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MEMORY LAWS IN HUNGARY AFTER THE HOLOCAUST

In line with the Hungarian post-holocaust memory-laws I would like to ask some questions about the connection of the Hungarian laws and our memories: about the commemorate and the remembrance, about the legal ways of the commemorate or about it how the law can influence our memories. Memory laws can be examined by jurisprudence and also by psychology. The consequence of this two-fold situation is that the research is interdisciplinary. I have to approach the problem of the normativity (as the sine qua non of the law) and the weight of commemorate, or remembrance. I would like to demonstrate the relation between genocide and law and try to explain what the expression „memory law” means. The questions of memory laws can be examined from the standpoint of the practice of law, not only analysing the methods of legislation or the semiotics problems. On the one hand, I find the Holocaust is a starting point in this traumatic-commemorate-fold. I do not want to make a distinction between genocide and genocide; I do not say the holocaust (capitalised or not) is more outstanding than other genocides. But I claim that in the 20th century, it had a huge effect on the postmodern thinking in law, in literature, philosophy, psychology, and in historiography. With the help of this effect, the people are able to think about their life in other dictatorships. On the other hand, the history of Central Europe is unique: the region experienced two opposing dictatorships one after another– and hence, the remembrance of the genocides is different than in Western Europe or in the USA. In the region, Hungary included, the politics of the remembrance is stacked up with various feelings.

Keywords: memory laws, remembrance, legal philosophy, postmodernism, Holocaust.

1. INTRODUCTION: MEMORY LAWS IN GENERAL: IS IT A REAL LEGAL PHENOMENON?

The following thought seems a fitting introduction : „Pierre Nora claimed that by the 1990s, we were living in an „age of commemoration” – society’s naturally integrated commemoration of history via oral stories and legends had disappeared, replaced by

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artificially engineered narratives of collective memory. Nowadays, commemoration has become an obligation, further inviting the question of whether selected tragedies in history imply a duty to remember. In other words, asking whether instrumentalisation of state-sponsored history can possess different, mandatory moral connotations. ... [the studies] provide insight and initiate crucial questions on the relationship between state control over historical narratives, deteriorating democracy, and rule of law around the world.”³¹⁴ Memory law as a legal phenomenon is a concept that is rather difficult to explain. In the light of the above words, and the holistic concept contained therein, I consider memory laws to be a link between the historical narratives and their legal obligations.

1.1. The ambivalent connection between memory and law

Memory laws can be examined by jurisprudence and also by psychology. The consequence of this two-fold situation is that the research is interdisciplinary. I have to attend to the problem of the normativity (it is the *sine qua non* of the law) and the difficulty remembrance. In my thesis I try to demonstrate the connection between the Holocaust and law. This source has the most basic, the most eventual questions, like this:

- The remembrance can be atrophic. How can this deformation be eliminated under the commemorate? Should the legislation take into account this deformation, or is it irrelevant?

- The Holocaust must not be narrowed only to the genocides against the Jewish people, but here I will focus only on the Jewish victims. In the Jewish tradition there is an order – the *Zachor*, the command of the remembrance. It is known that Hungary is a largely Christian country, whose religious tradition is the order of forgiveness. How could we connect the order of the *Zachor* with the order of the forgiveness? This main difference of the interpretation is understandable in the context of Jewish or Christian religions, where the mentioned differences result in misunderstanding.

- Normativity is a main feature of law. But how can a norm regulate something that is substantially a psychological procedure? Moreover, any such norm has to make a distinction between commemoration and remembrance. Generally, a law can prescribe how to keep events and stories in the common memory; this can only relate to a celebration or a memorial. On the other hand, there is the problem of the remembrance days: remembrance means keeping these happenings in one's mind and recalling them at will. But whose will is relevant here? The will of the one reminiscing, or the will of the state?

- What kind of legal opportunity has to commemorate? Is it possible to influence the commemorate by the law? Which fields of law have a role in this question?

1.2. Various meanings of memory laws

Providing a clear definition memory laws is not an easy task, and various definitions or explanations are offered by different stakeholders.

