

## VICTIMS' ROLES



**Editors: Andrea Domokos – Ágnes Czine – Szilvia Dobrocsi**

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Károli Gáspár University of the Reformed Church in Hungary  
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## FOREWORD

Between September 2022 and June 2024 a research project entitled Victim Roles was conducted at the Károli Gáspár Reformed University supervised by the Institute of Criminal Sciences of the Faculty of Law and the Ferenc Finkey Criminal Research Institute. This research programme is unique in several respects. Firstly, it is truly multidisciplinary research in the truest sense of the word. Theologians, art historians, psychologists, lawyers have dealt with the same concept, the victim, from different approaches. Lecturers and researchers from several faculties of the University were involved in researching perceptions of victims, presenting their particular insights on the same subject.

Thus, starting from the Institute of Criminal Sciences' study of criminal law, we are able to present a much broader spectrum of victimhood from a religious, artistic and psychological perspective. Our research is also unique in that it was carried out by a team of academics and students, giving students the opportunity to engage in academic research during their undergraduate years and also giving both academics and students a new experience of the benefits and advantages of working together.

The idea of victim-focused research was conceived at the Institute of Criminal Sciences and was, of course, linked to victims of crime and victims in criminal proceedings. The joint work has shown that collaboration between researchers in science and the arts can produce valuable and exciting results. Together, the sub-researches have produced a higher quality research output with a more comprehensive approach.

On behalf of the Faculty of Theology, Professor Péter Balla, Head of Department and Vice-Rector, examined texts in the New Testament

“cross-section” in the book of Acts and the letters of Apostle Paul. His student Dóra Kertész examined one specific New Testament passage in “depth” – Apostle Paul’s defence in Acts 26.

Two art history lecturers from the Faculty of Humanities, Professor Enikő Sepsi and Associate Professor Ádám Bethlenfalvy, examined the representations of sacrifice in different artistic disciplines (visual arts, literature, theatre, film, etc.) and their reflections in the thought of a group of students. The starting point for their research was artworks in which the problematic of victimhood appears strongly but in different ways. The research thus included paintings, installations, literary works and film extracts. Their student Száva Szántó’s study focused on the theatrical but therapeutic method of Chilean theatre-maker and filmmaker Alejandro Jodorowsky.

Paszka Kiss, habilitated associate professor, examined the psychological aspect. With his students, he has investigated the impact of resilience and the expansive-enriching theory of positive emotions on the life satisfaction and autonomous growth attitudes of young people in juvenile detention centres.

Olivér Árpád Homicskó, Professor at the Faculty of Law, examined the victim roles that can be identified in labour law and the jurisprudence related to them. Professor Andrea Domokos focused on the victims of domestic violence and partner abuse, presenting the relevant EU legislation and current Hungarian practice.

Her student Gábor Kelemen focused on a specific aspect of victimhood, the criminal protection of animals. Professor Ágnes Czine looked at the development of victim protection, with a special focus on the role of the Church in victim protection. In the field of procedural law, Associate Professor Szilvia Dobrocsi studied the role of the victim in criminal proceedings and its changes in recent decades, with an international perspective.

Vulnerable individuals, less able to defend themselves, are present in all walks of life, and helping and empowering them is a common

task and responsibility of all of us. Defining the concept of victimhood, understanding the role of victimhood, and treating, assessing and assisting victims are issues that can and should be interpreted across all disciplines.

We hope that the Honourable Reader will find at least as many lessons in reading our work as we ourselves have discovered in our multidisciplinary research, workshops and conferences!

Budapest, 31 August 2024

Andrea Domokos  
Head of Research



**Peter Balla**

# **PAUL THE APOSTLE – IN DEFENCE OF THE GOSPEL**

## **1. Introduction**

Our aim is to enrich the present interdisciplinary research with two complementary theological studies. On the basis of the letters of the Apostle Paul and selected passages of the New Testament book of the Acts of the Apostles, we intend to examine how Paul was attacked for preaching the Gospel of Jesus Christ, how the apostle defended himself, and how he gained the strength to withstand the undeserved attacks. His defence was his commitment to the Gospel, so that he could also use the situations of his being attacked to bear witness. He was a “victim” because he had been attacked, beaten, and imprisoned because of his testimony about the Saviour, Jesus Christ, even though he did not commit any crime in legal terms. However, he did not regard himself as a victim, but tried to fulfil his apostolic mission even among the persecutions.

The two studies from the Faculty of Theology, intended for the volume, complement each other. In this study, we examine texts in the New Testament “cross-section” in the Acts of the Apostles and the letters of Paul. Our university student Dóra Kertész (Faculty of Theology, Theologian/Minister of Religion major) examines a specific New Testament passage “in depth”: the defence of the Apostle Paul in the Acts of the Apostles, chapter 26.

The title of this study is intentionally ambiguous: we refer to the fact that, on the one hand, the Apostle Paul sees his work as being protected by his Saviour, and thus the Gospel also protects him. On the other hand, in the midst of the attacks, he “defends himself” by actually de-

fending the Gospel he preaches. He can be considered a victim, given that he has not been found guilty under the laws in force at his time; however, he is victim of attacks. Nevertheless, it is notable that he does not complain about his status as a victim, but tries to use his status for a good cause: during his „defence”, he bears witness for the Gospel.

## **2. The Apostle Paul’s defences in the book of the Acts of the Apostles**

### *2.1. Paul and Silas in the Philippian prison*

In connection with the preaching of the Gospel, Paul also suffered a short period of imprisonment preceding his subsequent, more prolonged incarcerations. From the perspective of ecclesiastical history, this period of captivity can be linked to a significant and distinctive event, because not long ago he arrived from Asia Minor to what is considered today the European territories. Thus the Gospel reached “Europe” by means of these proclamations of the apostle.<sup>1</sup> It is worthwhile to recall the circumstances of his journey.

In the second missionary journey undertaken by Paul, the Gospel was preached in Asia Minor.<sup>2</sup> In accordance with the guidance of the

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1 Peterson correctly emphasizes, based on William Ramsay’s earlier writing, that ancient man did not think of separate continents when he sailed from one side of the Hellespont to the other, which is why we refer to Europe here in quotation marks; David G. Peterson: *The Acts of the Apostles (PNTC)*, Grand Rapids, Wm. B. Eerdmans Publishing Company, 2009, 452.

2 The New Testament refers to these areas with the term “Asia” (e.g. Acts 16:6) – the western parts of today’s Turkey are also included; with today’s name, in this study we refer to these areas as “Asia Minor” (see e.g. the note in Acts 2:9 in the Hungarian RÚF 2014 edition of the Bible: “*In Asia*: i.e. Asia province, a Roman province” (*Biblia. Istennek az Ószövetségben és Újszövetségben adott kijelentése magyarázó jegyzetekkel*, Budapest, Kálvin János Kiadó, 2018, 1393). I note that the Hungarian text of the Bible in this work is the “Revised New Translation” (Revideált Új Fordítás, RÚF 2014).

Holy Spirit, Paul made decisions regarding whether to go or not to go to certain cities. This is recorded in the Acts of the Apostles, in chapter 16 (Acts 16:6–10).<sup>3</sup>

And they went through the region of Phrygia and Galatia, having been forbidden by the Holy Spirit to speak the word in Asia. (7) And when they had come up to Mysia, they attempted to go into Bithynia, but the Spirit of Jesus did not allow them. (8) So, passing by Mysia, they went down to Troas. (9) And a vision appeared to Paul in the night: a man of Macedonia was standing there, urging him and saying, “Come over to Macedonia and help us.” (10) And when Paul had seen the vision, immediately we sought to go on into Macedonia, concluding that God had called us to preach the gospel to them.<sup>4</sup>

The apostle and his traveling companions sailed from Troas to the “European” port city of Neapolis, and from there they went to nearby Philippi, where they spent several days (Acts 16:11–12). On Saturdays, local Jewish women, and “God-fearing” women who had embraced the Jewish faith, assembled outside the town for prayer meetings. Among them was a woman named Lydia, a seller of purple goods, who, influenced by the teachings of Paul, accepted Jesus as her Saviour and had been baptized (vv. 14–15). She can be considered the first Christian in European territory. Paul’s preaching

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3 The Bible is quoted in this study according to the English Standard Version (ESV).

