strategy, 2024. https://astanatimes.com/2024/01/european-parliament-report-calls-for-updated-central-asia-strategy/ (May 22, 2024).
21. Zhunissova, Madina: *The European Union's Soft Power Dynamics in Kazakhstan.* In Journal of Balkan and Black Sea Studies Vol. 11, 2023. pp. 75-102.

De iurisprudentia et iure publico
JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT
JOURNAL OF LEGAL AND POLITICAL SCIENCES
HU ISSN 1789-0446

Kiadja / Publishing:
Magyar Jog- és Államtudományi Társaság
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XIV. évfolyam | Vol. XIV
2024/3. szám| No. 3./2024
Tanulmány | Article
www.mjat.hu

The E-governance Challenges of Public Health Service in Ethiopia

ABSTRACT

This paper investigates the complexities of e-governance implementation, emphasizing the importance of user awareness as a fundamental step. E-governance in the public sector, particularly in health services, is facing challenges in Ethiopia. The effectiveness of e-governance is debatable, but it leverages technology to improve citizens' lives and enhance interaction between governments and the public through initiatives like WoredaNet and HealthNet. The study identifies obstacles to e-health strategy success, including institutional gaps, digital disparities, privacy concerns, and cultural barriers. Discrepancies between data system implementation expectations and reality are the primary cause of e-government project failure in developing nations. To address these challenges, it is crucial to establish clear mandates, responsibilities, and coordination across government entities. It advocates for a robust institutional framework, enhanced ICT access, service continuity, and IT education to support effective e-governance and digital healthcare implementation.

KEYWORDS: *e-governance, public administration, public sector, health services, Ethiopia*

Introduction

In the era of globalisation, e-governance is a topic that both practitioners and researchers are interested. In terms of scope, e-governance is narrower than e-government. It involves using ICTs to provide government services through the combination of various stand-alone systems for G2C, G2B, and G2G services (from the federal government to each national and regional state and vice versa in the case of Ethiopia).[1] The trend incorporates elements of online public service delivery and digital democracy, including online citizen involvement and public discussion. Generally, it is a relatively new method that can link individuals to the political process on several levels.[2]

Ethiopia has been at the forefront of several electronic networks at various times. Leading examples are WoredaNet, SchoolNet, HealthNet, and AgriNet. With over 565 woredas connected to federal, regional, and local government offices, WoredaNet is a terrestrial and satellite-based network that offers ICT services to the government at the federal, regional, and woreda (district) levels.[3] It connects downstream to approximately 6000 kebeles, the smallest administrative unit of governance, with an overall goal of connecting 18,000 kebeles.[4] Currently, 668 secondary schools are connected to SchoolNet, a satellite-based network, through a gateway that offers instructional material delivered in audio and video over VSAT connections.[5] Through 62 locations nationwide, HealthNet provides access to essential healthcare information. AgriNet uses eight VSAT lines to connect fifty agricultural research institutes run by federal and regional governments. Among the e-services mentioned, the widespread use of SchoolNet in high school was completely disrupted by a lack of ICT infrastructure, particularly a lack of a network. Following the sale of some shares to a foreign business (Safaricom), the present leadership in Ethiopia reversed the trend of monopolisation in the telecommunications industry. After paying an $850 million license fee, Safaricom became the first international business to be granted permission to provide telecom services in Ethiopia. In the 2022 UN e-government survey, Ethiopia was ranked 179th out of 193 nations. Several issues cause this rate, so the primary goal of this article is to examine the issues surrounding e-governance in Ethiopian public sectors with a particular emphasis on the health sector. Desk review was the research methodology employed in this work. This study critically analyses secondary sources, including books, peer-reviewed journals, published papers, and Ethiopian health policies and plans.

The methodology of this article involves utilizing both published and unpublished secondary materials, including journals, articles, and government reports on healthcare reforms (mainly based on PubMed, Scopus, JSTOR, DOAJ, Microsoft Scientific Research Engine, Heinonlie, and Google Scholar). The authors conducted a narrative review and analysed the collected data from various sources using content and text analysis methods. Other internet databases were the primary sources of articles, like statistics from the United Nation, the Ethiopian Statistics Service (ESS), or the Central Statistical Agency.

[1] Grigalashvili, Vepkhvia: E-government and E-governance: Various or Multifarious Concepts. *International Journal of Scientific and Management Research* 5.01. 2022.: 183-196.

[2] Rossel, Pierre, and Matthias Finger: Conceptualizing e-governance. *Proceedings of the 1st international conference on Theory and practice of electronic governance*. 2007.
Finger, Matthias, and Gaëlle Pécoud: From e-Government to e-Governance? Towards a model of e-Governance. *Electronic Journal of E-government* 1.1. 2003: 52-62.

[3] Senshaw, Debas: Assessing the impact of WoredaNet usage on dynamic capabilities: a structural equation modeling of Woredas in Ethiopia. *Digital Policy, Regulation and Governance*. 2023.

[4] Chekol, Abebe: Ethiopian free and open source software network (EFOSSNET). *Global information society watch: Focus on access to online information and knowledge–advancing human rights and democracy*. 2009. 123-126.

[5] Yigezu, Moges: Digitalization in teaching and education in Ethiopia. *International Labour Organization*. 2021.

I. E-Governance in the Public Sector

The contemporary age, or Paradigm Five, is distinguished in the history of public administration as the transition from government to governance.[6] E-governance, or Simple, Moral, Accountable, Responsive, and Transparent (SMART) governance, uses information and communications technology in government activities.[7] Many administrations defined this phrase to fit their own goals and purposes. The phrases e-governance and e-government are sometimes used interchangeably; however, this is debatable. While e-government is defined as using information technology to support government operations, engage citizens, and provide government services, e-governance uses emerging information and communication technologies to facilitate government and public administration processes.[8] ICT is vital to the public sector because it may expedite and simplify administrative goals while promoting democracy, human rights, good governance, peace, and security[9]. In public organisations, e-governance enables a more effective and efficient interface. This encourages efficiency and effectiveness in leadership throughout government agencies, along with accountability and openness.

Could technology lead to the emergence of new kinds of government outside certain domains, such as transparency? There are two options: e-Government 2.0 and virtual government models[10]. A virtual government is a company where people interact online from any location rather than having a physical office or structure. Since many of the routine operations performed by the government can be automated, this kind of organisation is not virtual in the true sense of the word. On the other hand, the second one goes beyond new, bottom-up forms of governance and is e-government 2.0.

A thorough explanation of this idea may be found in Millard's (2010) description of the use of tools like social networking, blogs, wikis, mashups, and so on to produce new services that are produced by communities themselves as opposed to the state, as well as new forms of governance. One such instance is Eixmystreet.com. With this, residents can notify their local government about issues with the urban environment. They can snap a photo of a cracked pavement or a broken traffic light, send it to the council, and post it online with information about when it was reported and how long it will take for the authorities to fix it. Even though its effectiveness is debatable, this is a proper kind of e-governance because it leverages technology to alter the way activities are carried out in ways that would be impracticable if the information and communication technologies were not used.[11]

[6] Wasistiono, Sadu, and Wike Anggraini: Three paradigms in government (good governance, dynamic governance, and agile governance). *International Journal of Kybernology* 4.2. 2019: 79-91.

[7] Heeks, Richard: Understanding e-governance for development, i-government working paper series. Institute for Development Policy and Management, University of Manchester, No 11. 2001
Mooij, Jos. Smart governance. *Politics in the policy process in Andhra Pradesh, India*. 2003: 22-3.

[8] Umbach, Gaby, and Igor Tkalec: Evaluating e-governance through e-government: Practices and challenges of assessing the digitalisation of public governmental services. *Evaluation and program planning* 93. 2022: 102118.

[9] Palma, John Paul B., et al. "E-governance: A critical review of e-government systems features and frameworks for success." *International Journal of Computing Sciences Research* 7.2023: 2004-2017. Fonou Dombeu, Jean Vincent, and Nelson Rannyai: African e-government research landscape. *The African Journal of Information Systems* 6.3 (2014): 2. Aloyce, Menda: E-governance in Africa-Successes and Challenges: E-governance in Tanzania, 2005. pp.36-37

[10] Bekkers, Victor. E-government and the emergence of virtual organizations in the public sector. *Information Polity: an international journal on the development, adoption, use and effects of information technology* (2003).

[11] Bannister, Frank, and Regina Connolly. Defining e-governance. *e-Service Journal: A Journal of Electronic Services in the Public and Private Sectors* 8.2. 2012: 3-25.

I.1. Stakeholders in the Implementation of E-governance

Any nation that adopts e-governance must have the active involvement and input of several essential parties and stakeholders throughout the process: (i) political leaders, (ii) government ministries, departments, and agencies; (iii) legislative body; (iv) citizens; (v) private sector; and (vi) international organisations and NGOs.[12]

In the public sector, *political leaders* play a pivotal role in the success of e-government projects, as their support is essential for their implementation. No matter how well-planned, an e-government project cannot succeed unless the nation's political elite is willing to support it. This is true for practically every country, and the national leadership needs to be sufficiently aware of the importance of electronic governance. At the same time, *government ministries, departments, and agencies* must ensure seamless integration of systems and procedures to facilitate the transition to a digital state. This involves fostering e-awareness among government personnel and a culture of openness to change. Integration across public sector ministries and agencies is essential to their ability to provide services in a readily coordinated fashion and may also lessen the inconvenience and weariness that service consumers experience while juggling services from many agencies and organisations. The involvement of the *legislative body* is crucial. The successful implementation of e-government initiatives may depend on developing and adopting well-crafted e-strategy, IT laws, and regulations; therefore, the participation of law-making authorities is crucial in this regard.

The *citizens* play a crucial role in the success of e-government initiatives as the primary beneficiaries of improved access to government services and information online. Their expectations for quick and easy access drive the demand for effective e-government solutions. Furthermore, citizens can actively participate in policymaking by expressing their opinions electronically, thereby contributing to governance reforms. Collaboration between the government and the *private sector* is essential for achieving e-government goals. Both parties stand to gain from the endeavours, making e-government goals readily achieved. Apart from financing e-government initiatives, the private sector can augment its worth by applying state-of-the-art technology and global expertise. Aside from the commercial side, they would benefit from the government's increased responsibility, efficiency, and transparency. Private companies bring expertise and resources that complement government efforts, enabling the implementation of advanced technologies and fostering innovation.

Finally, *international organisations* and *non-governmental organisations* (NGOs) play a vital role in facilitating and promoting e-government initiatives. They act as project facilitators and motivators, increasing public awareness and facilitating knowledge exchange among nations. Through research and sharing best practices, these organisations contribute to the success of e-governance platforms and promote global collaboration in digital governance endeavours.[13]

I.2. Taxonomy of E-governance Interactions

Within the concept of E-governance, the government and the stockholders form different interactions, which encompass four connections, delineating unique channels through which governmental bodies engage with one another, citizens, businesses, and employees correspondingly, like Government to Government (G2G), Government to Citizen (G2C), Government to Business (G2B), and Government to Employee (G2E).

The *Government to Government* (G2G) relation means cooperation between various government offices and elements, including information sharing and electronic data trading leadership. This transaction can occur between the country's similar and lower levels and external and internal

[12] The United Nations Educational, S.a.: E-Government toolkit for developing countries. 2005; Ntulo, Getrude, and Japhet Otike. E–government: Its role, importance and challenges. *School of Information Sciences. MoiUniversity*. 2013.: 1-16. United Nations, Division for Public Administration, & Development Management: *United Nations e-government survey 2008: From e-government to connected governance.* 2008 (Vol. 2). UN.