³¹⁴ Bán, 2020. p. 1226-1227., 1229.

For instance, Council of Europe³¹⁵ indicates in a 2018 factsheet the following:

„‘Memory laws’ enshrine state-approved interpretations of crucial historical events and promote certain narratives about the past, by banning, for example, the propagation of totalitarian ideologies or criminalising expressions which deny, grossly minimise, approve or justify acts constituting genocide or crimes against humanity, as defined by international law. Because of the dangers such laws represent for freedom of speech, member states should ensure that the restrictions to the freedom of expression entailed by such a legal framework are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria.”³¹⁶

The above paragraph illustrates of the difficulties in defining and adopting „memory laws”

Another contextualisation of memory laws is offered by the MELAPROJECT.³¹⁷ „Our questions are: When do memory laws conflict with values of democratic citizenship, political pluralism, or fundamental human rights? Are the punitive laws inevitably abusive? Are the non-punitive ones mostly benign? Are there optimal ways for states to propagate historical memory?”³¹⁸

2.THE HOLOCAUST AS A POINT OF DEPARTURE

2.1. „Camp-poker”

Hungary had only one Nobel-prize winner in literature, Imre Kertész, who was a Holocaust-survivor. His Nobel prize was not awarded in recognition of his Holocaust-related experiences described in the novel *Fatelessness*, but rather for the trauma-language which he had created to be able to talk about these experiences. In one of his novels entitled “Kaddish for the Unborn Child” one cannot read the expression „camp-poker”, rather, the term „game” is used. In the novel’s exposition, many people did not talk about their suffering in the camps, instead only referring to the name of the camp. It is as if they are bidding or betting – and the (poker) game persisted until someone calls „Auschwitz”. And this name – just like in poker – takes everything...³¹⁹

³¹⁵ Council of Europe activities are related to genocide in a general manner, in the general context of the European Convention of Human Rights (ECHR), adopted in Rome in 1950, and the subsequent establishment of the European Court of Human Rights in Strasbourg.

³¹⁶ <https://rm.coe.int/factsheet-on-memory-laws-july2018-docx/16808c1690> (20.05.2020.)

³¹⁷ MELAPROJECT is an abbreviation for ‘Memory Laws in European and Comparative Perspective’s. It was awarded in 2016, as a four-nation consortium comprising jurist, linguists and historians, who examine the remembrance of the state, of the national and the international dimension.

³¹⁸ melaproject.org (25.06.2020.)

³¹⁹ „... I see the gloomy faces around me, but only as so many theatrical masks bearing their various roles, ... were still drawing the final lesson, and someone came up with the melancholy idea that everyone should say *where he had been* at which the names began to drop with a wera spattering, like rain from a passing cloud which has long ago soent its force: Mauthausen, the Don Bend, Recsk, Siberia, the Transit Center, Ravensbrück, Fő Street, 60 Andrassy Avenue, the internal resettlement villages, the post-56 jails, Buchenwald, Kistarcsa, ... but now I was dreading it would be my turn, but fortunately I was preempted: ‘Auschwitz’, said somebody in the modest but self-assured tones of a winner, and the whole gathering nodded furiously: ‘Unstrumpable’,