4 Here we will only briefly indicate that from verse 10, the narration changes to the first person plural, the most likely reason for which is that the author of the book of the Acts of the Apostles, Luke the Evangelist, was himself present at the events that followed. See, for example: I. Howard Marshall: *The Acts of the Apostles. An Introduction and Commentary (TNTC)*, Leicester, Inter-Varsity Press – Grand Rapids, Wm. B. Eerdmans Publishing Company, 1980 (reprinted: 1992), 263–264; Balla, Péter: *Az újszövetségi iratok története*, Budapest, Károli Egyetemi Kiadó, 2008, 168–169.

ministry was repeatedly disturbed by a fortune-telling girl, from whom the apostle cast out this “spirit” (vv. 16–18). As a result of this, the girl’s masters fell from the profit from her fortune-telling, and therefore denounced Paul (v. 19). Because of the accusation, it is worth quoting again from the Acts of the Apostles (16:20–21): “And when they had brought them to the magistrates, they said, »These men are Jews, and they are disturbing our city. (21) They advocate customs that are not lawful for us as Romans to accept or practice.«” Here we can see that there was no specific accusation, but they refer to the difference in religious customs, the religious differences between Judaism and the Roman Empire in general. At the time of the Apostle Paul, the Jewish religion had been an “established”, i.e. legally accepted, religion in the Roman Empire.<sup>5</sup> For this reason, the reference to “Jewish customs” alone would not have been sufficient to accuse the apostle and his companions, which is probably why they mention the “upheaval” in the city. Referring to Paul’s preaching about Jesus Christ, Peterson aptly names the background of the accusation: “it was easy to present this new teaching as a threat to the existing social order.”<sup>6</sup>

Based on the accusation, Paul and his fellow witness, Silas, are caned by the Roman superiors and imprisoned (Acts 16:22–23). During their nightly prayer, God performs a miracle: suddenly, an earthquake hits the city, so violent that the foundations of the prison shake; and immediately all the doors were opened and everyone’s chains were unfastened: Paul and Silas were set free. The jailer wanted to kill himself, but the apostle went to him and led him to faith in Jesus Christ (vv. 27–34). There was a twist in the narration of the story: the next morning, without giving any reason, the wardens told the jailer that he can release Paul and Silas (vv. 35–36). The background for the warden’s order may be what a high-ranking Roman

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5 See, e.g., Peterson: *Acts*, 466.

6 *Ibid.*

official, Colonel Claudius Lysias, expressed in Jerusalem on another occasion, in connection with another imprisonment of the Apostle Paul, referring to the disputes among the Jews and differences in the interpretation of the law: “I found that he was being accused about questions of their law, but charged with nothing deserving death or imprisonment” (Acts 23:29). According to Marshall, Lysias considered Paul’s teachings a “theological” issue, and therefore did not consider him to be punishable under Roman law.<sup>7</sup> This may have been the reason for Paul’s release in Philippi. The apostle did not use his release to escape immediately (that is why he was able to save the jailer from his planned suicide), and since he was sure of his innocence, he also wished for the restoration of justice regarding his beating. We read as follows (Acts 16:37–38): “But Paul said to them, »They have beaten us publicly, uncondemned, men who are Roman citizens, and have thrown us into prison; and do they now throw us out secretly? No! Let them come themselves and take us out.«<sup>38</sup> The police reported these words to the magistrates, and they were afraid when they heard that they were Roman citizens.”

The Roman officials were frightened because they themselves became punishable by caning and imprisoning Roman citizens without a hearing or a trial. As representatives of the Roman Empire, they were supposed to protect the rights of other Roman citizens.<sup>8</sup> They went to Paul and Silas, apologised to them, led them out, and asked them to leave the city (v. 39). Before leaving the city, Paul and Silas went to Lydia, also giving spiritual encouragement to the “brothers”, i.e. the newly converted community (v. 40). The biblical text does not detail what happened to the jailer after the apostle’s departure, but we clearly see that he became a Christian and was baptized with

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7 Marshall: *Acts*, 371.

8 Bock refers to several ancient Roman laws that protected the accused: “The Valerian (509 BC), Porcian (248 BC), and Julian law codes (ca. 23 BC) affirmed such protections”; Darrell L. Bock: *Acts (BECNT)*, Grand Rapids, Baker Academic, 2007, 544.

“all his family” (v. 33), so in Philippi with all likelihood Lydia and the converted jailer and his family continued to openly profess their faith in Jesus Christ. When Paul insisted that they ask for forgiveness and that the city leaders ought to lead them out, he wanted to get them to recognise that their Christian testimony is not punishable under the Roman legal system. Stott – quoting A. N. Triton – rightly emphasizes that they also did a lot for the freedom of the new Christian church that remained in Philippi.<sup>9</sup> Acknowledging their innocence and defending themselves thus also served the cause of the Gospel: in Philippi, the Roman authorities likely acted with greater caution towards the Christians in the future.<sup>10</sup>

## 2.2. *Paul the Apostle in Jerusalem in the captivity of a Roman colonel*

In the previous section, we already referred to a Roman colonel, whose letter to the governor Felix we quoted; from this letter we know the name of the colonel (“chiliarch”, translated as “tribune” in the ESV): Claudius Lysias (Acts 23:26). Before the part of the letter quoted above, from which it is revealed that the colonel did not consider Paul guilty, we can read in a longer section that Paul was in captivity of the colonel, and that he also used this occasion to speak to his people in public. Let us examine the circumstances of his captivity, his dialogue with the colonel, and his related speeches – all this only briefly, because in this study volume Dóra Kertész analyses in detail another defence speech (Acts 26), so in this respect these two studies complement each other.

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9 John R.W. Stott: *Az Apostolok Cselekedetei. A Lélek, az egyház és a világ*, transl. Melinda Gulyás, Budapest, Harmat – KIA, 2010 (reprint: 2012), 297. See also: STOTT, John R. W.: *The Message of Acts. To the ends of the earth (BST)*, Leicester, Inter-Varsity Press, 1990, 268.

10 So argues also Bock: *Acts*, 545: “The magistrates would be more careful in the future.”

Although the seat of the Roman governor overseeing this area was in Caesarea on the Mediterranean coast (see e.g. Acts 23:23–24), there was also a Roman military base in Jerusalem; a military force of about a thousand men maintained order in the city.<sup>11</sup> The soldiers' barracks were in the northwest corner of the temple square, in the so-called Antonia Fortress, so they could easily monitor the area around the temple.<sup>12</sup> Paul fulfilled a purity ritual with which he wanted to show respect for the Mosaic laws (Acts 21:23–27), when some mistakenly thought that he had brought a pagan into the Jerusalem temple with him, and, inciting many, a large crowd was turned against the apostle. The hostile atmosphere was fuelled with the following words referring to the religious customs of the Jews (v. 28): “Men of Israel, help! This is the man who is teaching everyone everywhere against the people and the law and this place. Moreover, he even brought Greeks into the temple and has defiled this holy place.” The crowd seized Paul, “dragged him out of the temple, and at once the gates were shut” (v. 30). Roloff notes that this was intended to exclude the possibility that Paul could try to return to the temple as a place of refuge.<sup>13</sup> The hostility escalated to the point that they wanted to kill Paul (v. 31). The colonel, informed about the rebellion, hurried with soldiers into the crowd and arrested Paul (vv. 32–33). The apostle spoke to the colonel in Greek (v. 37) – at that time in the Roman Empire, the so-called *Koine* (“common”) Greek was spoken by almost everyone; it was the easiest way for people from many nations to understand each other. Paul asked for permission to speak to his people and gave a speech in Hebrew (v. 40). The apostle explained in detail that he himself had previously persecuted the followers of Jesus (as he said: “I persecuted this Way to the death”, Acts 22:4). On the road to Damascus he met the ris-

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11 Jürgen Roloff: *Die Apostelgeschichte*, Göttingen, Vandenhoeck & Ruprecht, 1981, 317.

12 *Ibid.*

13 *Ibid.*

en Jesus who appeared to him in a miraculous way (22:6–10), and from then on he confessed him to be his Lord (vv. 10–11 and 19). The crowd interrupted Paul’s speech and attacked him again with such murderous fury (vv. 22) that the colonel again seized Paul and bound him and took him into the barracks (vv. 24–25).

Paul then – in the same way as before in Philippi, as we saw above – referred to the fact that he was a Roman citizen (v. 25): “But when they had stretched him out for the whips, Paul said to the centurion who was standing by, »Is it lawful for you to flog a man who is a Roman citizen and uncondemned?«” We then learn about the colonel that he acquired Roman citizenship “for a large sum”, whereas Paul received it at birth (v. 28) – probably through his father, who was already a Roman citizen and passed this on to Paul.<sup>14</sup> The colonel “was afraid, for he realized that Paul was a Roman citizen and that he had bound him” (v. 29), and the next day he called together the chief priests and the council, i.e. the leaders of the Jewish people, and “he brought Paul down and set him before them” (v. 30).

The apostle used this defence opportunity to say in front of the Roman soldiers and the leaders of his own people: “Brothers, I have lived my life before God in all good conscience up to this day” (Acts 23:1). Since the high priest and the other leaders of the people were hostile towards him at the very beginning of his speech (vv. 2–5), Paul testified that he belonged to the Pharisaic sect within Judaism, because he knew that the members of the the great council of Pharisees and Sadducees present held very different views on the resurrection (v. 6).<sup>15</sup> In his previous speech (chapter 22), he spoke in detail about how Jesus Christ did not remain in death, but appeared to him as the resurrected Lord and spoke to him on the road to Damascus, but here he only briefly refers to the topic of the resurrection (23:6): “Brothers, I am a Pharisee, a son of Pharisees. It is with respect to the hope and the

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<sup>14</sup> See, e.g., Bock: *Acts*, 665.

<sup>15</sup> See, e.g., Peterson: *Acts*, 617.

resurrection of the dead that I am on trial.” Although the Pharisees did not accept that Jesus Christ was resurrected,<sup>16</sup> they also carried the hope of a future resurrection – on the other hand, the Sadducees did not believe in the resurrection (v. 8). So, at this point the accusers of the apostle began to argue with each other (v. 7), and some of the Pharisees sided with Paul, and some of their scribes said (v. 9): “We find nothing wrong in this man. What if a spirit or an angel spoke to him?” Peterson calls this last question a “rhetorical question” and notes that this question “implies that they take seriously the possibility that he received a divine calling and commissioning to carry out his ministry.”<sup>17</sup> The dispute became so violent that the colonel intervened again by bringing Paul into the barracks (v. 10).