[13] Fikadu Wamicho: Challenges in Implementing E-Governance in Addis Ababa City Land Administration: The Case of Nefas Silk Lafto Sub-city. Addis Ababa University, Ethiopia. 2012.

offices. This is the super-government database-supported web/online communications between government departments, agencies, and organisations. To put it simply, it is known as the interaction between the government and its employees. The following provide concrete evidence of this: enhances organisational and intergovernmental processes, simplifies government activity coordination and cooperation, and automates and simplifies business operations between governments, including service delivery, regulatory compliance, and upgrades.

Within the *Government to Citizen* (G2C), a collaboration involving the organised delivery of administrative services and information occurs, fulfilling the primary objective of e-government. This kind of cooperation aims to reduce the time and cost of transactions such as obtaining authorisations, renewing licenses, paying taxes and fees, and submitting applications for government programs. A section on citizen participation in the administration's planned procedures and approaches included. Most government services fall under this category, which aims to give residents and others access to extensive electronic resources for handling everyday issues and government business [14]. When e-government is implemented, the government and citizens constantly communicate, promoting accountability, democracy, and improvements to public services. By making public information more accessible through websites and cutting down on transaction time and expense, the main objective of e-government is to serve the people and facilitate their connection with the government.[15]

Government Interaction in E-governance Services

Interaction	Description	Examples
G2G (Government to Government)	Interactions between different government entities at various levels for collaboration and coordination. - Processing information and decision-making activities within the government system - Contribute towards enhancement of internal government work structure	- Inter-agency communication - Data sharing between government departments - Collaborative efforts on public projects
G2C (Government to Citizen)	Communication and services provided by the government to individual citizens. - Promotes efficient delivery of government services among citizens - Freedom to share views/grievances about government policies	- Issuing passports - Providing public service information - Driver's license renewal
G2B (Government to Business)	Interactions between government agencies and businesses, focusing on regulatory compliance and support. - Enable the business community to seamlessly interact with the government - Build up relationships among stakeholders	- Business registration - Tax filings - Procurement processes
G2E (Government to Employee)	Communication and services provided by the government to its employees for HR management and support. - Frequent interactions with employees to ensure satisfactory - Helps in providing perquisites and additional benefits	- Payroll processing - Training programs - Employee benefits administration

Source: own compilation of the authors based on Vértesy, László: Public Administration and Good Governance, Nemzeti Közszolgálati Egyetem, 2017. 33.

[14] Obodo, Nick A., Davidson Oliver Anigbata: Challenges of implementing electronic governance in public sector organizations in Nigeria. *International Journal of Applied Economics, Finance and Accounting* 2.1. 2018: 30-35. https://doi.org/10.33094/8.2017.2018.21.30.35

[15] Mustaf, Anas, Othman Ibrahim, and Fathey Mohammed: E-government adoption: A systematic review in the context of developing nations. *International Journal of Innovation: IJI Journal* 8.1. 2020: 59-76.
Ndou, Valentina: E-government for developing countries: Opportunities and challenges. *Electron. J. Inf. Syst. Dev. Ctries.* 18.1. 2004: 1-24.

The *Government to Business* (G2B) represents the second primary category of e-governance. It has the potential to increase corporate and government efficiency significantly. It also covers the interchange of different services between the public and private sectors, such as policies, memos, rules, and laws. The relationship includes improved and efficient procurement of goods and assistance from management for the business components. It also includes permission to administer items to the general public and has the potential to reduce costs through improved acquisition practices and increased challenge. Such a relationship also involves administration and organisation-to-administration exchanges and trades concerning licenses, tax assessments, and approaches provided for various locations.

The *Government to Employee* (G2E) partnership is intended to benefit the employees by providing them with online services, including evaluating salary payment records, checking leave balances, and submitting applications for annual leave online. This is also evident in the assortment of data and services that government agencies provide to their staff so that they can communicate with management and one another. It is also essential for delivering e-learning, fostering employee collaboration, and promoting information sharing. Employees now have equitable access to pertinent information on pay, policies and benefits, wage and salary administration, training and development, and online benefits access through simple and quick communication models and modems.[16] This partnership encompasses commercial opportunities, job regulations, guidelines, instructions, benefits and payment arrangements to administrative representatives, employee benefit programs and controls, government housing, etc.[17]

I.3. E-governance and Urban Public Service Delivery

Other names for e-government include electronic government, digital government, and e-governance. The government is a quickly expanding phenomenon that overpromises to solve many issues facing the public sector and has a rising influence on how it works[18].

With the introduction of e-governance in recent years, there has been a noticeable increase in the quality of services the government provides its residents. E-governance refers to the government's provision of public services and information using electronic methods. It represents a paradigm change from traditional practices in public administration. The quality of services provided to the public has revolutionised under this new paradigm. Transparency in the governance process has been brought about, along with time savings from the single-window service provision, process simplification, improved sector and record management, decreased corruption, and enhanced behaviour, attitude, and job-handling abilities of the dealing staff[19]. E-governance will make it easier for the general public to get government services by streamlining, expediting, and simplifying the process. E-governance is also viewed as a multifaceted idea that lowers government operating costs, increases administrative efficiency, and promotes openness[20]. E-governance is a transparent, intelligent government offering citizens unbiased, fair services while allowing information to flow securely and without interruption across departmental boundaries.[21]

Technological advancements are helpful since improving citizens' lives is a primary objective of good governance. Governments can take advantage of this rare opportunity to effectively interact with the public if people can receive timely, adequate, and prompt services through information technology.

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[16] Obodo, 2018.

[17] Bakon, Kinn Abass, Nur Fazidah Elias, and Ghassan AO Abusamhadana: Culture and digital divide influence on e-government success of developing countries: A literature review. *Bakon, Kinn Abass, Culture and digital divide influence on e-government success of developing countries: A literature review 15* .2020: 1362-1378.
The United Nations Educational, S. a.: E-Government toolkit for developing countries. 2005.

[18] Heeks, 2001.

[19] Fikadu Wamicho: Challenges in Implementing E-Governance in Addis Ababa City Land Administration: The Case of Nefas Silk Lafto Sub-city. Addis Ababa University, Ethiopia, 2012

[20] Prasannakumar R.B E-Governance and Service Delivery-Scope and Implementation Issues (online) Available: www.napsipag.org/PDF/BR PRASANNAKUMAR.pdf.

[21] Fikadu. 2012.

Ethiopia has not yet fully grasped the advantages of using ICT to combat public sector corruption. Most official websites created to demonstrate the government's dedication to e-governance are now broken or outdated. The bureaucracy is still unclear. Nevertheless, civil service reforms are being implemented to combat corruption and other issues. These consist of creating a commission on ethics and anti-corruption, a public service delivery improvement policy (PSDIP), and a public servant code of conduct.[22]

II. The practices of E-governance in Ethiopia

Ethiopia invests a tenth of its GDP in IT annually. Over the next five years, the government intends to spend over 100 million Birr on computers for the public sector. Its goal is to provide broadband internet access to hundreds of government buildings and educational institutions. By boosting civil service productivity, drastically reducing the amount of time spent on information processing and regulatory implementation, and widely implementing e-procurement, for instance, effective implementation of e-governance could significantly lower government costs.[23] Ethio Telecom reports that the overall number of customers hit 56.2 million, a 22% growth from the June 2020 landing and 108% of the goal subscriber base. There were 54.3 million mobile voice subscribers, 25 million data and internet users, 912K fixed services members, and 374K fixed broadband subscribers. 95% of the population and 85.4% of the area are covered. 54.8% of the population is covered by telecom.[24]

E-Government Indices in Ethiopia

	E-Government Development Index		**E-Participation Index**		**Online Service Index**	**Telecommunication Infrastructure Index value**	**Human Capital Index**
	(Rank)	(Value)	(Rank)	(Value)	(Value)	(Value)	(Value)
2003	166	0.12773	102	0.03450	0.37300	0.00264	0.35000
2004	170	0.13647	151	0.00000	0.36470	0.00238	0.38000
2005	171	0.13602	151	0.00000	0.63190	0.00268	0.39000
2008	172	0.18570	170	0.00000	0.52899	0.00402	0.37959
2010	172	0.20331	135	0.04285	0.45669	0.00731	0.40273
2012	172	0.23058	45	0.34210	0.47058	0.00930	0.21185
2014	157	0.25888	122	0.25490	0.20000	0.02659	0.29340
2016	157	0.26655	91	0.49153	0.17391	0.04950	0.22117
2018	151	0.34630	101	0.57300	0.01538	0.09760	0.30940
2020	178	0.27400	148	0.33330	0.02702	0.11940	0.33780
2022	179	0.28650	163	0.19320	0.03056	0.15010	0.33640

Source: UN E-government Knowledgebase, 2003-2022, available at https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/58-Ethiopia. (Accessed on 05/03/2024)

As we can observe from the above table from the UN E-government Knowledgebase,[25] the rank of Ethiopia is very low even among the low-income countries; however, it has been showing improvement since 2012. Ethiopia's E-Government Development Index score has increased over time. The score has increased from 0.12 in 2003 to 0.28 in 2022. This indicates that Ethiopia's government services have become more efficient in delivering services online over time. However, 2018

[22] MoFED, Ethiopia: Ethiopia: Building on progress a plan for accelerated and sustained development to end poverty (pasdep). *Addis Ababa: The Federal Democratic Republic of Ethiopia Ministry of Finance* (2006).
[23] Singh, Gurmeet, Raghuvar Dutt Pathak, and Rafia Naz: Service delivery through e-governance: perception and expectation of customers in Fiji and PNG. *Public Organization Review* 11. 2011. 371-384.
[24] Ethio Telecom 2021. Available at https://developingtelecoms.com/telecom-technology/consumer-ecosystems/11518-ethio-telecom-reports-a-22-jump-in-subscribers-to-56-2m.html
[25] Akpan-Obong, Patience I., et al. E-Governance as good governance? evidence from 15 West African countries. *Information Technology for Development* 29.2-3. 2023: 256-275.

was the peak point, and at the current time, it is decreasing. This is related to the ranking because, from the highest 151 in 2014, the lowest figure can be found in 2022 at 179. The result suggests that while Ethiopia's E-Government Index score has increased, other countries have improved their scores faster. Similar changes are reflected in the E-Participation Index;[26] in 2012, the ranking was 45, while in 2022, only 163. The Telecommunication Infrastructure Index score has increased the most. The Telecommunication Infrastructure Index score has increased from 0.03 in 2003 to 0.57 in 2018. This indicates that Ethiopia has significantly improved its telecommunication infrastructure, essential for e-government services.[27] The Online Service Index and Human Capital Index scores show a slight decrease in the past two decades, which suggests that Ethiopia has made the least progress in developing online services for citizens. The table shows that the country made some progress in developing its e-government services, but there is still room for improvement. The government needs to improve the Online Service Index score to make it easier for citizens to access government services online.

III. E-health Strategy in Ethiopia

Ethiopia has recognised the potential of e-health to improve its healthcare system and has developed a national e-health strategy to guide its implementation. The strategy, launched in 2014, outlines a ten-year plan for using information and communication technologies (ICT) to improve the delivery of health services, strengthen health information systems, and build capacity in the health sector.[28] The Ethiopian e-health strategy focuses on five main priority areas. The Health Information Systems (HIS) include developing and implementing electronic health records (EHRs), health management information systems (HMIS), and other systems to improve the collection, storage, and use of health data.[29] Telemedicine uses telecommunications technologies to provide healthcare services remotely, such as consultations, diagnosis, and treatment.[30] The mHealth refers to the use of mobile devices, such as smartphones and tablets, to deliver health information and services. E-learning involves using online and mobile technologies to train health workers and improve their knowledge and skills. The community information systems develop and implement systems to provide health information and education to communities.