It seems evident that the 20th century, Holocaust³²⁰ has had an immense effect to the postmodern thinking in law, in literature, in philosophy, in psychology, or in historiography, in the determination of collective identity and in remembrance politics. The reason of this elemental effect is that the Holocaust was – in terms of the systematic method used and in terms of its quantity – the most remarkable 'mass-murder'. This claim does not mean that other genocides are less remarkable, quite to the contrary: the Holocaust does not shadow these muss-murders, it rather also hold them in focus. This symbolic extension is also corroborated in practice. Another reason lays in the fact that: „The collective trauma does not have geographical or cultural borders.”³²¹ The trauma of the Holocaust became globalized; but there is an elemental doubt: can remembrance be globalised too? Before the Holocaust, Jewish identity was based on the free-will of 'togetherness'. In the ages of the Holocaust, it became a base for a forced identity, which also had legal base. This problematic identity is alive nowadays as, but „from the other side”: the memory laws could be globalised this trauma remembrance. According to Reinhart Koselleck (Assmann 170. o.) a forced, unified model never becomes effective; moreover it could be counterproductive. Koselleck underlines that there is a need to integrate the experience of the Holocaust in the national historical narratives. I strongly support this opinion: the remembrance of the Holocaust is up to the nations and is paradigmatic as well. It is a form of a cultural trauma – and the responses to this trauma considerably influenced the national remembrance-politics. In section 2.3. of this paper, the change of the opportunity of the remembrance after the change regimes will be analysed. However, there is one more changepoint too. In the 1990s, and especially in the 2000s the technological change in mass communications had a seminal role in the structure of the remembrance-time-culture' axis. Moreover, in the age of the globalization, the electronic media get the most prominent function – due to them, self-identification with others is not limited by geographical borders, and what is more. In the area of the memory laws, the development of new technologies contributed to progress, because the acts became comparable, and, based on various cases, researchers can analyse different answers to the question „how can the national law influence the inter-/trans-/national remembrance”. This was an extraordinary change on the global scale, of course with local characteristics.

Hungary's Holocaust-experience has its own geographical specificity.. In Hungarian history the 19th March 1944 is considered as a turning point. The German Army occupied Hungary. „We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected organ of popular representation was formed. We shall consider this date to be the beginning of our country's new democracy and constitutional order.”³²² Although before this occupation

as the host himself admited, half enviously, half grudgingly, and yet, when all is said and done, with a wry smile of acknowledgment.” Kertész, I: *Kaddish for an unborn Child*. Translated by Wilkinson, Tom. chrome-extension://jjhclmfgflimlhabjkqkeebkbiadflb/reader.html (12.09.2021.)

³²⁰ This does not mean that the relevance of other genocides is minimized or neglected.

³²¹ After my words in Hungarian: „A kollektív traumának nincsenek földrajzi vagy kulturális határai.” Jeffrey C. Anderson. In: Assmann, Aleida, 2014. p. 169

³²² The Fundamental Law of Hungary https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FIN.pdf (02.09.2021.)

there was legal deprivation, the establishment of the ghettos and the entrainment had begun after this date. About 600.000 people died in the Hungarian Holocaust. Each country has his own narrative about this genocide: in Hungary, this narrative is characterised by the enormous number of victims and the 'must-be-citizen' perpetrator too.

2.2. 1945 as a symbol

Year 1945 is an ambivalent symbol: it marks the end of the Shoah, but also the beginning of the division in Europe and the beginning of the Stalinist dictatorships in Central-East-Europe. Being a symbol means an inability of the articulation too. After 1945, a duality can be identified in the way in which historical traumas are remembered and integrated in the national identity. The countries on the east side of the Iron Curtain have a more fragmental, more imperfect remembrance-politics and memory law. The situation is quite converse in the countries to the West of the Iron Curtain. Moreover, in 1947, another dictatorship had begun in Hungary, characterised by failure to remember.

2.3. 1989 and 2004 as milestones

I consider 1989 is a caesura in the Hungarian memory laws. The case of this extraordinary change is the further chronological reason, meaning that the political regime changed, the last dictatorship was over too and the other reason is that the commemoration of the two dictatorships were possible.

Between 1989 and 2004 in Europe, more specifically, in the European Union, a special way to face the traumatic happenings of the 20th century came into life. Based on this theory the postmodern Europe's founding-myth would be the Holocaust. But in 2004, when the EU was enlarged, and most of the post communist countries became its members, the EU had to face another historic trauma of the 20th century, the communism. This dual or competition identity-generating remembrance-politics became a real transnational need to understand the past.

The reasons of the duality or a 'so-called competition' is that the west-European countries had their own strategy for confronting their own past. Before the fall of the Iron Curtain it was forbidden to the East to remember the WW II or the Holocaust or any traumatic happenings of this era. These countries considered themselves as victims of the Stalinist dictatorship – therefore their memberships status in the EU had the result of reconstitution of the postmodern founding myth.