We can confirm that Paul raised a debate among the great council that questioned him, and we do not know exactly what else his speech contained – Luke often reported on the events in abbreviated form, probably here as well.<sup>18</sup> If he did not even mention the name of Jesus in this speech (in contrast to chapter 22, where he mentioned it), at the end of the story, Luke clearly indicates that Jesus regarded Paul’s statements in Jerusalem as a testimony about him. Luke reports on the night following Paul’s speech to the great council (23:11): “The following night the Lord stood by him and said, »Take courage, for as you have testified to the facts about me in Jerusalem, so you must testify also in Rome.«” Thus, we can say that Paul also used his defences in Jerusalem to testify about Jesus.

### **3. The Apostle Paul’s acts of defence in his letters**

Here we list some examples in which Paul was in danger – and we will see that either the danger situation itself arose because of his

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16 This is emphasized, e.g., by Marshall: *Acts*, 366.

17 Peterson: *Acts*, 618.

18 See, e.g., Bock: *Acts*, 673.

testimony about the Gospel, or that the apostle used his being attacked and persecuted to bear witness to Jesus Christ.

### 3.1. *The Apostle Paul's hope for salvation according to the letter to the Philippians*

Paul was most likely imprisoned twice in the capital of the empire, Rome. His first imprisonment in Rome took place in connection with the fact that he appealed to the emperor during his arrest and hearing in Jerusalem, and although King Agrippa did not consider the apostle to be condemned based on Paul's defence speech, because of his appeal he ordered that he be taken to Rome (Acts 26:30–32).<sup>19</sup> We can read about this Roman captivity in chapter 28 of the book of the Acts of the Apostles. Of the Pauline letters in the New Testament, four were probably written during this captivity: the letter to the Ephesians, the letter to the Philippians, the letter to the Colossians, and the letter to Philemon.<sup>20</sup> Paul was probably released from this captivity, continued to travel and do missionary

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19 See the study by Dóra Kertész in this volume.

20 In contemporary introductory literature dealing with the circumstances of the creation of the Pauline letters, there is no complete unity, for example, in terms of authorship or the place of origin of the letters. According to the author of this study, it is a sustainable position that the thirteen letters preserved in the New Testament and associated with Paul's name were written by the apostle himself; see, e.g., for the four letters mentioned here: Balla: *Az újszövetségi iratok története*, 213–229. We note that there is a view according to which the apostle wrote the letter to the Philippians in Ephesus, see, e.g., Cserhádi Sándor: *Pál apostolnak a filippibeliekhez írt levele*, Budapest, A Magyarországi Evangélikus Egyház Sajtóosztálya, 1976, 45. We think that the view of the origin of the letter in Roman captivity can be maintained; for arguments in favour of this view see, e.g., Ben Witherington III: *Paul's Letter to the Philippians. A Socio-Rhetorical Commentary*, Grand Rapids, Michigan / Cambridge, UK, Wm. B. Eerdmans Publishing Company, 2011, 9–11. Here, Witherington convincingly argues not only against the Ephesian origin, but also against the Caesarian origin hypothesis raised by others (*ibid.* 11).

work, and then died a martyr's death in a second Roman captivity. He probably wrote his second letter to Timothy among the so-called Pastoral letters in his second captivity (2Tim).<sup>21</sup>

In the letter to the Philippians, we can read several times that the Apostle Paul is “in chains” – i.e. in captivity – (Phil 1:7, 13, 14, 17), and an important feature of this letter is that the apostle reckons with the possibility that he will be released from this captivity. In the first chapter of the letter, he clearly states why he was taken prisoner: “so that it has become known throughout the whole imperial guard and to all the rest that my imprisonment is for Christ” (Phil 1:13). Here, the expression “for Christ” must mean that he preached Jesus Christ as the Son of God, and because of this testimony he was imprisoned in Rome.<sup>22</sup> Based on the above-quoted parts of the book of the Acts of the Apostles, we also know that he was imprisoned in Jerusalem because of his testimony about Jesus Christ, and – as we have seen – in connection with his arrest there and then with his appeal, he was sent to Rome as a prisoner. According to the 28th chapter of the Acts of the Apostles, he awaited the outcome of his trial in a kind of “house arrest” (Acts 28:16, 23, 30), but this was a form of “captivity”, and surely the soldiers of the Roman guard took turns supervising his house arrest.<sup>23</sup> The apostle was thus able to encourage others with his own example (Phil 1:14).

In the first chapter of the letter to the Philippians, the apostle beautifully testifies that he is not afraid of death either, because by his

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21 See, e.g., Balla: *Az újszövetségi iratok története*, 241–250; Balla, Péter: *A Pásztori levelek szerzőségének kérdése*, in László Emőke – Pap Ferenc (eds): *Krisztust dalolni merem. Tanulmányok Békési Sándor hatvanötödik születésnapja alkalmából*. Cluj-Napoca, Presa Universitara Clujeana / Kolozsvári Egyetemi Kiadó, 2020, 9–25.

22 See, e.g., Witherington: *Philippians*, 79.

23 *Ibid.*; Witherington also notes here that the members of the Roman “Praetorian Guard” changed the guard ca. every four hours, so Paul could speak to many soldiers about the Gospel.

death he would only come sooner to his Saviour, Jesus Christ: “For to me to live is Christ, and to die is gain” (v. 21). Then he continues: “I am hard pressed between the two. My desire is to depart and be with Christ, for that is far better” (v. 23). The apostle also lived his earthly life in communion with Christ, but with his death this communion becomes perfect, therefore dying is a “gain”. Fee summarizes this as follows: Paul’s “present existence »in Christ« makes it unthinkable that he would ever – even at death – be in a »place« where he was not »with Christ.« Hence death means »heaven now«.”<sup>24</sup>

The apostle hopes that he will be released from this captivity and will still be able to serve among the Philippians. This is how he testifies about this hope (Phil 1:24–26): “But to remain in the flesh is more necessary on your account. (25) Convinced of this, I know that I will remain and continue with you all, for your progress and joy in the faith, (26) so that in me you may have ample cause to glory in Christ Jesus, because of my coming to you again.”

It was given to the Philippians – like to Paul – that they suffered “for Christ”, and thus this present imprisonment of the apostle is also a spiritual resource for the recipients of the letter (vv. 29–30): “For it has been granted to you that for the sake of Christ you should not only believe in him but also suffer for his sake, (30) engaged in the same conflict that you saw I had and now hear that I still have.” Thus, the sufferings of the apostle are related to the Gospel in multiple ways: on the one hand, he suffers for his testimony about Jesus Christ (including imprisonment), and on the other hand, his perseverance in this suffering is an example and a resource for other Christians. Paul’s circumstances – referred to by the phrase “in me” in verse 26 – also create an opportunity to confess the “magnificence” of the cause of Jesus Christ. To “boast” in Christ (as the ESV writes: “to glory in Christ Jesus”) meant: to bear witness to the great deeds

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24 Gordon D. Fee: *Paul’s Letter to the Philippians*, Grand Rapids, Michigan, Wm. B. Eerdmans Publishing Company, 1995, 149.

and redemptive work of Jesus, i.e.: to “glorify” Him (and not to show one’s own “greatness”).<sup>25</sup>

The Apostle Paul’s “captivity” (house arrest) in Rome gave him the opportunity to testify not only among the “imperial guard”, but also, as we saw in Philippians 1:13: “to all the rest”, i.e. certainly among the members of the imperial court as well. At the end of the letter, Paul – like in his other letters – sends greetings, and here we find a reference to the fact that he had brothers in Christ in the imperial court (4:21–22): “The brothers who are with me greet you. (22) All the saints greet you, especially those of Caesar’s household.” Witherington argues that we should not be thinking of the high ranks of the Roman nobility here, but of slaves and freed slaves who served in the imperial court – including those performing important administrative tasks.<sup>26</sup> Because of their position, they were regarded with much more respect by those around them than other servants or even freed slaves. Witherington calls them “very well-connected Christians”,<sup>27</sup> and the fact that Paul also conveys their greeting to the Philippians at the end of his letter indicates their importance. Thus, for Paul, this “captivity” is not a reason to complain about his difficult situation, but he invites the recipients of the letter to see with him this special occasion of spreading the Gospel (1:12): “I want you to know, brothers, that what has happened to me has really served to advance the gospel”. Since, according to our argument above, this “captivity” is the Roman house arrest mentioned in Acts 28,<sup>28</sup> what Luke quotes from the apostle there could have provided a good basis for the hope of his release. This is what Paul said to his Jewish brothers and sisters in Rome who visited him at his military-guarded

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25 For example, the following authors agree with this interpretation: Fee: *Philippians*, 155, and Witherington: *Philippians*, 93.

26 Witherington: *Philippians*, 286.

27 *Ibid.*

28 Witherington gives the time of this “house arrest” (this Roman captivity of the apostle) as follows: “about AD 60–62” (*ibid.*).

accommodation (Acts 28:17–18): “Three days later he called together the local leaders of the Jews. When they had assembled, he said to them, “After three days he called together the local leaders of the Jews, and when they had gathered, he said to them, »Brothers, though I had done nothing against our people or the customs of our fathers, yet I was delivered as a prisoner from Jerusalem into the hands of the Romans. (18) When they had examined me, they wished to set me at liberty, because there was no reason for the death penalty in my case.«” He came to Rome because of his appeal, and he saw this forced situation as an “opportunity” to bear witness to the Gospel. Luke ends the book of the Acts of the Apostles in this way, referring to Paul’s work (28:30–31): “He lived there two whole years at his own expense, and welcomed all who came to him, (31) proclaiming the kingdom of God and teaching about the Lord Jesus Christ with all boldness and without hindrance.”