III.1. E-health Strategy Implementation in Ethiopia

Digital technologies present a significant opportunity to change healthcare delivery, producing high-quality healthcare that will enhance community wellness. The achievement of universal health coverage (UHC) is being aided by digital health, particularly in Africa, where numerous nations have implemented varying degrees of automation in their healthcare and health insurance systems[31]. Ethiopia has shown robust progress in building and digitizing the health information system, including the electronic community health information system, telemedicine and teleradiology, supply chain management (logistics), and Health-Net infrastructure development.[32]

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[26] The EPI specifically focuses on how well a country uses online tools to promote citizen engagement and interaction with the government. It doesn't appear in the table you provided, so I cannot analyze it based on the information you gave.

[27] Yimer, Ali Hussien: Challenging the Challenges of E-Government: The Ethiopian Context. *International Journal of Digital Strategy, Governance, and Business Transformation (IJDSGBT)* 11.1. 2021. 1-12.

[28] Walle, Agmasie Damtew, et al.: Exploring facilitators and barriers of the sustainable acceptance of E-health system solutions in Ethiopia: a systematic review. *PLoS One* 18.8. 2023: e0287991.

[29] Manyazewal, Tsegahun, et al.: The potential of digital health technologies in African context, Ethiopia. *medRxiv*. 2021.: 2021-03.

[30] Sagaro, Getu Gamo, Gopi Battineni, and Francesco Amenta: Barriers to sustainable telemedicine implementation in Ethiopia: a systematic review. *Telemedicine Reports* 1.1. 2020: 8-15.

[31] Ibid

[32] Ayele, Wondimu, et al.: Implementation of human development model impact on data quality and information use in Addis Ababa, Ethiopia." *Ethiopian Journal of Health Development* 35.1. 2021.

One of the top ten initiatives in Ethiopia's digital transformation that will be completed by 2025 is community-based health insurance, a notable health sector service that is practically digitalizing. Even though the government now receives less money from the healthcare sector than from other industries, the healthcare sector can potentially produce enormous profits for both public and private businesses in the future. Therefore, one of the emerging health sectors where the government may have a chance to convert the CBHI to a digital system is the digitalisation of the payment system.

III.1. Major Challenges of E-governance in E-health Strategy

The implementation of the e-health strategy is facing several challenges: (i) lack of institutional framework supporting e-governance; (ii) digital divide; (iii) privacy and security concerns; (iv) limited IT skills and training; and (v) culture and attitudes.

There is a *lack of institutional framework supporting e-governance*; establishing interoperability (seamless data exchange) between different e-health systems becomes difficult without clear guidelines and regulations.[33] This can hinder initiatives like telemedicine consultations, where patient data must be securely shared between healthcare facilities. Another example is a doctor in a rural clinic who needs to access a patient's medical history from a hospital in the city. Without a standardised system and data exchange protocols, retrieving the information might be challenging and time-consuming, delaying treatment. Therefore, establishing an institutional structure is necessary to back these initiatives.[34] Establishing a high-level committee, keeping an eye on implementation efforts, ensuring e-government investment evaluations happen, and clearly defining roles and responsibilities are all part of this. To effectively support the development of e-governance and guarantee appropriate coordination across government entities, it is crucial to establish clear mandates and responsibilities.[35]

The gap in the number of phones, internet users, or computers per person in developed and emerging nations is commonly used to characterize the *digital divide*. Two of the biggest obstacles to establishing e-government today are differences in internet access and private computer ownership. A country's economic background significantly impacts the digital gap in emerging nations, particularly in Africa and other developing regions. The limited access to technology, particularly in rural areas, hinders the reach of mHealth interventions like SMS-based medication reminders or mobile health education platforms.[36] A program promoting child immunisation reminders via SMS might not reach a significant portion of the target population if mobile phone penetration and literacy rates are low in certain regions. Greater access to ICTs is significantly associated with economies that are doing well compared to those that are not.[37]

Data privacy and security is yet another significant technical challenge. Participants believe sharing personal information with public organisations online or electronically or using websites to transfer their personal information (such as uploading important documents, entering name, date of birth, photo, and credit card information) is unsafe. They worry that e-service websites are unsafe enough to prevent hackers from misusing or distorting their personal data. Public concerns about data privacy and security can discourage people from using e-health services, especially those involving sensitive health information. This can hinder initiatives like electronic health records (EHRs) or telehealth consultations, where patient data is stored and transmitted electronically. Patients might hesitate to use an online appointment booking system if they are unsure how their personal information will be

[33] Uyar, Kaan, Gezahegn Mulusew Delele, and Erkut Inan Iseri: Web accessibility of the Federal Democratic Republic of Ethiopia governmental websites. *IJCSNS* 20.6. 2020. 144.
[34] Nkwe, Nugi. E-government: challenges and opportunities in Botswana. *International journal of humanities and social science* 2.17, 2012: 39-48.
[35] Cohen, Steven, and W. William: The future of e-government: A projection of potential trends and issues." *Columbia University*, 2002.
[36] Nigussie, Zeleke Yimechew, et al.: Using mHealth to improve timeliness and quality of maternal and newborn health in the primary health care system in Ethiopia." *Global Health: Science and Practice* 9.3. 2021.: 668-681.
[37] NUA Internet Trends and Statistics, 2002. http://www.nua.ie/surveys/ how_many_online/index.html, accessed 03/04/2024.

protected. Service continuity is essential for e-government operations because it fosters citizen confidence and trust and ensures service supply and delivery.[38]

One aspect of *limited IT skills and training is a low level of computer literacy* among the general public, businesses, and government agencies.[39] The number of persons with ICT skills in underdeveloped nations is relatively low. Most people with them are young people, so when it comes to implementing e-government, the elderly will be forgotten. The other significant issue is that not even government personnel, or those supposed to ensure the seamless e-government operation, have the necessary skills. There is also a shortage of health workers with the skills and knowledge to use e-health technologies effectively.[40] This can limit the adoption and utilisation of solutions like online learning platforms or patient portals for healthcare workers to access health information. While a hospital might implement an EHR system, if healthcare staff have not received proper training, data entry errors and inefficiencies in the system could occur. Primary and vocational IT education is necessary.

One of the biggest obstacles to adopting e-government in developing nations is overcoming *cultural inertia*. According to, the primary cause of e-government project failure in most developing nations, if not all of them, is the discrepancy between data system implementation expectations and reality.[41] Existing cultural beliefs and attitudes regarding healthcare might affect the acceptance of e-health solutions. For instance, some communities might prefer traditional healing practices over technology-based interventions. In a community with strong cultural beliefs in traditional birthing practices, promoting a digital platform for prenatal care advice might require addressing those beliefs while demonstrating the complementary nature of the e-health solution.

These challenges are interrelated and need to be addressed comprehensively to ensure the successful development and implementation of an e-health strategy within the e-governance framework in Ethiopia. Overcoming these challenges requires a multifaceted approach. Developing a robust legal framework for data privacy and security in e-health is essential. A reform includes investing in infrastructure to bridge the digital divide by expanding internet access and promoting digital literacy. Building public trust is crucial and can be achieved through transparent data management practices and robust cybersecurity measures. Additionally, it is imperative to enhance IT skills through targeted training programs for healthcare professionals and the public. Engaging with communities to understand their perspectives and concerns and tailoring e-health interventions accordingly will further strengthen the effectiveness and acceptance of digital healthcare initiatives.

Conclusion

E-governance is not a simple system in and of it; rather, it is a complicated process that requires careful consideration to be implemented successfully. Without meeting the prerequisites, the system's successful implementation was exceedingly challenging. Good user awareness is the first step towards e-governance.

A lack of user awareness was one major obstacle to the successful launch and deployment of e-governance systems in several public sectors, including land administration. Users' knowledge of the advantages of the e-governance system was inadequate. The paper primarily aims to evaluate Ethiopia's e-governance practices and issues. To achieve this goal, mainly secondary data were utilised with some statistics. The Ethiopian government is developing an e-governance implementation strategy to provide effective and efficient public services to the nation's citizens. Ethiopia has been at the forefront of several electronic networks at various times. Leading examples are WoredaNet, SchoolNet, HealthNet, and AgriNet.

[38] Nkwe, 2012.
[39] Balaraman, Premkumar: ICT and IT initiatives in public governance− benchmarking and insights from Ethiopia. Business Ethics and Leadership, Volume 2, Issue 1, 2018.
[40] Mengestie, Nebyu Demeke, et al.: E-Health literacy of medical and health science students and factors affecting eHealth literacy in an Ethiopian university: a cross-sectional study. *Applied Clinical Informatics* 12.02. 2021: 301-309.
[41] Heeks, 2001.

The successful implementation of the e-health strategy is impeded by several obstacles, including the absence of an institutional framework conducive to e-governance, disparities in digital access, apprehensions regarding privacy and security, insufficient IT skills and training, and entrenched cultural attitudes. Establishing a robust institutional structure is vital to support e-governance initiatives effectively. This entails creating a high-level committee to oversee implementation efforts, conducting evaluations of e-government investments, and defining clear roles and responsibilities. Additionally, ensuring greater access to information and communication technologies (ICTs) is correlated with the economic prosperity of nations. Service continuity is crucial for e-government operations to maintain citizen confidence and trust and ensure the uninterrupted delivery of services. Primary and vocational IT education is essential to enhance these skills across various sectors. Moreover, promoting digital platforms for healthcare services may require addressing cultural beliefs while showcasing the complementary nature of e-health solutions.