Imagine this victim's/perpators's narrative, which proved to be acceptable in the last 17 years in the post communist countries and the European Union. Showing the possibilities for the constructional way to identity. That's because the Central-European countries see themselves from this special „victim narrative”: they were the victims of the Stalinist dictatorship. This victim narrative has to be positioned in the „Holocaust-focused' memory politics. This is a daunting, because the meaning of „victim” has undergone a semantic recoding: being a victim, which was earlier a desired (almost a hero)'role' changed into a suffering 'role'.

There was a change of the discourse: being a victim is more acceptable like being a hero. The alteration shows the way in which the concept of the individual 'victim' turned away from the concept of the public 'victim'. It is a passive victim identity: but it has other aspects in the post- Soviet countries and in those on the west side of the Iron Curtain. In the Eastern region, the method of memorisation, which could appoint the position of the self-reflection, did not evolve. These nations had to build in their self-image the experiences both of the dictatorships. This „had-to-build-in” became a political problem in Europe, because the suffering from the Stalinist dictatorship had an ethnical basis.

As a the result of this ethnical-based suffering-meaning the chance to establish their own national perpetrators-narrative was lost; in fact, entire countries permeated this victim-position. The transnational level of remembrance begun after 2004, marking the era of the rival victim-narratives. This legal/normative way is one possible method: I think it could be the answer in the questions of the competitive victim-narratives. Under the said normative method, memory laws can be a part of the development of national self-identity. We have to be conscious of that by becoming a member of the EU in 2004, these countries also became the part of a transnational remembrance, of an own narrative of the European Union narrative too.

The normative method can help avoid the binary code, which operates on the „Gulag” - „Auschwitz” symbolic axis. The politics of the acknowledgment can also be found in the post communist countries national practices, rather than the acknowledgment of the communism's sins could be found global.

In other words, a new dichotomy was established: „It was, therefore, undoubtedly a rather noble paradigm that guided their legislators at the time, leading to the adoption of so-called self-inculpatory memory laws, in the words of Eric Heinze. Central to that paradigm was the dignity of Holocaust victims. The recent wave of mnemonic constitutionalism in CEE, to the contrary, underlines the victimhood of national States and majority nations. Such – in contrast, self-exculpatory – memory laws serve as both a shield and a sword in the context of memory wars unfolding in the region.”³²³ This two-folded paradigm need to be a self identification detail as well.³²⁴

3.HOW CAN MEMORY LAWS BE SEARCHED FOR?

In this section of the paper, I will attempt to summarize the methodological points of searching relevant memory laws in my national legal system. After presenting the aim I will present the relevant tools. In my opinion, in order to identify the best method one should have a comprehensive knowledge of the system of the legal databases of one's country: finding the relevant results, being familiar with the entire software, knowing the other possibilities: the official legal database and the market-based databases as well. Using the relevant legal database enables a comparison of the text of the laws before and after the amendments or

³²³ Belavusau, 2020, p. 4.

³²⁴ See more Soroka & Krawatzek, 2019, pp. 157-160., Heinze, 2019, <https://freespeechdebate.com/discuss/should-governments-butt-out-of-history/> (10.08.2021.); de Bates, 2019, <https://freespeechdebate.com/2019/12/self-inculpatory-laws-do-not-exist/> (10.08.2021.)

identifying the former and future text as well. For example, on 10th of September 2021, a total of 241 588 'documents' can be found in a given database: they are not only laws, because not every of them have legal obligatory. There are 50 419 acts in force. How can relevant data be extracted from these? I decided to use the „word for word” but this raises more dilemmas. For instance, should I opt to search for the word 'holocaust' or genocide or remembrance? Should I pay attention to writing holokaust (in Hungarian) or search for Holocaust? Whose responsibility is the result? In fact, it seems that the best way forward is to apply a broad approach, since even seemingly irrelevant documents can include valuable information. In terms of the research method, I analyse not only the acts in force, but also examine the questions in the aspect of legal philosophy, legal politics, which have the same relevance of being in force or annul an act. From these I can find conclusions referring to the remembrance politics.