### *3.2. The persecutions of Paul the Apostle according to Second Corinthians*

Before the first great Roman captivity, Paul had to suffer persecutions that we might not even know about if his apostleship had not been attacked and if he had not written about them in his second letter to the Corinthians in “defence” of his apostleship. In this letter, he refers to his attack with questions (2Cor 11:21–22): “To my shame, I must say, we were too weak for that! But whatever anyone else dares to boast of – I am speaking as a fool – I also dare to boast of that. (22) Are they Hebrews? So am I. Are they Israelites? So am I. Are they offspring of Abraham? So am I.”

Based on the phrase “I am speaking as a fool”, the literature refers to a longer passage in this letter under the title “the fool’s speech”.<sup>29</sup> Paul would not write like this readily, for he considers this kind of defence to be foolish. But he narrates this account for the sake of the Corinthian church, in order to restore their relationship with Jesus Christ (see also: 2Cor 1:6; 4:5; 11:1–2; 1:9–13).<sup>30</sup> According to the questions cited above, confusion was probably caused by false teachers in the Corinthian Christian church (which was previously founded by the Apostle Paul, see: 1Cor 3:6; 2Cor 3:2–3) who placed great emphasis on the merits of their origin: the term “Hebrews” could refer to their Jewish origin and language, the term “Israelites” to the observance of religious customs and expectations, and the expression “offspring of Abraham” could refer to their inclusion in the “chain” of God’s salvation history.<sup>31</sup> On the one hand, Paul points out that all this is true for him, and then goes further than this when he asks a fourth question about the false teachers, and with his answer he begins the longer section about his sufferings (2Cor 11:23–24):

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- 29 For the expression “the fool’s speech” in the English literature, see, e.g., George H. Guthrie: *2 Corinthians (BECNT)*, Grand Rapids, Michigan, Baker Academic, 2015, 502; according to him, the speech itself is 2 Corinthians 11:22–12:10, which is introduced by a longer section (11:1–21) and is followed by an afterword (12:11–13). The term “Narrenrede” is used in German literature; see, e.g., Thomas Schmeller: *Der zweite Brief an die Korinther. Teilband 2. 2Kor 7,5–13,13 (EKKNT VIII/2)*, Neukirchen-Vluyn, Neukirchener Verlagsgesellschaft – Ostfildern, Patmos Verlag, 2015, 231; Schmeller gives this title to the longer passage in 2Corinthians 11:16–12:13.
- 30 Kruse also considers this to be one of the main goals of the letter that Paul wanted to achieve in the community of the Corinthians: “to ensure its members’ continued devotion to Christ”; Colin G. Kruse: *2 Corinthians. An Introduction and Commentary (TNTC)*, Revised Edition, Nottingham, Inter-Varsity Press, 2015, 23.
- 31 Schmeller notes that it is difficult to distinguish the content of the three terms. According to him, the first term mainly refers to language and culture, the other two mainly to religious content (Schmeller, *Der zweite Brief an die Korinther*, 250).

“Are they servants of Christ? I am a better one – I am talking like a madman – with far greater labours, far more imprisonments, with countless beatings, and often near death. (24) Five times I received at the hands of the Jews the forty lashes less one.”

In some details of the book written about the Acts of the Apostles, we have already seen above that the captivity of Paul in Philippi, Jerusalem, and Rome also started from the fact that several leaders and members of his own people could not accept his testimony about Jesus Christ as the Messiah, the Saviour, the Son of God. Some of his sufferings listed in 2 Corinthians also originated from such a background – this is indicated by the beginning of verse 24. The fact that he suffered such a beating five times by his own people, the Jews, is not mentioned in the Acts of the Apostles or even in the other apostolic letters, but is only mentioned here.<sup>32</sup> Paul then lists his persecutions and sufferings at length, among which there are more that we only read about here in the entire New Testament. Some of these sufferings are related to “nature” (e.g. starvation, shipwreck), but some indicate persecution by humans. Let’s quote a few sentences of the apostle’s report (vv. 25–26): “Three times I was beaten with rods. Once I was stoned. Three times I was shipwrecked; a night and a day I was adrift at sea; (26) on frequent journeys, in danger from rivers, danger from robbers, danger from my own people, danger from Gentiles, danger in the city, danger in the wilderness, danger at sea, danger from false brothers”. The caning (“beaten with rods”) may refer to the beatings he suffered from the Roman soldiers; we

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32 In the Old Testament, it was regulated that there should not be more than forty lashes during a punishment (Deut 25:1–3). In the time of Paul, the Jews acted in such a way that they stopped at thirty-nine lashes (see above in v. 24: “forty lashes less one”), so as not to accidentally exceed the upper limit set in the Mosaic Law. On this topic, see, for example: Guthrie: *2 Corinthians*, 556.

read about such a caning above in connection with the arrest of the apostle in Philippi (Acts 16:22–24).<sup>33</sup>

In Paul's second letter to the Corinthians, there are several details according to which the apostle's main goal was everywhere to preach the Gospel about Jesus Christ (e.g. 2Cor 1:19; 2:12; 3:4, 14; 4:5). However, the "treasure" of the Gospel is in "earthen vessels" – with this expression, Paul could also refer to his bodily "fragility" (4:7).<sup>34</sup> The weak body had to suffer many persecutions, as we can read in 2Corinthians 4:8–10: "We are afflicted in every way, but not crushed; perplexed, but not driven to despair; (9) persecuted, but not forsaken; struck down, but not destroyed; (10) always carrying in the body the death of Jesus, so that the life of Jesus may also be manifested in our bodies." Paul preached the redemptive death of Jesus (see e.g. 1Cor 2:2), and as a result he came close to death several times (see e.g. 1Cor 15:30–32; 2Cor 1:8–10). However, he did not see his persecution as a consequence of committing crimes in the legal sense, but accepted it as a suffering he gladly undertook because of his testimony about Jesus Christ. In 2Corinthians 4:11, he summarizes the final basis and goal of the persecution quoted above with another triumphant pair of opposites: "For we who live are always being given over to death for Jesus' sake, so that the life of Jesus also may be manifested in our mortal flesh."

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33 See, e.g., Mark A. Seifrid: *The Second Letter to the Corinthians (PNTC)*, Grand Rapids, Michigan–Cambridge, UK, Eerdmans, Nottingham, UK, Apollos, 2014, 429. Seifrid notes here that the soldiers carried sticks symbolizing Roman power; he affirms concerning these sticks: "They could be used not only for beatings but also for executions".

34 For example, Guthrie: *2 Corinthians*, 253–254, also refers to the fragility of earthenware, and in this connection to the passage in 2Corinthians 12:1–10, in which Paul testifies about his weakness (*ibid.*, 254).

### 3.3. *The last imprisonment of Paul*

As mentioned in connection with what was written above about the letter to the Philippians, Paul most likely escaped from his first Roman captivity and was imprisoned again after another missionary service – in this second Roman captivity he wrote his second letter to Timothy.<sup>35</sup> At that point, he no longer expected that he would be freed, but he was mentally prepared for death, which he expressed in a poetically soaring confession (2Tim 4:6–8): “For I am already being poured out as a drink offering, and the time of my departure has come. (7) I have fought the good fight, I have finished the race, I have kept the faith. (8) Henceforth there is laid up for me the crown of righteousness, which the Lord, the righteous judge, will award to me on that day, and not only to me but also to all who have loved his appearing.”<sup>36</sup> From this letter we can also learn about some of the “external circumstances” of his captivity, for example, that winter was approaching; he writes to Timothy (4:21): “Do your best to come before winter.” He also asks Timothy to bring him his cloak, which he had previously left “with Carpus at Troas” (v. 13).<sup>37</sup> During this captivity, there were those who turned away from him,

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35 See, e.g., Aída Besançon Spencer: *2 Timothy and Titus. A New Covenant Commentary (NCCS)*, Eugene, Oregon, Cascade Books, 2014, 75–76. According to Spencer, the apostle Paul was arrested in 66 AD and suffered a martyr’s death in 67 (*ibid.*, p. 76). Here Spencer mentions this as a “traditionally” held view, referring to others: “According to tradition, both Paul and Peter were executed in AD 67”; See affirms here further: “Traditionally, Paul and Peter were both killed June 29, AD 67”.

36 Spencer also points out that the second letter to Timothy is the last letter of the Apostle Paul in the New Testament canon (Spencer: *2 Timothy and Titus*, 76).

37 Yarbrough notes that this cloak may have been a “heavy garment like a blanket with a hole in it to fit over the head”, and that this cloak was also a protection against the cold of winter; Robert W. Yarbrough: *The Letters to Timothy and Titus (PNTC)*, Grand Rapids, Michigan, Eerdmans – London, UK, APOLLOS, 2018, 450.

but as Luke stayed by his side during his first Roman captivity, so here (vv. 9–11): “Do your best to come to me soon. (10) For Demas, in love with this present world, has deserted me and gone to Thessalonica... (11) Luke alone is with me.”