Bibliography

1. Akpan-Obong, Patience I., et al. E-Governance as good governance? evidence from 15 West African countries. *Information Technology for Development* 29.2-3. 2023.: 256-275.
2. Aloyce, Menda: E-governance in Africa-Successes and Challenges: E-governance in Tanzania, 2005. pp.36-37
3. Ayele, Wondimu, et al.: Implementation of human development model impact on data quality and information use in Addis Ababa, Ethiopia." *Ethiopian Journal of Health Development* 35.1. 2021.
4. Bakon, Kinn Abass, Nur Fazidah Elias, and Ghassan AO Abusamhadana: Culture and digital divide influence on e-government success of developing countries: A literature review. *Bakon, Kinn Abass, Culture and digital divide influence on e-government success of developing countries: A literature review 15* .2020.: 1362-1378.
5. Balaraman, Premkumar: ICT and IT initiatives in public governance− benchmarking and insights from Ethiopia. Business Ethics and Leadership, Volume 2, Issue 1, 2018.
6. Bannister, Frank, and Regina Connolly. Defining e-governance. *e-Service Journal: A Journal of Electronic Services in the Public and Private Sectors* 8.2. 2012.: 3-25.
7. Bekkers, Victor. E-government and the emergence of virtual organizations in the public sector. *Information Polity: an international journal on the development, adoption, use and effects of information technology* (2003).
8. Chekol, Abebe: Ethiopian free and open source software network (EFOSSNET). *Global information society watch: Focus on access to online information and knowledge–advancing human rights and democracy*. 2009. 123-126.
9. Cohen, Steven, and W. William: The future of e-government: A projection of potential trends and issues." *Columbia University*, 2002.
10. Ethio Telecom 2021. Available at https://developingtelecoms.com/telecom-technology/consumer-ecosystems/11518-ethio-telecom-reports-a-22-jump-in-subscribers-to-56-2m.html
11. Fikadu Wamicho: Challenges in Implementing E-Governance in Addis Ababa City Land Administration: The Case of Nefas Silk Lafto Sub-city. Addis Ababa University, Ethiopia. 2012.
12. Finger, Matthias, and Gaëlle Pécoud: From e-Government to e-Governance? Towards a model of e-Governance. *Electronic Journal of E-government* 1.1. 2003.: 52-62.
13. Fonou Dombeu, Jean Vincent, and Nelson Rannyai: African e-government research landscape. *The African Journal of Information Systems* 6.3 (2014): 2.
14. Grigalashvili, Vepkhvia: E-government and E-governance: Various or Multifarious Concepts. *International Journal of Scientific and Management Research* 5.01. 2022.: 183-196.
15. Heeks, Richard. Understanding e-governance for development. E-government working paper series. Institute for Development Policy and Management, University of Manchester, No 11. 2001.
16. Manyazewal, Tsegahun, et al.: The potential of digital health technologies in African context, Ethiopia. *medRxiv*. 2021.: 2021-03.
17. Mengestie, Nebyu Demeke, et al.: E-Health literacy of medical and health science students and factors affecting eHealth literacy in an Ethiopian university: a cross-sectional study. *Applied Clinical Informatics* 12.02. 2021.: 301-309.
18. MoFED, Ethiopia: Ethiopia: Building on progress a plan for accelerated and sustained development to end poverty (pasdep). *Addis Ababa: The Federal Democratic Republic of Ethiopia Ministry of Finance* (2006).
19. Mooij, Jos. Smart governance. *Politics in the policy process in Andhra Pradesh, India*. 2003.: 22-3.
20. Mustaf, Anas, Othman Ibrahim, and Fathey Mohammed: E-government adoption: A systematic review in the context of developing nations. *International Journal of Innovation: IJI Journal* 8.1. 2020.: 59-76.
21. Ndou, Valentina: E-government for developing countries: Opportunities and challenges. *Electron. J. Inf. Syst. Dev. Ctries.* 18.1. 2004.: 1-24.
22. Nigussie, Zeleke Yimechew, et al.: Using mHealth to improve timeliness and quality of maternal and newborn health in the primary health care system in Ethiopia." *Global Health: Science and Practice* 9.3. 2021.: 668-681.

23. Nkwe, Nugi. E-government: challenges and opportunities in Botswana. *International journal of humanities and social science* 2.17, 2012.: 39-48.
24. Ntulo, Getrude, and Japhet Otike. E–government: Its role, importance and challenges. *School of Information Sciences. MoiUniversity*. 2013.: 1-16.
25. NUA Internet Trends and Statistics, 2002. http://www.nua.ie/surveys/ how_many_online/index.html, accessed 03/04/2024.
26. Obodo, Nick A., Davidson Oliver Anigbata: Challenges of implementing electronic governance in public sector organizations in Nigeria. *International Journal of Applied Economics, Finance and Accounting* 2.1. 2018.: 30-35. https://doi.org/10.33094/8.2017.2018.21.30.35
27. Palma, John Paul B., et al. "E-governance: A critical review of e-government systems features and frameworks for success." *International Journal of Computing Sciences Research* 7.2023.: 2004-2017.
28. Prasannakumar R.B E-Governance and Service Delivery-Scope and Implementation Issues (online) Available: www.napsipag.org/PDF/BR PRASANNAKUMAR.pdf.
29. Rossel, Pierre, and Matthias Finger: Conceptualizing e-governance. *Proceedings of the 1st international conference on Theory and practice of electronic governance*. 2007.
30. Sagaro, Getu Gamo, Gopi Battineni, and Francesco Amenta: Barriers to sustainable telemedicine implementation in Ethiopia: a systematic review. *Telemedicine Reports* 1.1. 2020.: 8-15.
31. Senshaw, Debas: Assessing the impact of WoredaNet usage on dynamic capabilities: a structural equation modeling of Woredas in Ethiopia. *Digital Policy, Regulation and Governance*. 2023.
32. Singh, Gurmeet, Raghuvar Dutt Pathak, and Rafia Naz: Service delivery through e-governance: perception and expectation of customers in Fiji and PNG. *Public Organization Review* 11. 2011. 371-384.
33. The United Nations Educational, S. a.: E-Government toolkit for developing countries. 2005.
34. The United Nations Educational, S.a.: E-Government toolkit for developing countries. 2005;
35. Umbach, Gaby, and Igor Tkalec: Evaluating e-governance through e-government: Practices and challenges of assessing the digitalisation of public governmental services. *Evaluation and program planning* 93. 2022.: 102118.
36. United Nations, Division for Public Administration, & Development Management: *United Nations e-government survey 2008: From e-government to connected governance.* 2008 (Vol. 2). UN.
37. Uyar, Kaan, Gezahegn Mulusew Delele, and Erkut Inan Iseri: Web accessibility of the Federal Democratic Republic of Ethiopia governmental websites. *IJCSNS* 20.6. 2020. 144.
38. Walle, Agmasie Damtew, et al.: Exploring facilitators and barriers of the sustainable acceptance of E-health system solutions in Ethiopia: a systematic review. *PLoS One* 18.8. 2023.: e0287991.
39. Wasistiono, Sadu, and Wike Anggraini: Three paradigms in government (good governance, dynamic governance, and agile governance). *International Journal of Kybernology* 4.2. 2019.: 79-91.
40. Yigezu, Moges: Digitalization in teaching and education in Ethiopia. *International Labour Organization* (2021).
41. Yimer, Ali Hussien: Challenging the Challenges of E-Government: The Ethiopian Context. *International Journal of Digital Strategy, Governance, and Business Transformation (IJDSGBT)* 11.1. 2021. 1-12.

De iurisprudentia et iure publico
JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT
JOURNAL OF LEGAL AND POLITICAL SCIENCES
HU ISSN 1789-0446

Kiadja / Publishing:
Magyar Jog- és Államtudományi Társaság
Hungarian Association of Law and Political Sciences

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XV. évfolyam | Vol. XV
2024/3. szám| No. 3./2024
Tanulmány | Article
www.mjat.hu

The Legal Boundaries and Implications of Civil Death

ABSTRACT

Present paper attempts to conduct a thorough examination concerning the issue of civil death, that can be classified within the category of moral punishments. The category of moral punishments is a complex area that requires not only an understanding of legal systems but also a comprehensive grasp of moral norms and societal expectations. Civil death as a punishment raises extremely serious legal and moral dilemmas that can extend from human rights to punitive objectives to international law. The aim of the study is to outline the category of moral punishments, attempt to define and interpret civil death as a punishment, and contemplate the relevant elements of the current Hungarian regulation on this topic, mainly in terms of punitive objectives and certain forms of restrictive and deprivation sanctions. Furthermore, the study aims to provide a historical overview of the development and application of civil death as a punishment, considering its legal and societal context. The analysis also seeks to assess how these aspects continue to shape contemporary attitudes towards civil death and its potential implications for modern legal systems.

KEYWORDS: *moral penalties, civil death, punishment objectives, mort civile, attainder*

Introduction – moral penalties

„The path and framework of the assimilation into criminal law are provided by the ancient distinction that morality pertains to inner feelings, while law pertains to external actions.”[1]

The category of moral penalties represents a scientific abstraction that can be aptly encapsulated through the description provided by Ferenc Finkey.[2] Finkey describes moral penalties as "punitive measures distinct from capital punishment and the various forms of imprisonment, including security and rehabilitative interventions similar to them, as well as monetary fines." Finkey further adds that moral penalties are typically "less severe" than the aforementioned punitive measures.[3] This statement hints at Finkey's conception of a "sanction hierarchy," which could raise intriguing questions regarding specific sanctions that fit within the realm of certain moral penalties. One such query pertains to discerning whether life imprisonment, the death penalty, or civil death constitutes the gravest penalty. Moreover, reflecting on the interplay between moral penalties and other sanctions garners interest because, as Finkey notes, they are diverse and have been known in criminal law for millennia. Even before the development of formal state institutions, societies with no state apparatus had „sanctions” resembling the characteristics of those that fall within the realm of moral penalties. Examples include exile, varied forms of debasing and corrective penalties (such as corporal chastisement, public shaming), diverse manifestations of dishonor, or the aforementioned civil death penalty. Lastly, reflecting on legal disabilities that fit within the realm of moral penalties can be an intriguing task, considering the extent and scope of the connections between ethics and law, particularly ethics and criminal law. It involves examining to what extent any given punishment can be considered a moral penalty, in the sense that the imposition of a sanction typically triggers automatic societal moral disapproval. Additionally, individuals with criminal records are also ineligible for an official moral certificate, further illustrating the connection between ethics and criminal law.

The term "moral penalties" is sometimes interchangeably referred to as "honour penalties" because they strip the offender, either partially or fully, of their rights, legal status, and honour.[4] It is worth noting, however, that the law can only indirectly deprive an individual of their honour. Honour is always a result of societal judgment, shaped by ethical norms, customs, and traditions. Just as the law does not create honour, it cannot take it away; only the society that created it can revoke it. Nonetheless, the creation of criminal law is done indirectly by society, so the application of sanctions that strip an individual of their honour is possible based on legal grounds. However, the law alone is insufficient for depriving someone of their honour; if society does not agree, the law will eventually yield to public pressure.[5] The underlying concept of sanctions falling under the category of moral penalties involves varying degrees of deprivation of rights due to unworthiness. These sanctions can be imposed on offenders who were not sentenced to death[6] but whose actions, due to their severity, warrant deprivation

[1]István, Bibó: *Válogatott tanulmányok*. Magvető Könyvkiadó, Budapest, 1986. p. első kötet, 164.
Own translation: „a büntetőjoggá hasonulás útját és kereteit az az ősi megkülönböztetés adja, mely szerint az erkölcs *belső* érzelemre, a jog *külső* cselekedetre vonatkozik.”
István Bibó was a Doctor of Law, university professor, corresponding member of the Hungarian Academy of Sciences, and vice president of the Eastern European Institute. He also worked as a librarian and was a political prisoner. Internationally renowned, Bibó is regarded as the greatest democratic political thinker in Hungary during the 20th century. His works on democracy, political philosophy, and his critique of authoritarianism have left a lasting legacy in both Hungarian and global intellectual history.
[2]Ferenc Finkey was a Hungarian legal scholar, university professor, crown prosecutor, and a member of the Hungarian Academy of Sciences at the turn of the 19th and 20th centuries.
[3]Ferenc, Finkey: *Büntetéstani problémák*. Sylvester Irodalmi és Nyomdai Kt., Budapest, 1933. p. 253.
[4]Finkey: op.cit. p. 253.
[5]*A becsület/erkölcsi büntetések fajai és jogosultsága a magyar büntetőjogban.* (Debreceni Magyar Királyi Tisza István Tudományegyetem Állam- és Jogtudományi Kar) 1939. https://dea.lib.unideb.hu/server/api/core/bitstreams/9e03124d-3fc3-464e-bba2-54bb89ec8145/content (23.12.01.)
[6]Thus, they could not be subjected to the most severe forms of punishment, which, of course, is not limited to the death penalty.

of certain rights temporarily or permanently, such as rights related to participation in public affairs, either in addition to or independently of imprisonment. Furthermore, the function of moral penalties includes stigmatizing the offender in the eyes of citizens to make them more cautious and serve as a deterrent example,[7] aligning with modern penal objectives. The moral content of moral penalties perhaps most prominently manifests based on the idea that the imposition of legal disadvantages in this category stems from some form of unworthiness, which is purely an ethical question.