4. EXAMPLES OF THE HUNGARIAN, POST- HOLOCAUST MEMORY LAWS

In this section, I chose some of the Hungarian memory laws in order to illustrate some questions or having brainstorming areas. As a PhD-researcher, I analyse in my dissertation these laws semiotically, so I have to focus on the sociolinguistic significance too.

4.1. The Fundamental Law of Hungary³²⁵

Before 1949 Hungary did not have a written constitution. While there were some „base laws” in force, the constitution was missing. It was the extended era of the „historical constitution” in Hungary, which was also connected to the medieval doctrine of the „Holy Crown”; it has sacred and symbolic meaning in the guarding the independence of Hungary. In 1949, Hungary a written constitution, a unified constitutional text was adopted: this constitution was utilized for the building up of the communist regime. Independent of the change of the political regime in 1989, the Hungarian Constitutional Law was in force until 2010. The new Fundamental Law is a truly unique constitutional text, which starts with the National Avowal. It refers „to King Saint Stephen I as founder of the Hungarian state, proclaims Christianity as historically central”, „in the preservation of nationhood” and, most importantly, reinforces the narrative of Hungarian victimhood following the post-World War I Treaty of Trianon. This contradictory account of national division helps justify Hungary's role in the protection of „Hungarians beyond the borders”. In addition, the Avowal praises the „achievements of the historical constitution” and the Holy Crown as symbols of the independence and continuity of the Hungarian State, while condemning the Nazi and communist occupations of the country. It also claims that the State lost its self-determination on 19 March 1944, the date on which Hungary's German occupation began, and regained it after the fall of the communist dictatorship on 2 May 1990, the day of assembly of the first freely elected Hungarian parliament. This characterizes the 1949 constitution of Hungary as unlawful and as the basis for „tyrannical rule”.³²⁶

³²⁵ See more Könczöl, M. & Kevevári I. 2020. pp. 161-175

³²⁶ Belavusau & Gliszczynska-Grabias, 2020., pp. 1239-1240.

As indicated in section 2.1 I also illustrated the dates between which Hungary was divested of its own self-determination.

In 2013, the Hungarian government adopted Article U as a constitutional provision, stating that the era before 1989, the Communist Party (formally: the Hungarian Socialist Workers' Party) and its satellite organisations were "criminal organisations". The leaders carry – according to the text- a liability that is "without a statute of limitations". The Fundamental Law's Article U) proclaims that the Communist party has responsibility for several domestic historical event, such as the post WW2 era of unlawful persecutions, suppressing the Revolution; establishing a legal order built on the exclusive exercise of power and unlawfulness, depriving private property, creating national debt and subordinating Hungary's economy, national defence, diplomacy and human resources to foreign interests.

4.2. Remembrance days

I collected some normative rules relating to the remembrance of the Holocaust. Currently, two such dates are in place in Hungary. The first one 27th of January, as of, which is established by the UN. It is the international remembrance day after the liberation of the Auschwitz camp. The second one is the remembrance day of the Hungarian Holocaust, 16th of April, from the year 2000.³²⁷ It is the day that the Ghetto in Budapest was created. It is also a part of the Hungarian remembrance narrative. However, there is a relevant question – these remembrance days are envisaged in legal acts,³²⁸ but is the method of the remembrance mandatory as well? The Hungarian national remembrance days is regulated in the Fundamental Law: for instance, the 20th of August establishment our state, or 15th of March marking the Revolution of 1848, or 23rd of October marking the revolution of 1956, or the days of Christmas and many others. However, the Holocaust remembrance days are a part of these national holidays, so on these days there aren't any obligations in terms of labour law, of educational law etc. You can find nothing in our legal system about that how to remember on these days. In word or in thought the citizens, the teachers, the simple people, the actors are the ones that make the decision about it. You can find more films, more talkshows on the TV or more plays at the theatres about this, but nothing else.

4.3. Educational area

There is also a close link with educational. On the one side, there are some instructions to remembrance on the Holocaust remembrance day and on the remembrance day of the victims of the Communist dictatorship (in Hungary there is a remembrance day on the 25th of February). But these are only instructions, only recommendations, there are no obligations.