At the beginning of the letter, the apostle encourages Timothy to be ready to suffer for the Gospel, just as Paul suffers for it (1:8): “Therefore do not be ashamed of the testimony about our Lord, nor of me his prisoner, but share in suffering for the gospel by the power of God”. From this sentence we can learn that Paul also “suffers” for his ministry of preaching the Gospel; that is why he suffers the current captivity, and God gives him strength to endure this persecution and imprisonment.<sup>38</sup> In ancient times, captivity was associated with “shame”, and thus a prisoner’s relative and friend “shared” the prisoner’s shame in the eyes of outsiders.<sup>39</sup> However, since this captivity was for the “Gospel”, Timothy did not have to be “ashamed” of Paul. Both Timothy and Paul were able to bear suffering with the power of God’s Spirit.<sup>40</sup>

Even as he was preparing for his death, the apostle had a heart for his companions who were free to continue preaching the Gospel. He encourages Timothy to do so on several occasions in this letter (see, e.g., 2Tim 1:13–14; 2:2, 15; 3:14–17; 4:2). The apostle summarizes the essence of his preaching at the beginning of the letter by confessing that he is being persecuted for preaching the Gospel. The Gospel kept him, and he faithfully kept the Gospel all the way. He does not want to appear as a “victim” in the eyes of others, but

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38 Spencer rightly points out that the explanation of the “power” received from God can also be found in the following verses, for example in verse 9, in which the apostle Paul points to God and declares: he “saved us...”; Spencer: *2 Timothy and Titus*, 86.

39 See, e.g., Osvaldo Padilla: *The Pastoral Epistles. An Introduction and Commentary (TNTC)*, London – Downers Grove, Illinois, IVP Academic, An imprint of InterVarsity Press, 2022, 162.

40 *Ibid.*

as a witness of Jesus Christ – even if he pays for it with his life. He summarizes his life, his faith, and his hope for eternal life as follows, referring to God (1:9–12):

...who saved us and called us to a holy calling, not because of our works but because of his own purpose and grace, which he gave us in Christ Jesus before the ages began, (10) and which now has been manifested through the appearing of our Savior Christ Jesus, who abolished death and brought life and immortality to light through the gospel, (11) for which I was appointed a preacher and apostle and teacher, (12) which is why I suffer as I do. But I am not ashamed, for I know whom I have believed, and I am convinced that he is able to guard until that day what has been entrusted to me.

The apostle also looks ahead to the last times, the final judgment, when he uses the expression “that day”.<sup>41</sup> He confesses his certainty that God will grant him mercy and “acquittal” even at the final judgment.<sup>42</sup> At the end of the letter, he confirms the same thing with the image of the “crown” (as we saw above; 4:8):<sup>43</sup> “Henceforth there is laid up for me the crown of righteousness, which the Lord, the righteous judge, will award to me on that day, and not only to me but also to all who have loved his appearing.” During his earthly life, Paul stood before earthly judges several times. During these occasions he was never ashamed of the Gospel, but used these distressed situations to testify about Jesus Christ. For him, Jesus Christ is “the

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41 See, e.g., Yarbrough, *The Letters to Timothy and Titus*, 364.

42 The English term “vindicate”, which is used in this context by Yarbrough, also means this “vindication”, “acquittal” in the end times: “God will vindicate Paul at the final judgment” (*ibid.*).

43 Padilla notes that the Greek term used here, *stephanos*, which several Bible translations render as the word “crown”, was the ancient term for the victory crown given to athletes, which also referred to the reward of martyrs by God in Judaism (Padilla, *The Pastoral Epistles*, 217).

righteous judge”,<sup>44</sup> therefore he also gained strength for his earthly persecutions from the certain hope that one day he will be able to stand before this “judge”, who will give him grace and eternal life for the merit of his own redeeming death.

#### 4. Conclusion

Paul was an apostle, a “messenger” of Jesus Christ; he provided testimony regarding the assertion that his Lord sends him in all situations, as he attested that this is the sole means of salvation for all people: Jesus Christ is the Saviour. This testimony of his reached many parts of the then-known world, including several major cities, and many people became Christians based on the apostle’s preaching. However, many people listened to him with hostility; they reported and accused him repeatedly. The accusations were usually that his teachings were undermining the existing order, but the Roman authorities found on several occasions that he had done nothing that was punishable by law. On the basis of his teaching, disputes arose within the religion of Judaism, but this was not “punishable” in the eyes of Roman officials. In his letters and in the Acts of the Apostles, the apostle presents his persecutions in a way that avoids emphasising his own suffering and acting as a victim. Instead, he accepts that such persecutions are a consequence of his testimony about Jesus Christ. That’s why he was “not ashamed” even of his captivities. He also used these difficult situations to testify about his Saviour – and to set a good example for other Christian brothers and sisters. The prospect of eternal life imbued him with fortitude in the face of his present circumstances. In addition to Timothy, numerous subsequent Christians have been and continue to be in-

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<sup>44</sup> Yarbrough notes that in the Old Testament God is “the righteous Judge” (see, e.g., Ps 7:12), and Paul here refers to Christ (and his appearance at the end of v. 8) with this expression (Yarbrough, *The Letters to Timothy and Titus*, 445, here also fn. 340).

spired by the apostle's example. A concise summary of the principal themes addressed in this study can be found in a few lines of Paul's second letter to Timothy. This passage may therefore be considered a suitable conclusion to the present study (2Tim 4:16–18): "At my first defence no one came to stand by me, but all deserted me. May it not be charged against them! (17) But the Lord stood by me and strengthened me, so that through me the message might be fully proclaimed and all the Gentiles might hear it. So I was rescued from the lion's mouth. (18) The Lord will rescue me from every evil deed and bring me safely into his heavenly kingdom. To him be the glory forever and ever. Amen."

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Dóra Kertész

## FROM PERSECUTOR TO PERSECUTED

*Paul the Apostle as a Victim as Portrayed in Acts 26*

### 1. Introduction

The primary source for the comprehensive account of the life of Paul the Apostle is the Acts of the Apostles penned by Luke. Chapters 13 to 28 recount Paul's life and the events related to him. Making up a third of Acts, chapters 19 to 28 recount the apostle's arrest, his interrogations, and then his voyage to Rome and house arrest there. Such an extensive account of this period reveals that, including his arrest, captivities, and interrogations, the life of Paul attests to the *fulfilment of God's plan*. During his interrogation held before Agrippa, Paul stands before the king and the attendants as a *victim*, but for the readers of Luke's work Paul still appears as a *witness*, whose life is a proof of God's mighty acts. Focused on analysing the Apostle Paul as a victim, with particular emphasis on chapter 26 of the Acts of the Apostles, this paper first points out the role played by the speeches in Luke's work and the relationship between that role and the main goals of his narrative. Examining the apologia, we come to the conclusion that instead of defending himself, Paul testifies of the fact that he went from *persecutor* to *persecuted*. Therefore, albeit being a *victim*, he stands before his audience (and readers, even today) as a *witness*.

## 2. Main introductory issues

### 2.1. *The authorship and genre of the Acts of the Apostles*

There is basically a consensus in the literature that the Acts of the Apostles had originally been penned as the second part of – sequel to – the Gospel of Luke, without a separate title given by the author. The two parts of Luke-Acts were separated during the formation of the canon. Part one was grouped with the other three Gospels, while part two, now separated, was given several titles at first. Tertullian refers to the second part as “The Memorandum of Luke”, while it is included in the Muratorian Canon as the “Acts of All the Apostles”. The title “Acts of the Apostles”, still used today, first appeared in the Anti-Marcionite prologues and in III.13.3 of Irenaeus’s *Adversus Haereses*.<sup>1</sup> Luke was generally considered the author in the early church tradition, with no other name ever linked to it.<sup>2</sup>

A specific genre in Hellenistic literature, “acts” (πράξεις) mostly described the deeds of a prominent person, or even a group. The works centred around the life of the protagonist – a divine or Godsent man –, recounting the miraculous events related to him.<sup>3</sup> In the New Testament, the only work standing for this genre is the Acts of the Apostles.<sup>4</sup> However, as emphasized in the literature, “acts” did not constitute a precisely defined single genre in antiquity. Summarising the works of Hengel, Sterling, and Witherington, Bock points out that the Acts of the Apostles is closer to the ancient historical

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1 D. A. Carson – Douglas J. Moo: *An Introduction to the New Testament*, Grand Rapids, Zondervan, 2005, 285.

2 Balla Péter: *Az újszövetségi iratok története*, Budapest, Károli Egyetemi Kiadó, 2008, 166–167.

3 Darrell L. Bock: *Acts*, Grand Rapids, Baker Academic, 2007, 1–2.

4 Balla: *Az újszövetségi iratok története*, 163.

monographs than to the genre indicated in the inscription of the work, that is, “acts” in the Greco-Roman sense.<sup>5</sup>

## 2.2. *The goal and language of the Acts of the Apostles*

As opposed to the three evangelists who recorded only the events of Jesus’s earthly life, Luke, apart from the life of Christ, recorded also the history of the first Christians. The reason for that was aptly formulated by Van Unnik in the title of a related paper: “The ‘Book of Acts’ the Confirmation of the Gospel”. Van Unnik also points out that Luke’s Gospel describes Jesus’s redemptive work and its reality, while the Acts of the Apostles shows the way the church proclaimed and confirmed this work and the message it conveyed. The first part of Luke–Acts presents God’s plan of salvation and its fulfilment in Jesus as a series of events limited in time and space. The second part recounts the way the message spread from Jerusalem all the way to Rome, changing the lives of countless people over the course of a few decades.<sup>6</sup> Carson and Moo emphasize that Luke’s primary purpose was to edify and strengthen the community of believers by narrating how God’s plan, fulfilled in Jesus, continued to unfold in the history of the early church.<sup>7</sup>

In his monograph, John Squires explores the fulfilment of God’s plan in Luke–Acts. He points out that, running through the entire work, God’s plan is a distinctively Lukan theme, emphasized specifically in the speeches of Acts. The several thematic strands underline the *continuous realization of God’s plan*: through the life of Jesus in the Gospel, and through the early church in Acts. Squires points

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5 Bock: *Acts*, 3.