It is worth noting that in this study, when referring to moral penalties, we are specifically discussing legal sanctions within the framework of social norm systems that carry distinct moral content. Therefore, moral penalties do not refer to responses to violations of ethical norms prescribed by the ethical norm system, which typically entail permanent or temporary exclusion from the community. It is important to emphasize, however, that the imposition of moral penalties can stem from engaging in behavior prohibited by both the ethical norm system and legal norms, thereby constituting a violation of both. Indeed, it is not uncommon, and often evident, that certain actions are condemned by both legal and ethical norm systems. Thus, as Tamás Földesi[8] also noted, in the context of the relationship between law and ethics, we can perhaps speak more confidently about "legal" and "non-legal" ethics, as a significant portion of ethical norms becomes (or is already) part of legal norms.[9] István Bibó nuances the relationship between ethics and criminal law when he states that a requirement with a criminal law flavor is the demand for the universality of the moral law, as expressed in Kant's classic definition: act as if the maxim of your action were to become through your will a universal law of nature.[10] Bibó presents two views on the relationship between ethics and law. The first suggests that every legal norm is implicitly contained within the rules of ethics, and law, in its descent from the realm of universal validity of ethics to the realm of actual human behaviors, concretizes ethics. The second view is the positivist view, asserting that the possible immorality a law does not affect its validity and obligation and the law and ethics are completely independent of each other. Bibó argues against the untenability of these extreme positions and asserts that, on one hand, due to the varied functions of law in society, it cannot be entirely part of the order of ethical norms, and on the other hand, despite its differences, law represents a domain of societal rules that particularly falls under the judgment of ethics.[11]

I. Civil death

„Anyone attempting to find the roots of civil death will find that he has to grope his way along paths marked by obscure, flickering and sometimes misleading lights.*"*[12]

As previously mentioned, civil death is a legal disadvantage that falls within the category of moral penalties, with its roots tracing back to communities operating without formal state organizations. Its essence lies in complete legal incapacitation, [13] where the law deprives an individual of legal capacity, declares them dishonorable, and thus effectively excludes them from society. [14] It is a legal fiction through which a person is deprived of all civil rights and is treated as if they were dead. [15]

[7]Finkey: op.cit. p. 253.
[8]Tamás Földesi was a professor of law and political sciences, and has also served as a department head and dean at one of the most prestigious faculties of law and political sciences in Hungary.
[9]With the differentiation of society and social needs, there also occurred a specific differentiation of norms. Therefore, the most significant new institution, the state, highlighted certain norms, thereby creating the category of law. See: Földesi, Tamás: *Jog, erkölcs, igazság.* p. 2. In Iskolakultúra, Az Országos Közoktatási Intézet folyóirata, 1994/18., p. 2-11.
[10]Bibó: op. cit. p. 165.
[11]Ibid. p. 166.
[12]Tanya M., Monforte: *A Theory of Civil Death: Legal Status and Security Under Neoliberalism*. p. 103. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[13]Finkey: op.cit. p. 254.
[14]*A becsület/erkölcsi büntetések fajai és jogosultsága a magyar büntetőjogban.* (Debreceni Magyar Királyi Tisza István Tudományegyetem Állam- és Jogtudományi Kar) 1939. https://dea.lib.unideb.hu/server/api/core/bitstreams/9e03124d-3fc3-464e-bba2-54bb89ec8145/content (23.12.01.)
[15]*Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) p. 968. https://www.jstor.org/stable/1332815 (2023.11.06.)

Civil death lacks a unified definition. Yet various analogies in legal history can be referenced, it has been codified in various legal systems to some extent, and its different manifestations often share similar or even identical features. The diverse forms of civil death as a legal category partly result from the contexts from which they have repeatedly emerged. Contemporary definitions of civil death sometimes appear as legal innovations, while others instinctively resemble certain older legal institutions. Understanding the concept of civil death today requires understanding how the concept was used and shaped in the past.[16] The history of civil death can also be interpreted as an organic, logical, and legally continuous phenomenon. However, it is worth distinguishing when examining such processes, and a clever example that Kevin Kelly revives could be relevant. The text reports that the British railway was sized to a width of 4'8.5", which coincided with the width of the roads left behind by the Romans in Great Britain. These roads were built to fit the tracks of Roman chariots, which in turn matched the width of Roman war chariots, roughly equivalent to the width of two horses side by side. Nowadays, spacecraft are built in various locations across the United States and then transported by rail. The width of rocket engines is approximately 4'8.5" to fit through railway tunnels.[17] Tanya M. Monforte further extended the analogy in her doctoral dissertation on law,[18] arguing that it would be absurd to claim that a spacecraft is the contemporary form of a Roman chariot, even though both are modes of transportation and the chariot, in some sense, influenced certain aspects of the development of spacecraft. History requires more than a simple functional explanation; it demands both functional and social analyses to help define both the constant and random factors. Certainly, those examining contemporary expressions of civil death today reach back into history to bring forth various aspects for defining or redefining the concept.[19]

I.1. Throughout history

In ancient times, when the basic social unit was the family, the head of the family not only had disciplinary rights but also could apply family sanctions. This always involved dishonor, and depending on the seriousness of the act, it could mean a one-time or temporary humiliation, or lifelong internal ostracism, where the sanctioned individual essentially lived as a „tolerated outcast" within the community. It's worth noting that families typically did not seek to destroy the wrongdoer but rather to humiliate them and express that they had lost the respect of the other family members.[20] These characteristics bear resemblance to earlier attempts to outline the features of civil death and moral punishments.

The next step after the family is the kin, representing a larger community where blood ties have become less prominent. Here, reactions to "bad" deeds were categorized into two groups: actions against the entire community and behaviors that offended specific members of the community. In both cases, possible sanctions included death penalty, exile/banishment, loss of status, and humiliation. Therefore, communities operating without a formal state structure, whose basic unit was initially the family and then the kin based on less close blood ties, prominently applied sanctions falling into the realm of moral punishments. These sanctions share similarities with civil death penalties, as exile, for example, is meant (among other things) to completely and permanently sever the individual's ties with the community, depriving them of the opportunities available to other members. Loss of status, on the other hand, directly implements "disenfranchisement," such as turning a free person into a slave, which inherently signifies significant restrictions in opportunities.[21]

The factors bearing the characteristics of moral punishments or honor penalties also emerged in ancient societies. The ancient Greeks highly valued political rights and equated their loss with loss of

[16] Monforte: op.cit. p. 103. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[17]Kelly, Kevin: *What technology wants*. Viking. 2010. p. 179–180.
[18]Monforte: op.cit. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[19]Ibid. p. 104–105.
[20]Csaba, Kabódi – József, Lőrincz – Barna, Mezey: *Büntetéstani alapfogalmak*. Rejtjel Kiadó, Budapest, 2005. p. 20.
[21]Ibid.

honor or civil status within society.[22] In ancient Greek (Attic) law, the term "atimia" was used to signify the complete or partial loss of civil rights. The word "atimia" derives from the Greek "timé," meaning honor, respect, or value, combined with the prefix "a," which carries a negative connotation or denotes some kind of lack. Complete "atimia" equated to civil death. An individual subjected to complete "atimia" could not litigate, appear publicly, and in certain cases, their property could be confiscated. If they attempted to exercise a right reserved for those fully participating in civil rights and duties, they faced death as punishment. Complete "atimia" primarily served as a sanction for bribery, embezzlement, perjury, or neglect of filial duties. While complete, it was not necessarily permanent, as a vote of 6,000 citizens could overturn "atimia.".[23] In ancient Athens, they also knew of "infamy," later mentioned by the Romans, which served as a consequence for severe crimes and entailed the loss of all rights enabling a citizen to influence public affairs. Athenian "infamy" revoked the right to participate in assemblies, voting rights, and the right to hold various offices. Additionally, a person subjected to "infamy" could not serve in the military or appear in court.[24]

Regarding Roman law, Charles Phineas Sherman writes that modern law only recognizes natural death, however, Roman law asserted that a person's legal capacity can be extinguished by civil death.[25] Carlo Calisse, an Italian professor, also noted that neo-Roman law includes the expression "quod omnia pro mortuo habetur," referring to the persecuted, meaning "in all respects as if dead," which he classified as part of civil death. Calisse further believes that Roman law "supported" contemporary concepts of civil death, fundamentally linking it to capitis deminutio.[26] In the context of Roman law, two factors relating to legal capacity are noteworthy for our topic: infamy and, exemplified by Finkey[27] and Francois Richer[28], capitis deminutio.[29] Etymologically, "infamy" derives from the Latin word "fama," meaning reputation or fame. The prefix "in" denotes opposition or absence.[30] Infamy fell into the category of diminution of esteem (minutio existimationis), and over time, it manifested in various forms, but its fundamental essence was the deprivation of rights due to disgraceful behavior. Of these, the infamy applied by the censor is notable, where the censor would reprimand individuals who violated moral rules (mos), resulting, for instance, in their removal from the Senate. Also significant one of the praetorian infamy, the sententia condemnatoria, a condemning judgment that triggered infamia for perpetrators of crimes.[31] The legal effects of infamy included the loss of political rights, incapacity for legal representation, marriage prohibition in certain cases, and loss of senatorial status. It was generally lifelong, but restoration of "good reputation" (bonae famae restitutio) was possible by the emperor or the Senate. Apart from infamy, another form of diminished honor, turpitudo, gained prominence later on. Turpitudo was not limited to specific cases but could be broadly applied based on public perception, resulting in dishonor. Its consequence was the impossibility of holding public office and a general loss of trust. [32] Etymologically, "turpitudo" relates to the Latin term "turpis," meaning ugly, disgraceful, or shameful.[33] It is worth noting that perhaps the Hungarian word "turpisság" (meaning disgracefulness) originates from turpitudo, as in Hungarian, it denotes reprehensible or morally bad behavior. Just as the

[22]Grady, Sarah C.: *Civil Death Is Different: An Examination of a Post-Graham Challenge to Felon Disenfranchisement Under the EighthAmendment*. p. 443. In Journal of Criminal Law & Criminology, 2013., p. 441-470.
https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7427&context=jclc (2023.11.15.)
[23]Vilmos, Pecz (ed.): *Ókori lexikon*. Franklin-Társulat Magyar Irod. Intézet és Könyvnyomda, 1902. https://mek.oszk.hu/03400/03410/html/ (2023.11.06.)
[24]Damaska, Mirjan R.: A*dverse Legal Consequences of Conviction and Their Removal: A Comparative Study (Part 1).* p. 351. In The Journal of Criminal Law, Criminology, and Police Science, Vol. 59, No.3., 1968., p. 347-360.
[25]Charles, Phineas Sherman: *Roman Law in the Modern World.* The Boston Book Company, Boston, U.S.A., 1917. p. 40.
[26]Calisse, Carlo: A *History of Italian Law.* BeardBooks, Washington DC, 1928. p. 423.
[27]Finkey: op.cit. p. 253.
[28]Richer, Francois: *Traite de la Mort Civile.* Paris, 1755. p. 55.
[29]Monforte: op.cit. p. 103-109. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[30]https://www.etymonline.com/word/infamy (2023.12.05.)
[31]Thus, a conviction for committing a crime automatically elicited moral disapproval.
[32]András, Földi – Gábor, Hamza: *A római jog története és institúciói. Huszonkettedik átdolgozott és bővített kiadás*. Eszterházy Károly Egyetem Oktatáskutató és Fejlesztő Intézete, 2018. p. 223–224.
[33]https://www.etymonline.com/word/turpitude (2023.12.05.)