³²⁷ See more: a nemzeti rendezvények megszervezéséről szóló a 1190/2020. (IV. 30.) Korm. határozat. The unofficial translation would read: 'Government Resolution 1190/2020. (IV. 30.) on the organisation of national events'. <https://njt.hu/jogszabaly/2020-1190-30-22> (01.06.2021)

³²⁸ For instance, the remembrance day of the Gypsy Holocaust cannot be found in the legal acts. This is because the 2nd of August as a day of remembrance of this holocaust is established by the World Organization of the Gypsies, but it is not regulated by law in Hungary.

On the other hand, in these acts a further connection between memory and the education can be identified: the remembrance of the Holocaust has to be the part of the system of Hungarian secondary education's final exam.³²⁹ And this obligation applies to the History exam, but not to other subjects. For example, Hungary had the previously mentioned Nobel-prize winner, but the students do not have to study his novels.

4.4. Criminal law

The fourth and perhaps the largest group of acts are those in the field of criminal law. This applies to a broad spectrum of these laws: from the Hungarian Criminal Code to the cooperation of law enforcement agencies, or even regulations governing international criminal legal assistance. The relevant issue at hand is the collision between using the symbol of a dictatorship and the freedom of speech. The most evident illustration of this is the following provision of the Hungarian Criminal Code:

„Use of symbols of despotism

Section 335

A person who, in a manner capable of disturbing public peace or, in particular, violating the human dignity of or the right to respect for the deceased victims of despotic regimes,

- a) disseminates,
- b) uses in front of a large audience, or
- c) displays in public

a swastika, SS insignia, arrow cross, hammer and sickle, five-pointed red star, or any symbol depicting such signs is guilty of a misdemeanour and shall be punished by confinement, unless a criminal offence of greater gravity is established.”³³⁰

Where are the borders of this legal phenomena? The most notable cases against Hungary brought before the ECtHR are the Fratanolo-, the Vajnai and the Fáber-cases.³³¹ All cases concern the factual using symbols of earlier dictatorships the red star and the famous red and white striped flag named after Arpad chieftain. In Hungary it will be a punishable offence to use the swastika, the cross of the so-called „nyilas”-era or SS-insignia. That is the point of interpreting law semiotically or simply linguistically. In this article there are symbols; the interpreting of a symbol (like a language too) is problematic. It is up to the interpreter, the context, the historical experience etc. What is to be done in this situation: the basic of the legal studies is the being obligatory. How can we talk about obligations in line with symbols? They cannot have only one meaning, and this is the difficulty of collective memory, and its beauty of it too.

³²⁹ In the Hungarian educational system, most students take a final exam when they are 18-19 years old.

³³⁰ Act C of 2012 on Criminal Code https://njt.hu/translation/J2012T0100P_20210708_FIN.pdf (10.08.2021.)

³³¹ Case of Fratanoló v. Hungary (Application no. 29459/10); Case of Vajnai v. Hungary (Application No. 33629/06) and Case of Fáber v. Hungary (Application Number 40721/08)

4.5. Budgetary law

Finally, I found a lot of budgetary laws – in this regard I can demonstrate rather political issues than real legal facts. As a general rule, the budgetary laws are not relevant themselves, but only with regards to something else - for example, the establishment of Holocaust Museum, etc.

5.SUMMARY

„The Holocaust (Shoah) fundamentally challenged the foundations of civilization. The unprecedented character of the Holocaust will always hold universal meaning.”³³² As the Stockholm Declaration said, the experience of the Shoah changed the whole thinking about the world. It has a huge effect to the philosophy, to the literature, to the theology, to the law. I think to each fields of the human sciences. According to the fourth and the sixth point the members of the International Holocaust Remembrance Alliance pledge to strengthen their efforts to promote remembrance about the Holocaust and share a commitment to commemorate the victims of the Holocaust. I regard that declaration as a warning sign to the future: never like this genocide. The legal system with the memory laws can guarantee that we never forget these happenings.

³³² <https://www.holocaustremembrance.com/about-us/stockholm-declaration> (08.11.2021.)

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