6 W. C. van Unnik: *Sparsa Collecta. The Collected Essays of W. C. van Unnik. – Part 1: Evangelia, Paulina, ACTA*, Leiden, Brill, 1973, 340–373.

7 Carson–Moo, *Introduction*, 321.

out that by focusing on the fulfilment of God's plan, Luke intends to explain, strengthen, and expand his readers' faith.<sup>8</sup>

The first verse of the prologue reveals Luke's thoughts on his own work: "In the first book, O Theophilus, I have dealt with all that Jesus began to do and teach" (Acts 1:1)<sup>9</sup>. John Stott argues that Luke distinguished between two stages of Christ's ministry, as the Acts of the Apostles also recounts the work of Jesus, all that he *continued* to do and teach by the Holy Spirit, especially through his apostles. According to Stott, instead of "Acts of the Apostles", a more accurate – though cumbersome – title would be something like "The Continuing Words and Deeds of Jesus by his Spirit through his Apostles".<sup>10</sup>

Haenchen highlights that Luke's language and style stand out among the works included in the New Testament. Similar to Luke-Acts in length, Xenophon's *Memorabilia* was written with a more reduced vocabulary, while the first four volumes of *Anabasis* hardly exceed the vocabulary used by Luke. In agreement with several other authors, Haenchen found that the most striking literary feature of Luke's oeuvre is the style resembling the Septuagint (LXX): nine tenths of the words used by Luke can be found in the text of the Septuagint.<sup>11</sup>

Howard Marshall points out that Luke's prologues (Luke 1:1–4 and Acts 1:1–3) underpin the finding that he had the ability to write in a different style, showing that the literary language of his works was a conscious choice. Rightly, Marshall concludes that Luke's intent was to write a *sacred story*. He believed that the events recorded in

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8 John T. Squires: *The Plan of God in Luke-Acts* (SNTS Monograph Series 76), Cambridge, Cambridge University Press, 1993, 1.

9 English Standard Version (ESV)

10 John R. W. Stott: *The Message of Acts. The Spirit, the Church & the World*, Revised Edition, Leicester, Inter-Varsity Press, 2020, 12–14.

11 Ernst Haenchen, *The Acts of the Apostles*, ford. Basil Blackwell, Philadelphia, The Westminster Press, 1971, 72.

his works were the fulfilment of prophecies included in the Holy Scripture (Old Testament), and, thus, perceived the history of the early church as the continued work of God.<sup>12</sup> Therefore, the events recorded in Acts are in continuity with God’s mighty acts included in the Old Testament, and also with Christ’s ministry attested to by the Gospels.<sup>13</sup>

### 2.3. *The structure of the Acts of the Apostles*

The Acts can be divided into seven major units. Each part presents a new geographic and/or cultural venue, following a “road map” introduced in verse 8 of chapter 1:<sup>14</sup> “But you will receive power when the Holy Spirit has come upon you; and you will be my witnesses in Jerusalem, in all Judea and Samaria, and to the ends of the earth.”<sup>15</sup> This is fulfilled throughout the work: the gospel message spreads to Jerusalem in chapters 1–7, to Judea and Samaria in chapters 8–12, and all the way to Rome in chapters 13–28.

Paul’s arrest, interrogations, and his later voyage to Rome and his house arrest there is recounted in the last, seventh main part (Acts 19:21–28:31). This last, longest unit makes up a third of the work. Marshall found that described at such length, Paul’s captivity is instrumental in achieving a key objective of the work: Luke strove to show that the spread of the Christian faith is not hindered even by persecution. Moreover, Luke intended to highlight a cruel reality of life: no matter how innocent they are, Christians can still expect to *fall victim to injustice*.<sup>16</sup>

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12 Howard I. Marshall: *The Acts of the Apostles. An Introduction and Commentary*, Grand Rapids, Wm. B. Eerdmans Publishing Company, 1980, 18.

13 Marshall: *The Acts of the Apostles*, 23.

14 Carson–Moo: *Introduction*, 286–290.

15 Bible quotes follow The New Oxford Annotated Bible (New Revised Standard Version).

16 Marshall: *The Acts of the Apostles*, 27–28.

The first verse of the seventh part reveals that having accomplished his third mission, Paul goes to Jerusalem with the intention to see Rome thereafter (Acts 19:21).<sup>17</sup> Here, for the first time, Luke mentions Rome as Paul's planned mission destination. According to Carson and Moo's introductory work, despite the length of the journey, Luke's narrative in the following chapters is guided by the goal of reaching Rome as a destination.<sup>18</sup> A significant milestone along the way is the apologia included in chapter 26.

Heading to Jerusalem, Paul advanced in a fast pace, eager to reach the city by the day of Pentecost (20:16). In Miletus, he sent for to the elders of Ephesus to say farewell to them. His speech reveals the key drive of his mission as a whole: *a life of obedience to God's call*. Although foreseeing the imprisonment and misery awaiting in Jerusalem, Paul remains loyal to his ministry (20:23). As he puts it: "But I do not count my life of any value to myself, if only I may finish my course and the ministry that I received from the Lord Jesus, to testify to the good news of God's grace" (20:24). Here, the apostle defines the purpose of his ministry as *to testify to the good news of God's grace*. The meaning of the Greek term διαμαρτύρομαι is to testify, that is, to make a solemn declaration about the truth of something.<sup>19</sup> Paul's purpose in life is therefore consistent with *Jesus' command* that provides the key agenda of the Acts of the Apostles: to be the Lord's witness to the ends of the earth (1:8). The uniqueness of the interrogation described in chapter 26 is the steadfast determination to pursue that purpose.

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17 In the following, when making reference to the Acts of the Apostles, only the numbers of the chapter and the verse will be indicated.

18 Carson–Moo, *Introduction*, 289.

19 W. Bauer – F. W. Danker – W. F. Arndt – F. W. Gingrich: *Greek-English Lexicon of the New Testament and Other Early Christian Literature*, 4th rev. ed., Chicago, University of Chicago Press, 2021, 206–207. (This work will be referred to as BDAG.)

After his arrival to Jerusalem, Paul visited the temple. Some Jews from Asia Minor stirred up the crowd, alleging that Paul took Greeks to the part of the temple where only Jews were allowed to enter. The riot got out of control and the crowd dragged Paul out of the temple to kill him. The tribune of the cohort intervened, arrested Paul, and the soldiers took him to the barracks (21,27–22,24). Thus, the process of interrogation began, first before the Jewish Council, then before governors Felix and Festus, and, eventually, before King Agrippa.

#### 2.4. *Speeches in the Acts of the Apostles and their historical reliability*

Speeches formed a crucial part of Greco-Roman historiography. Thucydides divided his historical work into deeds and speeches.<sup>20</sup> In the literature, the role played by the speeches in the Acts of the Apostles and the historical reliability of the work itself are closely connected. Harboursing distrust of Luke's historiographic method, many scholars are also sceptical about the historical credibility of the speeches included in Acts. First developed by Martin Dibelius, the theory that the speeches attest to Luke's creativity has widely spread in the scholarly research.<sup>21</sup> Dibelius applied form criticism to the second part of Luke-Acts, concluding that the material used by Luke can be separated from the rest of the Acts, which, thus, can be considered the result of the author's own creative writing. As pointed out by F. F. Bruce, the redaction criticism applied by Hans Conzelmann and Ernst Haenchen is based directly on Dibelius's view.<sup>22</sup> Péter Balla's summary finds that the core arguments of critical

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20 Derek K. Hogan: *Forensic Speeches in Acts 22-26 in their Literary Environment, A Rhetorical Study*, Ph.D. Dissertation, Baylor University, 2006, [https://baylor-ir.tdl.org/bitstream/handle/2104/4848/derek\\_hogan\\_phd.pdf?sequence=1&isAllowed=y](https://baylor-ir.tdl.org/bitstream/handle/2104/4848/derek_hogan_phd.pdf?sequence=1&isAllowed=y), 99. (Accessed: 23 April 2023)

21 Balla: *Az újszövetségi iratok története*, 177.

22 F. F. Bruce: *The Acts of the Apostles. Greek Text with Introduction and Commentary*, Grand Rapids, Wm. B. Eerdmans Publishing Co., 1990, 36.

scholars generally include the similarity of the style of each speech and other narrative parts, and the historiographic model of Thucydides (allegedly contradicting the model of Polybius) followed by Luke.<sup>23</sup> Alongside several contemporary scholars, based on various aspects, we can reject these accusations.