Hungarian term for morality ("morál") comes from the Latin "mos," so too does the saying "móresre tanítani" ("to teach manners") likely stem from Latin influence.

In the context of the roots of civil death in Roman law, another significant factor influencing legal capacity was capitis deminutio, which in general Roman usage denoted a change in status. The term "caput" referred to the legal concept of a person or legal personality and legal capacity. Additionally, "caput" corresponds to the meanings of "head" or "person," which also aligns with the concept of capitis deminutio in terms of a change in status indicating a decrease in a community by one "person." However, the precise meaning of the concept and its various forms is not devoid of ambiguities or contradictions.[34] Cases of capitis deminutio were fundamentally of two types: those arising due to changes in life circumstances and those imposed as punishments.[35] It is noteworthy, however, that the Romans did not apply capitis deminutio as a separate punishment.[36] Additionally, capitis deminutio had three forms: "maxima," "media," and "minima". Capitis deminutio maxima denoted the most extreme form of status change, namely the loss of freedom, such as when a free person became a slave. Similar consequences were encountered in communities functioning without a formal state structure, as discussed earlier. Capitis deminutio media signified the loss of Roman citizenship. In the context of our topic, relevant cases included status changes due to exile, which again recalls the "sanctions" applied in ancient communities, often appearing as the most severe punishment alongside death penalty in ancient times. It is worth noting that capitis deminutio media serves as a bridge among factors influencing legal capacity in Roman law since the previously discussed diminution of esteem (minutio existimationis) automatically occurred with the loss of civil status, a fundamental aspect tied to capitis deminutio media by the Romans. From our standpoint, capitis deminutio minima, the third and "smallest" type, is a bit of an oddity among factors influencing legal capacity in Roman law because while the two earlier types generally resulted in a relatively worse, more disadvantageous, or restricted state, minima, in certain cases, could place the individual in a relatively better position. Therefore, we cannot comfortably equate it with the legal disadvantages classified under moral penalties.[37]

I.2. 19th century Europe

The moral judgment of civil death as a punishment was a controversial issue in Europe. One significant reason for this can be found at the level of concepts, as the legal content, framework, and consequences of civil death as a punishment varied over time and place. In Tanya M. Monforte's doctoral dissertation, she writes that the use of the concept of civil death is not entirely consistent because various sources outline different meanings and manifestations over the centuries. Summarizing and tracking these divergent meanings and manifestations would provide enough material for a book in itself. In some cases, civil death was viewed as a punishment transformed by a reformist program, a kind of "purified" punishment compared to violent, bloody executions, providing a trained alternative.[38] According to Savigny, although civil death was a severe punishment, it was not stricter than any other serious sanction, nor was it morally unacceptable. Savigny mentions two significant legal codes in connection with civil death that represented key examples on the European continent: the French and Russian legal codes.[39] However, not everyone shared Savigny's viewpoint; many viewed civil death as a barbaric punishment. Charles Brocher, a Swiss academic and judge, considered civil death an act of barbarism condemned by both common sense and morals.[40] Francis Wharton believed that civil death evoked disgust, seen as barbarism condemned by truth, reason, and morality.[41]

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[34]Földi – Hamza: op.cit. p. 220–221.
[35]https://romaikor.hu/kislexikon/kislexikon_(jogrendszer)/cikk/capitis_deminutio. (2023.12.01.)
[36]https://romaikor.hu/romai_jog_es_jogrendszer/romai_jogrendszer/romai_buntetojog/buntetesek_/cikk/capitis_deminutio_ (2023.12.01.)
[37]See: Földi – Hamza: op.cit. p. 220–221.
[38] Monforte: op.cit. p. 114–115. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[39]Friedrich Carl, Savigny: *Private International Law: A Treatise on the Conflict of Laws and the Limits of Operation in Respect of Place and Time*. Stevens & Sons, London, 1869. p. 36–37.
[40]Monforte: op.cit. p. 115. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[41]Francis, Wharton: *A Treatise on the Conflict of Laws: Private International Law.* Kay and Brother, 1905. p. 252.

Summarizing, it is a fact that complete legal incapacitation manifested in various ways throughout antiquity, the Middle Ages, and modern times alike, serving as a highly popular form of punishment. As Finkey writes, the punishment of civil death led to inhumanity and legal chaos, which might have been understandable in the anarchic legal states of the ancient world but was a glaring anachronism amidst the high standards of private and criminal law relations of the 19th century, which European legal systems systematically abolished during that century. However, its vestiges naturally remained, and thus, the abolition of the punishment of complete legal incapacitation can also be interpreted as a form of legal development since penalties involving partial legal incapacitation reminiscent of certain elements of civil death continue to exist both in the 19th century and in present-day legal systems.[42]

Given the available framework, the following subsection will delve more deeply into the regulation of civil death in 19th-century French and English legal systems.

I.2.1. French mort civil

An important milestone in thinking about civil death is found in modern French law. In 1755, François Richer, a French legal scholar, wrote a comprehensive work on the punishment of civil death. Richer fundamentally considers Roman law as the legal source regarding civil death and draws an analogy with capitis deminutio. According to Roman law, if a man is a free Roman citizen and also the head of a family, he is called a "caput." This person can participate in public affairs. If someone loses any of the three "statuses" mentioned, namely his freedom, citizenship, or position as head of the family, he can also lose his right to participate in public affairs, which is termed capitis deminutio. Richer asserts that the concept of caput in Roman law and the statuses appearing in French law naturally differ. First and foremost, he emphasizes that there is no slavery in France, and anyone born in France is a French citizen. Therefore, in France, it is conceptually impossible for someone to lose any of their "statuses" as in the various cases of capitis deminutio in Roman law. Thus, in France, legal loss of status can only mean loss of citizenship, which specifically entails the loss of all civil rights of the individual. The loss of citizenship equates to the "civil death," as Richer puts it: "la mort civile.".[43]

It is believed that France has a long history of civil death; [44] however, it was not codified in the revolutionary constitutions but first appeared in a law in 1793. Subsequently, the Napoleonic Code Civil reintroduced provisions regarding civil death, which remained in the legal system until 1854.[45] In the French Civil Code, civil death was considered more severe in some aspects than in other legal systems, yet it was claimed that codification helped curb previous cruel practices. The appearance of civil death in the Civil Code was seen as a kind of moderation compared to earlier French legal customs. According to the definition in the Code Civil, civil death is the "deprivation of civil rights as a consequence of a judicial proceeding." According to the code, "condemnation to natural death results in civil death. Other perpetual penalties result in civil death only to the extent provided by law,"[46] and "the condemned person loses ownership of all property; their succession is opened in favor of their heirs, to whom the property is attributed as if the person died naturally and intestate."[47] Additionally, they cannot dispose of or partake in their wealth, act as a guardian, serve as a witness, enter into marriage that triggers civil rights, or have any rights from a previous marriage. Mort civil also terminates usufruct, associations, and opens succession and inheritance.[48] Therefore, delving into a wide range of civil entitlements, the Code Civil extensively regulated the institution of civil death until its definitive abolition in 1854.

[42]Finkey: op.cit. p. 254.
[43]See: Richer: op.cit.
[44]Monforte: op.cit. p. 114. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[45] Damaska: op.cit. p. 352.
[46]Code Civil 23-24.
https://fr.wikisource.org/wiki/Code_civil_des_Fran%C3%A7ais_1804/Texte_entier (2023.11.10)
[47] Code Civil 25.
https://fr.wikisource.org/wiki/Code_civil_des_Fran%C3%A7ais_1804/Texte_entier (2023.11.10)
[48]See: Code Civil.
https://fr.wikisource.org/wiki/Code_civil_des_Fran%C3%A7ais_1804/Texte_entier (2023.11.10)

According to the Code Pénal, civil death acts as an ancillary penalty, and here too, there is the possibility for the government to grant mitigation (as seen in Roman law and often in subsequent, modern legal systems' milder cases): "Sentences of life imprisonment with forced labor and deportation entail civil death. However, the government can grant deportees the exercise of citizenship rights at the place of deportation or some of these rights."[49]

The codified civil death was relatively quickly abolished in 1854, the same year when F. Genaudet argued for the abolition of civil death, stating that "civil death dissolves all social ties that bind man to society, leaving only his natural state and physical existence."[50]

I.2.2. The English "attainder"

The institution of civil death primarily originates from the english common law: "there is real death, and there is civil or legal death."[51] Additionally, the legal application of civil death in 19th-century North America can also be traced back to England.[52] The English civil death, with its attributes that most closely resembled the legal consequences of natural death, fell into three categories. The legal consequences of civil death occurred firstly with entry into certain religious orders, secondly when someone fled the country to avoid punishment, and thirdly in cases of exile, where an individual was banished from the realm through parliamentary measures.[53]

Sir William Blackstone also confirms this when he writes that civil death begins when someone is exiled from the realm during a public legal procedure or enters a religious order. According to Blackstone, in both cases, the individual is "cut off" from society. Blackstone argues that the reason why monks also fall under complete legal disability is that English law cannot tolerate those who enjoy the benefits of society but choose to shut themselves away from it and refuse to submit to its rules. Therefore, monks are civilis mortus, or civilly dead.[54] This also illustrates well the complex nature of civil death because it shows that the change in legal capacity does not necessarily qualify as a moral punishment, as was evident, for example, in the presentation of the Roman legal concept of capitis deminutio minima.

In addition to exile, an interesting relationship can also be outlined with moral punishments. According to Blackstone's interpretation, exile is less of a punishment than a parliamentary act, because otherwise it would be an alternative to or mitigation of the death penalty or imprisonment: 'but there is no power on earth, except the English parliament, that can banish an English subject against his will; even if guilty. For exile, or banishment, is an unknown punishment in the English legal system, and where it is applied today, it is either based on the guilty party's own choice to escape the death penalty, or according to the express provision of some modern parliamentary decision."[55] Therefore, according to Blackstone, courts cannot exile anyone, but can only apply exile if it serves to mitigate the death penalty or imprisonment, so in English law, civil death also carries a kind of grace, as it can offer an alternative to the killing of the convict.[56] It is worth noting that Blackstone examined the scope of civil death more extensively, discussing legal entities, associations, and even the civil death of parliament, which he mainly categorized as various modes of dissolution."[57]

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[49]Code Pénal 18. https://ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_1.htm (2023.11.10)
[50]Monforte: op.cit. p. 115. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[51]*Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) p. 968. https://www.jstor.org/stable/1332815 (2023.11.06.)
[52]Monforte: op.cit. p. 110. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[53]*Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) p. 969. https://www.jstor.org/stable/1332815 (2023.11.06.)
[54]William, Blackstone: *Commentries on the Laws of England. A Facsimile of the First Edition of 1765-1769. Volume 1 of the Rights of Persons.* The University of Chicago Press, 1765. p. 128.
[55]Blackstone: op.cit. p. 133.
[56]Monforte: op.cit. p. 112. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[57]Blackstone: op.cit. p. 472.