According to Carson and Moo, the uniform style of the speeches only indicates that Luke did not pen a verbatim transcript of what had been said; in any way, that would not have been possible in the case of a speech delivered originally – for example – in Aramaic. Nonetheless, condensed speeches, summaries, and paraphrases can convey the message just as accurately.<sup>24</sup>

As pointed out by Péter Balla, Thucydides, in fact, remarked that sometimes quoting the original speeches verbatim was not possible, so he had to rely on the account of others. Accordingly, this does not mean that Thucydides himself created the speeches he wrote, but that he always strove to reflect the line of arguments of the original speech in them.<sup>25</sup> Summarizing the historical value of the speeches, DeSilva found that according to the standard of ancient historiography, the speech had to be consistent with the setting, the person who delivered the speech, and the occasion. The content of the speech was to be conveyed accurately where possible, but the linguistic expression was to the author's ingenuity. Therefore, Luke went to great lengths to follow the ancient historiographic tradition, even if he used the speeches to highlight certain events described in Acts.<sup>26</sup>

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23 Balla: *Az újszövetségi iratok története*, 177–178.

24 Carson–Moo, *Introduction*, 320.

25 Balla: *Az újszövetségi iratok története*, 177–178.

26 David A. deSilva: *An Introduction to the New Testament. Contexts, Methods and Ministry Formation*, 2nd ed., Westmont, InterVarsity Press, 2018, 308.

### 3. “Brought before kings and governors...”

Examining the Apostle Paul’s apologia delivered before Agrippa from the above aspect, we find that – although standing as a *victim* before the king and the attendants – for the readers of Luke’s work Paul still appears as a *witness*, whose life is a fulfilment of God’s plan. It would be easy to see Paul as someone who fell victim to the unrighteousness of Jewish leaders, the partiality of the Roman governors, or simply to the calamitous circumstances. However, Paul’s life, including his arrest, captivities, and interrogations, rather attests to the *fulfilment of God’s plan*.

#### 3.1. *Paul’s arrest in Jerusalem and the following apologias*

Paul’s defense speeches are included in chapters 22, 24 and 26. The climax of these chapters is the last apologia delivered before King Agrippa. In chapter 22, Paul addressed the people, who, however, refused to hear him out. The day after, Paul was brought before the council – the supreme tribunal of the Jews – by tribune Lysias to find out what Paul was charged with. Kilgallen points out a parallel with chapter 4 of the Acts of the Apostles, which recounts that Peter and John were captured and later arrested by the priests and Sadducees. Luke notes that the religious leaders were much annoyed because the apostles were teaching the people and proclaiming that in Jesus there is resurrection from the dead (4:2).<sup>27</sup> In Paul’s case, too, the *hostile attitude of the Sadducees on resurrection* led to the heated debate between the members of the council that cut Paul’s speech short. Thereafter, the apostle was heard in Caesarea before Governor Felix, with the attendance of the high priest, members of the Sanhedrin, and an attorney called Tertullus (24:1–23). Kilgallen notes that this

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<sup>27</sup> John T. Kilgallen: *Paul before Agrippa (Acts 26,2-23): Some Considerations in Biblica*, Vol. 69, No. 2, Leuven, Peeters Publishers, 1988, 172.

is the only actual hearing compliant with Roman law mentioned in the Acts of the Apostles in relation to Paul.<sup>28</sup> Reluctant to make a decision, Felix adjourned the hearing, leaving Paul in custody. Felix's successor, Festus, too, postponed the judgement to do the Jews a favour (25,9).

The Jews strove to persuade the governors to embrace an interpretation of Paul's teaching according to which the apostle agitated among the Jews and would stir riots all over the Empire (24:5). Being well aware of that the Romans would not be willing to convict someone for purely religious reasons, the Jews intended to add a *political twist to an accusation based solely on a religious matter*.<sup>29</sup> Nonetheless, the representatives of Roman law soon saw through the twisted arguments, and declared Paul innocent several times during the procedure (23:29; 25:18; 25:25). As Sherwin-White aptly argues, Paul's trial was complicated and prolonged because the charges against him were of *political nature*, thus the governors were reluctant to drop them. On the other hand, Paul's accusers offered theological evidence, which was difficult for the Romans to comprehend.<sup>30</sup>

Stott highlights that the procedure of Roman lawsuits consisted of three stages. First the charges were formulated, then underpinned by the prosecutor. This was followed by the formal accusation. In the third step, the case was heard by an official with *imperium* (the supreme executive power vested in the major Roman officials). The accuser and the accused were both present at the hearing.<sup>31</sup> Nonetheless, the Jewish leaders who accused Paul had *no proof of their charges* (25:7), thus not even the first basic condition of the court procedure was fulfilled.

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28 Kilgallen: *Paul before Agrippa*, 172.

29 H. N. Sherwin-White: *Roman Society and Roman Law in the New Testament*, London, Oxford University Press, 1963, 50.

30 Sherwin-White: *Roman Society and Roman Law*, 51.

31 Stott: *The Message of the Act*, 349.

### 3.2. *Provocatio ad Caesarem*

The prolonged trial, the two years of captivity, and Festus's reluctance to render a judgement drove Paul to appeal to the emperor. Festus, too, was aware of the fact that no more hearings were necessary (25:25), yet – knowing that it would have led to Paul's release – he was disinclined to openly admit it. Having understood the situation, Paul appealed to the emperor relying on his Roman citizenship.

Witherington argues that there were probably not many Roman citizens living in Judea in the 50s AD, and even less who were also Jews. Therefore, probably only few precedents were available in relation to a complex case like Paul's who was apparently caught between Jewish and Roman law. Witherington also notes that administering justice must have been a puzzle for the governor in this case, as the accusers emphasized *political charges* but in fact intended to *judge Paul themselves*, while Paul pointed out the *theological issues* and insisted on the being tried in the *Roman justice system*.<sup>32</sup>

Sherwin-White points out that Paul's appeal was not an *appellatio* – which spread later as an appeal filed to a higher-level court against the decision of a lower-level court – but the exercise of the *ius provocationis* of Roman citizens. This right provided protection against execution or torture without a fair trial, and against being tried by a court outside Italy.<sup>33</sup> As regards Paul's appeal to the emperor, we should discuss the aforesaid destination: Rome. The Lord assured Paul that he would bear witness to Him in Rome (23:11). Therefore, Paul made the next step with his destination in mind and most likely referred to that before Festus, expounding that he should (δεῖ) be tried before the emperor's tribunal (25:10).

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32 Ben Witherington III: *The Acts of the Apostles. A Socio-Rhetorical Commentary*, Grand Rapids, Wm. B. Eerdmans Publishing Co., 1998, 724–725.

33 Sherwin-White: *Roman Society and Roman Law*, 68.

### 3.3. *Representatives of Roman law in Luke's narrative*

Up to that point, Paul defended himself before Felix and Festus. Luke's portrayal of the two governors is not positive: Felix hoped that he would receive money from Paul (24:26), and both Felix and Festus wanted to grant the Jews a favour (24:27; 25:9). The time had come, however, for Paul to stand before King Herod Agrippa II, officially named Marcus Julius Agrippa. Alongside others, Kilgallen points out that in the Lukan narrative the king represents a connection between the Roman Empire and the Jews.<sup>34</sup> Both Paul and Festus welcomed the attendance of the king, hoping that he would comprehend Paul's defence related to the Jewish religion and be able to decide whether the apostle posed a threat to the ruler of the Roman Empire.<sup>35</sup> In Luke's narrative, the presence of Agrippa is an indication to the reader that the apologia that follows will be solidly grounded in Jewish theology.

Agrippa's presence is also crucial from another perspective. It fulfils Jesus's prophecy formulated in Luke 21:12–13: "But before all this occurs, they will arrest you and persecute you; they will hand you over to synagogues and prisons, and you will be brought before kings and governors because of my name. This will give you an opportunity to testify." Yamazaki-Ransom argues that Roman officials should be viewed in a broader context of the salvation history: in the framework of the relationship with God and God's people. He also points out an eschatological aspect, since the above prophecy is included in Jesus's speech on the signs of the end times in Luke's Gospel. Even though the Acts of the Apostles reveals no punishment either of the governors or of the Jewish leaders, the message of such punishment is implied in the overall eschatological frameworks of the narrative of the hearings, in the reference made to the coming

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34 Kilgallen: *Paul before Agrippa*, 170.

35 Kilgallen: *Paul before Agrippa*, 171.

judgement (24:25), and in the proclamation of the resurrected Jesus as Lord (26:15).<sup>36</sup>

#### 4. *Apologia Pro Vita Sua*

It follows from the above that the hearing before Agrippa aimed at *the sentencing of a man proclaimed innocent* by the Roman authorities in a religion-based case that did not violate the Roman law or jeopardized the emperor. Witherington notes that the series of court hearings in Luke's work reaches its climax at this point. Moreover, this is the climax of all Paul's speeches recorded by Luke. The *apologia* before Agrippa is the longest of Paul's defense speeches.<sup>37</sup> As F. F. Bruce put it, in the quiet, dignified environment of the emperor's hearing chambers, Paul delivered the speech that is worthy to be called his *Apologia Pro Vita Sua*.<sup>38</sup> According to Bock, two main themes are featured in the *apologia*: a testimony to the cross and the insistence that the new faith represented by Paul is in continuity with the religion of the Jews.<sup>39</sup>

##### 4.1. *The structure of the apologia*

The *apologia* delivered before Agrippa is largely consistent with the structure of the speeches of antiquity: after a short introduction, Paul gives an account of the events, underpins his own arguments, refutes the charges against him, and finally summarizes his message in the conclusion. Nonetheless, Derek Hogan points out that due to the unusual nature of the interrogation, we should not strive to find all of

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36 Kazuhiko Yamazaki-Ransom: *The Roman Empire in Luke's Narrative*, Library of New Testament Studies, London, T&T Clark International, 2010, 157–158.