In England, practically two terms were used for complete deprivation of rights, or it can be said that there exists an English term that encompasses the legal consequences of civil death. This English term is the so-called 'attainder'. It is worth noting that there were sources already in the 18th century regarding the intertwining of attainder and civil death, namely in Mathew Bacon's work 'New Abridgement of the Law', in which he states, 'all customary property falls under this rule, unless there is some special custom to the contrary, ..., because the person is civilly dead by attainder, and therefore incapable of disposing of or possessing any property. The person is civilly dead by attainder, and therefore cannot dispose of property.”[58]

The term "attainder" originates from the Latin expression "attinctus," meaning "tainted”. In English law, attainder encompassed most of the legal consequences associated with a death sentence, including the inability to testify, initiate legal actions, and make a will. As Mirjan R. Damaska writes, "attainder was the mandatory legal consequence of a death sentence.”[59] Additionally, as the Harvard Law Review puts it, the characteristics of civil death in attainder primarily extended to the loss of civil rights, particularly the ability to testify and initiate lawsuits.[60] In cases of attainder, a person was seen as legally dead. Interestingly, although the person subject to attainder could not initiate lawsuits, citizens could still initiate lawsuits and even enforce judgments against them. Therefore, while they were considered civilly dead, this status did not "protect" them from potential opposing parties.[61]

In summary, Blackstone approached civil death with a kind of normative neutrality, as he wrote about the complete loss of rights for various institutions, monks, and exiles alike. He based his perspective on the social contract theory, viewing civil death in connection with the withdrawal from this contract, akin to the dissolution of a legal relationship. Around the same time, Mathew Bacon identified civil death as a consequence of attainder, thus perhaps bringing it closer to its narrower, criminal law meaning.[62] The English attainder was abolished relatively late in 1870.[63]

II. Civil death today

As previously noted, based on the reviewed sources, it is less accurate to claim that civil death has been completely abolished. Instead, it has gradually evolved into sanctions that involve partial restrictions of rights. This viewpoint may align with the developmental path of criminal sanctions, illustrating how initially chaotic and unregulated acts of vengeance transformed into legally imposed disadvantages by the state, applied strictly as a last resort.

Within the existing legal frameworks, the factors that make it difficult to imagine the permanent deprivation of all rights in today's European legal systems can be categorized into at least three categories. Firstly, it would contradict the purpose of punishment, that have been evolving for centuries. Secondly, it cannot be reconciled with the steadily evolving rules of human rights. Thirdly, it raises complex international legal questions and issues that are not easily achievable even in "simpler" criminal justice tasks. Within the available frameworks, the study elaborates more on the purpose of punishment among those listed.

II.1 Punishment objectives

As Bibó puts it: the unique moral phenomenon of criminal law is defined by a single central question, which encompasses all other ethical aspects. This question is the issue of the meaning and

[58]Monforte: op.cit. p. 111. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[59]Damaska: op.cit. p. 351.
[60]*Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) p. 969. https://www.jstor.org/stable/1332815 (2023.11.06.)

[61]Joseph, Chitty: *A Practical Treatise on the Criminal Law with Comprehensive Notes on Each Particular Offence*. G. and C. Merriam, Springfield, 1836. p. 725.
[62]Monforte: op.cit. p. 114. https://escholarship.mcgill.ca/concern/theses/8623j413z (2023.11.30.)
[63]Damaska: op.cit. p. 352.

nature of punishment. [64] When we speak of the purposes of punishment, we cannot omit a historical overview and a brief review of the various theories of punishment in order to place the concept of complete deprivation of rights within the framework of punishment.

According to the theory of absolute punishment, punishment serves as just retribution, balancing the harm caused by the crime with the harm inherent in the punishment. This theory is grounded in the principle of justice, with retribution as its primary aim. The severity of punishment is determined by distributive justice, which bases the proportion of punishment on the degree of guilt and the seriousness of the offense, without considering the personal circumstances of the offender. The philosophical foundation of this theory is indeterminism, positing that crimes are the result of the offender's free will. This approach is characterized by a retrospective focus and an emphasis on the criminal act itself in legal judgment.

The other major theoretical approach to punishment is the relative theory, which can be encapsulated by the maxim: "*nemo prudens punit, quia peccatum est, sed ne peccetur*" (a wise person does not punish because a crime has been committed, but to prevent future crimes). Under this theory, the primary objective of punishment is utility, aimed at preventing future criminal behavior. Its philosophical foundation is determinism, which asserts that there is a causal relationship between the punishment given and the future behavior of the offender. Prevention is classified into two primary categories: general prevention and special prevention.[65]

The third significant school of thought, known as the intermediary school, considers retribution as the theoretical aim and societal protection as the practical aim of punishment. This distinction highlights an important point: it is worth differentiating between the purpose, content, and form of punishment. The content of punishment refers to its main characteristics and attributes, while the purpose of punishment concerns the practical function of the sanction system, including the state and societal tasks it aims to achieve. Lastly, the form of punishment pertains to its external manifestation. Therefore, when referring to the purpose of punishment, we mean the practical realization of the content of punishment.[66]

According to the current Hungarian Penal Code, the primary objective of punishment is the protection of society by preventing the commission of further crimes by either the perpetrator or others. This primary objective is achieved through two subsidiary objectives: special prevention and general prevention. Special prevention can be realized in three ways, the foremost and most ideal of which is resocialization. Resocialization entails the moral re-education and reintegration of the offender into society. This rehabilitative process aims to positively transform the offender’s character, fostering an understanding of the wrongful nature of their actions, eliciting genuine remorse, leading them to repudiate their previous conduct, and ultimately shaping them into lawful citizens. The second, less ideal but still aligned with the objective of protecting society, is deterrence. In this case, the offender does not undergo an internal moral transformation and does not perceive their actions as morally wrong. However, the fear of sanctions prevents them from reoffending. The third method, in descending order of ideal implementation, is the incapacitation of the offender.

Three methods can be listed in relation to achieving general prevention. First, the threat of punishment, which involves the prospect of being punished. Second, the actual imposition of punishments. Third, the actual execution of imposed punishments. All three steps can be traced back to "deterrence," which makes general prevention similar to the second method of realizing special prevention.[67]

Let's examine the concept of complete disenfranchisement from the perspective of the specific and general preventive objectives of the current Hungarian regulations. The first and most ideal form of special prevention, resocialization, is immediately excluded in the case of civil death, as it is conceptually impossible for a person deemed "dead" to be reintegrated into society and morally rehabilitated. Resocialization is conceivable only if the complete disenfranchisement is not permanent,

[64]Bibó: op.cit. p. 170.
[65]Tibor, Horváth – Miklós, Lévay (ed.): *Magyar Büntetőjog, Általános Rész*. Wolters Kluwer Kft, Budapest, 2014. p. 308-316.
[66]Finkey: op.cit. p. 12.
[67]Zoltán, Tóth J.: *Halálbüntetés: pro és kontra*. In *Jogelméleti Szemle*, 2003/2. szám, https://jesz.ajk.elte.hu/toth14.htm (2023.10.04.)

as evidenced by historical examples from ancient Greece and Rome, as well as modern France. However, what form of resocialization can be considered when the perpetrator lacks legal capacity? How can an individual participate in any resocialization or rehabilitation program without legal capacity? This underscores the incompatibility of complete disenfranchisement with the regulations of modern legal systems.

The situation is similar with deterrence, as it also implies that the perpetrator will eventually reintegrate into society. This expectation of their return to society is incompatible with the objectives and essence of civil death penalties. The most viable approach concerning the relationship between civil death and specific prevention appears to be the neutralization of the perpetrator, which in this context is achieved through their isolation from society. There are perhaps two ways to accomplish this. One is the complete loss of rights accompanied by exile, as known from ancient times. The other is the loss of rights without exile, where the perpetrator merely subsists as a living dead within society, [68] existing as a tolerated pariah.

Regarding general prevention, which aims to deter other members of society from committing criminal acts through the imposition of punishment, the following observations can be made. In the early 20th century, Finkey asserted that general prevention is a legitimate objective and possesses undeniable deterrent power. However, he also warned of the dangers of overvaluing general prevention. If prevention were the sole objective, then Feuerbach's theory of psychological coercion and the principle of deterrence would prevail. Should the primary aim of punishment be to dissuade as many individuals as possible from committing criminal acts, it would pose a real threat of introducing increasingly severe and inhumane forms of punishment and methods of execution.[69]

What is important to note regarding the deterrent effect is that a significant spectrum of criminal acts can already be excluded, namely those committed in a narrowed state of consciousness (such as sudden emotional outburst, intense stress, the influence of alcohol or drugs, mental illness, etc.). In such cases, the perpetrator's state of consciousness is narrowed, and they are temporarily unable to control their impulses or fully regulate their behavior. When discussing sudden emotional outbursts, it is crucial to understand the significance of the term "sudden," which implies that the perpetrator reacts to an external stimulus with an immediate impulsive action, meaning the behavior is spontaneous, driven by emotion, and devoid of prior deliberation or consideration of potential consequences.[70] According to Beccaria, a smaller but unavoidable punishment has a greater deterrent effect than a larger but potentially escapable one. Albert Camus contended that the deterrent effect primarily influences the timid, those who would not commit a crime punishable by death in the first place. [71]

According to Finkey, there is no need for deterrence in the case of intelligent individuals with a higher moral standing, while the threat of the strictest punishment is entirely ineffective and futile against those prone to crime or "professional" criminals. [72] Argumentum a minore ad maius: those who have committed themselves to carrying out a punishable act and are not deterred by lesser punishments will not be deterred by much harsher ones either. Simply put, the application of civil death as an exceptionally severe punishment would likely not enhance general prevention, as it is highly probable that someone who plans and intends to commit a serious act, potentially punishable by civil death, after considering the possibilities, will still attempt to carry it out.[73]

After summarizing the objectives of punishment, it is possible to briefly highlight the moral dimension of criminal law related to penology, which Bibó emphasized. Acknowledging that both retribution, with its emotional component, and societal protection, which includes general and specific prevention, are goals of punishment, Bibó argues that the function of punishment should be nothing other than the sublimation and channeling of society's outrage, making it institutionalized, abstract, objective, and just. The evolution of criminal law followed the path of the community appropriating

[68]See: *Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) p. 969. https://www.jstor.org/stable/1332815 (2023.11.06.)
[69]Finkey: op.cit. p. 2.
[70]Tóth J.: op.cit., https://jesz.ajk.elte.hu/toth14.html (2023.10.04.)
[71]Albert, Camus: *Gondolatok a halálbüntetésről*. In A halálbüntetésről. Medvetánc füzetek, Magvető Könyvkiadó, Budapest, 1990, p. 7-74.
[72]Finkey: op.cit. p. 18.
[73]Tóth J.: op.cit., https://jesz.ajk.elte.hu/toth14.html (2023.10.04.)

private acts of vengeance. It wasn't the victims who first sought public protection against offenders, but rather the defendants who sought protection against vengeful relatives and lynching mobs. At the forefront of every criminal law doctrine is the historical legal observation that criminal law was established by gradually taking the right of retribution out of the hands of individuals. Thus the original function of criminal law was not to protect society. Undoubtedly, today, it is also an indisputable goal, but perhaps partly because a significant part of civilized humanity has become accustomed to refraining from self-justice in many areas of life. Criminal law protects society from criminals just as much as it protects those accused of crimes from the immediate indignation of society. According to Bibó, there is nothing unusual about a social institution, such as criminal law, being developed to fulfill a particular social function and then, once it has grown into an established institutional system, being used to serve another social purpose. Evidence of this can be seen in the less severe areas of criminal law, which serve purely to protect society. As Bibó illustrates, society uses the regulatory and deterrent apparatus of criminal law for various practical purposes. There is no doubt that a fine imposed on a jaywalking pedestrian is not to protect the fined individual from the danger of being lynched. However, the larger and more characteristic part of criminal law still fulfills the function of sublimating society's retaliatory indignation, and this area is clearly distinct from the purely defensive aspect of criminal law. The retributive nature of the penal system can only be reduced where and to the extent that society's readiness for outrage and retribution has diminished. Undoubtedly, as throughout history society's capacity for outrage towards the mentally ill and those accused of witchcraft has been minimized, so too can society's understanding increase significantly in the vast area of modern crimes. Where moral outrage would otherwise lead to self-administered retribution and revenge in the absence of criminal law, criminal law intervenes to mitigate the not less harmful consequences of moral wrong. This distinguishes it from other areas of law that also serve to reduce the dangers of vigilante justice but deal with less emotional and less morally charged situations.[74]

II.2. Civil death in present-day Hungary

The application of restrictive "sanctions" resembling civil death is not unknown in the history of Hungarian law, manifesting concretely, for example, in the form of dishonour based on public perception, exclusion, and humiliation. Ákos Szendrey, gathering scattered data on legal customs, draws attention to the fact that village communities, independently of institutions responsible for justice, effectively enforced their own traditional "punitive customs," which served to shame the individual who violated the community's moral norms. When applied in extreme cases, these punishments were even more severe than the death penalty, equating to the offender's "moral death."

Those condemned by their community had to endure ritualized punishments, which were not necessarily proportionate to the gravity of their offense, as well as temporary or permanent removal from the community, public degradation, and retaliation.[75] The most significant characteristic of the so-called public opinion punishment is that the "accused" is not formally condemned, as there is no "court" and no legal procedure.[76]

When it comes to present Hungarian criminal law, the whole array of penalties resembling civil death, restricting rights, or depriving of rights is lined up in the current Criminal Code, both sides in the dualistic system.

The criteria for categorization will be the following: is it a restriction of rights or not? Is it temporary or permanent in effect? To what extent does it diminish the scale of rights?

A restrictive punishment that cannot be permanent in effect and represents a minimal level of rights limitation is a ban from attending sporting events. This is a significant example for our topic in that social processes and legal policy, relying on the ultima ratio function of criminal law, are able to invoke sanctions that limit freedom of action from unexpected and non-traditional directions. It should also be noted that at the European level, there have been serious precedents for this punishment,

[74]Bibó: op.cit. p. 176.
[75]http://mek.niif.hu/02100/02152/html/08/347.html (2023.11.10.)
[76]This bears a resemblance to the atimia in ancient Greek (Attic) law, where, similarly without any further proceedings, the wrongful act automatically resulted in a state of disenfranchisement.

beginning with a convention adopted by the Council of Europe in Strasbourg on August 19, 1985, followed by a series of relevant regulations.[77]

Another restrictive penalty that cannot be applied permanently is exclusion, which limits the right to freely choose one's place of residence. In the context of our topic, it is relevant because it slightly resembles the ancient sanction of exile, though only in terms of restricting freedom of residence.

The punishment of expulsion is more significant than the first two in that it can be applied with permanent effect, involving the restriction or deprivation of rights. It is similar to exile in its relation to civil death. Additionally, it is noteworthy in that it resembles the provisions of the previously discussed Code Civil, which allow for the possibility of requesting a waiver from the permanent effect, granted by the court in deserving cases. Another punishment that can be applied with permanent effect is the prohibition from driving, although from the perspective of our topic, this can be considered an outlier.

According to the Comprehensive Commentary on the Criminal Code, perhaps the disqualification from profession is particularly interesting from our perspective, as it can have permanent effect due to unworthiness, thereby claiming an undisputed place within the realm of moral penalties. It should be noted, however, that under certain circumstances, the offender may be exempt from the permanent effect through becoming "deserving," which once again entails a moral consideration obligation.[78]

The only measure to be mentioned among the sanctions is the reprimand, which may not have significant legal consequences (in relation to other sanctions), yet it shows similarities to moral punishments, as it can inflict a form of honor degradation and stigma through the “reproach” of the penal authority.

In relation to our topic, the strongest connection to civil death may be found in the only ancillary punishment within the Hungarian legal system: disqualification from public affairs. The nature of this ancillary punishment means that it cannot be applied independently but only in conjunction with imprisonment, which shows similarities to the previously discussed capitis deminutio and Finkey's views on moral punishments. Its severity also aligns with its distant relative, as it can only be imposed for intentional crimes or in cases of enforced imprisonment.

An undeniable evidence of fitting into the realm of moral punishments is that its imposition conjunctively requires unworthiness. According to the Comprehensive Commentary on the Criminal Code, among the criteria for unworthiness, factors such as the gravity and nature of the committed crime, the personality and lifestyle of the perpetrator may be significant. Thus, based on judicial practice, its application is generally justified, for example, in cases of intentional acts against life, violent crimes, offenses against public integrity, and against perpetrators of corruption crimes.[79] Although it cannot have permanent effect, it imposes restrictions on a wide range of entitlements related to public affairs, thereby showing significant similarities with its ancient Greek and Roman, as well as modern French and English counterparts.

[77]Krisztina, Karsai (ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez.* Wolters Kluwer Hungary, Budapest, 2022. p. 175.
[78]Ibid. p. 164.
[79]However, in the case of homicide committed in a strong emotional state, if the degree and nature of the reasonable excuse support moral excusability, the prohibition from public affairs for a perpetrator with no prior criminal record is usually unnecessary (BH2004. 46.). One decision of the Budapest Metropolitan Court also indicated that in the case of foreign offenders, the justification for imposing this ancillary punishment should be carefully examined, as it may restrict the exercise of rights that non-Hungarian citizens are entitled to. In the specific case, the court omitted the prohibition from public affairs for a Romanian citizen who committed a particularly serious crime against life, considering that their temporary stay in Hungary did not confer citizenship rights that would be deprived by the prohibition from public affairs (ÍH2007. 94., cf. BH2001. 205.).
See: Karsai: op.cit. p. 184-185.

Conclusion

The study aimed to offer a comprehensive overview of the historical background of punishments resembling civil death, which fall under the category of moral penalties, their application in specific legal systems, their subtle links to current Hungarian legislation, and their connection to various punishment objectives and theories. Based on the reviewed sources, it can be concluded that moral punishments, particularly the punishment resembling civil death, along with various legal disabilities resembling it, have permeated, continue to permeate, and accompany the development of criminal law.

The development of criminal law and the imposition of penalties are directly proportional to the effective development of the state and society. Within the realm of law, criminal law plays a crucial role in ensuring social coexistence and the effective functioning of the state. To achieve this, it is inevitable to establish refined, well-defined punishment objectives, principles of punishment imposition, and penalties, constantly reviewing them through a moral magnifying glass, and executing them through a moral filter.

Bibliography

1. *A becsület/erkölcsi büntetések fajai és jogosultsága a magyar büntetőjogban.* (Debreceni Magyar Királyi Tisza István Tudományegyetem Állam- és Jogtudományi Kar) 1939. https://dea.lib.unideb.hu/server/api/core/bitstreams/9e03124d-3fc3-464e-bba2-54bb89ec8145/content
2. Albert, Camus: *Gondolatok a halálbüntetésről*. In A halálbüntetésről. Medvetánc füzetek, Magvető Könyvkiadó, Budapest, 1990, p. 7-74.
3. András, Földi – Gábor, Hamza: *A római jog története és institúciói. Huszonkettedik átdolgozott és bővített kiadás*. Eszterházy Károly Egyetem Oktatáskutató és Fejlesztő Intézete, 2018.
4. Calisse, Carlo: A *History of Italian Law.* BeardBooks, Washington DC, 1928.
5. Charles, Phineas Sherman: *Roman Law in the Modern World.* The Boston Book Company, Boston, U.S.A., 1917.
6. *Civil Death Statutes. Medieval Fiction in a Modern World.* (Harvard Law Review) https://www.jstor.org/stable/1332815 (2023.11.06.)
7. Code Civil 25. https://fr.wikisource.org/wiki/Code_civil_des_Fran%C3%A7ais_1804/Texte_entier (2023.11.10)
8. Code Pénal https://ledroitcriminel.fr/la_legislation_criminelle/anciens_textes/code_penal_1810/code_penal_1810_1.htm
9. Csaba, Kabódi – József, Lőrincz – Barna, Mezey: *Büntetéstani alapfogalmak*. Rejtjel Kiadó, Budapest, 2005.
10. Damaska, Mirjan R.: A*dverse Legal Consequences of Conviction and Their Removal: A Comparative Study (Part 1).* In The Journal of Criminal Law, Criminology, and Police Science, Vol. 59, No.3., 1968.
11. Ferenc, Finkey: *Büntetéstani problémák*. Sylvester Irodalmi és Nyomdai Kt., Budapest, 1933.
12. Földesi, Tamás: *Jog, erkölcs, igazság.* In Iskolakultúra, Az Országos Közoktatási Intézet folyóirata, 1994/18., p. 2-11.
13. Francis, Wharton: *A Treatise on the Conflict of Laws: Private International Law.* Kay and Brother, 1905.
14. Friedrich Carl, Savigny: *Private International Law: A Treatise on the Conflict of Laws and the Limits of Operation in Respect of Place and Time*. Stevens & Sons, London, 1869.
15. Grady, Sarah C.: Civil Death Is Different: *An Examination of a Post-Graham Challenge to Felon Disenfranchisement Under the EighthAmendment*. p. 443. In Journal of Criminal Law & Criminology, 2013. p. 441-470.
16. http://mek.niif.hu/02100/02152/html/08/347.html
17. https://romaikor.hu/kislexikon/kislexikon_(jogrendszer)/cikk/capitis_deminutio.
18. https://romaikor.hu/romai_jog_es_jogrendszer/romai_jogrendszer/romai_buntetojog/buntetesek_/cikk/capitis_deminutio_
19. https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7427&context=jclc
20. https://www.etymonline.com/word/infamy
21. https://www.etymonline.com/word/turpitude
22. István, Bibó: *Válogatott tanulmányok*. Magvető Könyvkiadó, Budapest, 1986.
23. Joseph, Chitty: *A Practical Treatise on the Criminal Law with Comprehensive Notes on Each Particular Offence*. G. and C. Merriam, Springfield, 1836.
24. Kelly, Kevin: *What technology wants*. Viking. 2010.
25. Krisztina, Karsai (ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez.* Wolters Kluwer Hungary, Budapest, 2022.
26. Richer, Francois: *Traite de la Mort Civile.* Paris, 1755.
27. Tanya M., Monforte: *A Theory of Civil Death: Legal Status and Security Under Neoliberalism*. https://escholarship.mcgill.ca/concern/theses/8623j413z
28. Tibor, Horváth– Miklós, Lévay (ed.): *Magyar Büntetőjog - Általános Rész*. Wolters Kluwer Kft, Budapest, 2014.

29. Vilmos, Pecz (ed.): *Ókori lexikon*. Franklin-Társulat Magyar Irod. Intézet és Könyvnyomda, 1902. https://mek.oszk.hu/03400/03410/html/
30. William, Blackstone: *Commentries on the Laws of England. A Facsimile of the First Edition of 1765-1769. Volume 1 of the Rights of Persons.* The University of Chicago Press, 1765.
31. Zoltán, Tóth J.: *Halálbüntetés: pro és kontra*. In *Jogelméleti Szemle*, 2003/2. szám, https://jesz.ajk.elte.hu/toth14.htm