37 Witherington: *The Acts of the Apostles*, 735.

38 Bruce: *Acts of the Apostles*, 488.

39 Bock: *Acts*, 705.

the elements of ancient forensic speeches in this particular apologia.<sup>40</sup>

Hogan summarizes the proposals for the division of the speech suggested so far in the literature: Kennedy: 26:2–3: *exordium*, 26:4–18: *narratio*, 26:19–23: *peroratio*; Neyrey: 26:2–5: *exordium*, 26:6–8, 16–20: *narratio*, 26:12–18, *probatio*; Long: 26:2–3: *exordium*, 26:4–11: *narratio*, 26:12–18: *probatio*, 26:19–23: *rebutatio*; Winter: 26:2–3: *exordium*, 26:4–18: *narratio*, 26:19–20: *probatio*, 26:21: *rebutatio*, 26:22: *peroratio*; Witherington: 26:2–3: *exordium*, 26:4–21: *narratio*, 26:22–23: *propositio*, 26:25–26: *rebutatio*, 26:27–29: *peroratio*.<sup>41</sup> Each of the abovementioned scholar found that the speech begins with an *exordium*, where Paul expresses his joy over the fact that he had the opportunity to bring his case before Agrippa. All but Neyrey also agree on that the *narratio*, making up a significant part of the apologia, begins with verse 4. The key differences in the scholars' view concern the structure of the second part of the speech. Three scholars believe that the closing verses should be included in the *peroratio*, one would classify them in the category of *probatio* and one in the *rebutatio*. It follows that the special content of the apologia allows for various results in terms of determining its structure.

Hogan argues that one of the reasons why the scene is difficult to analyse from the aspect of forensic rhetorical categories is that it does not depict a formal trial. Even though in verse 2 Paul says that he would make his defence against all the accusations of the Jews, Festus had already decided that the charges brought by the Jewish leaders are not eligible for Roman proceedings (25:19). Therefore, Paul's speech is not a standard apologia to refute the accusations brought against him, as those accusations are irrelevant, *negligible from the aspect of Roman law*. Moreover, at that moment, the governor was

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40 Derek K. Hogan: *Forensic Speeches in Acts 22-26 in their Literary Environment, A Rhetorical Study*, Ph.D. Dissertation, Baylor University, 2006, [https://baylor-ir.tdl.org/bitstream/handle/2104/4848/derek\\_hogan\\_phd.pdf?sequence=1&isAllowed=y](https://baylor-ir.tdl.org/bitstream/handle/2104/4848/derek_hogan_phd.pdf?sequence=1&isAllowed=y), 173. Accessed: 23 April 2023)

41 Hogan: *Forensic Speeches*, 170–171.

still uncertain about what charges to bring against Paul so that he could send the apostle before the emperor. Hogan notes that this fact has often been overlooked in the literature.<sup>42</sup>

With a view to all that, we might as well say that Paul fell victim to the unrighteous intentions of the Jewish leaders, since the accusations that brought him before the Roman court were not only untrue but also irrelevant. Yet, the next part of the apologia reveals that Paul in fact uses his own hearing to testify to the good news of God's grace. In this way, even though he *is a victim*, he stands before his audience *as a witness*.

#### 4.2. Agrippa's permission to deliver the speech (26:1)

Verse 1 of chapter 26 starts with a remarkable twist: not Festus but Agrippa gives Paul permission to speak: "Agrippa said to Paul, 'You have permission to speak for yourself.' Then Paul stretched out his hand and began to defend himself" (26:1). As pointed out by Witherington, with this instance, Luke shows his readers that Paul addresses his apologia to Agrippa, and, thus, the speech will have a personal character.<sup>43</sup>

According F.F. Bruce, Paul's outstretched hands represent a greeting of respect to the king,<sup>44</sup> while Keener sees it as a rhetorical gesture typical of the period.<sup>45</sup> Luke uses the verb ἀπολογέομαι to indicate the nature of the speech, which means an apologia delivered by the accused in his own defence against charges considered untrue.<sup>46</sup> Witherington, on the other hand, notes that Paul's apologia is special because it resembles a testimony given by a witness, not a speech delivered in defence against the accusations.<sup>47</sup> There is a

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42 Hogan: *Forensic Speeches*, 172.

43 Witherington: *The Acts of the Apostles*, 738.

44 Bruce: *Acts of the Apostles*, 496.

45 Craig S. Keener: *Acts*, Cambridge, Cambridge University Press, 2020, 581.

46 BDAG, 102.

47 Witherington, *The Acts of the Apostles*, 736.

tension between the *form* and the *content* of the speech. The court hearing that we see gives the speech a well-defined context. On the other hand, the content is aligned with the purpose indicated by Paul himself in the apologia: the main drive of his life, since the resurrected Jesus called out to him when travelling to Damascus: “I have appeared to you for this purpose, to appoint you to serve and testify to the things in which you have seen me and to those in which I will appear to you” (26:16). Thus, God’s plan is fulfilled in Paul’s speech. On the other hand, the main agenda of Luke’s work is also fulfilled, summarized by the mission mandate given by Jesus’s ascension: “But you will receive power when the Holy Spirit has come upon you; and you will be my witnesses in Jerusalem, in all Judea and Samaria, and to the ends of the earth (1:8). Fulfilling this, even as *the accused*, Paul stands before the court as a *witness*.

#### 4.3. *Exordium* (26:2–3)

An important element of the speech, the *captatio benevolentiae* – capture of the benevolence of the king – introduces Paul’s speech in verses 2 and 3. Paul articulates his intention to make his defence against all the accusations the Jews brought against him. As Witherington points out, this intention is realized only partially, since Paul does not mention the charges brought against him but instead rephrases the actual reason of the lawsuit.<sup>48</sup> The verb ἐγκαλέω (to accuse someone, to bring charges against<sup>49</sup>) is in the passive voice and present continuous tense (*praesens imperfectum passivum*), indicating that the accusation is an ongoing process. Paul then addresses Agrippa as someone who is especially familiar with all the customs and controversies of the Jews and begs him to listen patiently.

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48 Witherington, *The Acts of the Apostles*, 739.

49 BDAG, 242.

#### 4.4. *Paul as a young Pharisee (26:4–5)*

Paul mentions his youth at the beginning of the *narratio*: his was a life spent from the beginning among his own people and in Jerusalem. Also, says Paul, the Jews had known for a long time, if they are willing to testify, that he belonged to the strictest sect of their religion and lived as a Pharisee. The wording of these sentences reveals Paul's literate Greek, whose quality would gain the approval even of an audience trained in rhetoric: for example, he uses the *praesens perfectum* form (ἴσασι) of the verb οἶδα (to have information about, know, be aware of, recognise<sup>50</sup>). According to Culy and Parsons, this is the only passage in the New Testament where instead of οἶδασι, the older literary form of the *praesens perfectum* is used.<sup>51</sup> Keener points out that making references to witnesses, public knowledge, the information available to the audience, and youth were established rhetoric tools in antiquity. Paul refers to his widely known youth, well known also by the Jews *if they are willing* to testify.<sup>52</sup>

#### 4.5. *The Resurrection Hope (26:6–8)*

In verse 6, Paul clearly explains that he stands on trial on account of his hope in the promise made by God to his ancestors. This is completely different to the charge that had so far been brought against him. The first accusation is mentioned in chapter 21, shouted by the Jews from Asia Minor, stirring up the crowd: “This is the man who is teaching everyone everywhere against our people, our law, and this place; more than that, he has actually brought Greeks into the temple and has defiled this holy place” (21:28). The next accusation was formulated by an attorney named Tertullus before

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50 BDAG, 615–616.

51 Martin M. Culy – Mikeal C. Parsons: *Acts. A Handbook on the Greek Text*, Waco, Baylor University Press, 2003, 491.

52 Keener: *Acts*, 582–583.

Felix: “We have, in fact, found this man a pestilent fellow, an agitator among all the Jews throughout the world, and a ringleader of the sect of the Nazarenes. He even tried to profane the temple, and so we seized him, and we would have judged him according to our law” (24:5–6). Thus, the content of the charges remains unchanged, but the wording differs. Kilgallen argues that Tertullus focused on showing the Roman officials that Paul was just as dangerous to the Roman peace as to the tenets of the Jewish religion –the accused is more likely to be convicted if presented as a *political revolutionary*.<sup>53</sup> The charges brought against Paul by his accusers overlap at certain points. In each case, the main motifs are the people (λαός), teaching against the law (νόμος) and the place (τόπος), and the profanation of the temple (ἱερόν). Nonetheless, behind all that lies a single central truth: Jesus and the faith in him. Jesus is the reason of the change in terms of the people, the law, and the sacred place.

Accordingly, the charges – the grounds for his arrest – had been formulated by Paul in various ways since the beginning of the trial. In the brief speech held before the council, he said the following: „Brothers, I am a Pharisee, a son of Pharisees. I am on trial concerning the hope of the resurrection of the dead” (23:6). Later, in response to Tertullus’s words spoken before Felix, Paul explained that he worshipped the God of his ancestors, believing in “everything laid down according to the law or written in the prophets” (24:14). Paul’s hope in God is the very hope accepted by his accusers: “that there will be a resurrection of both the righteous and the unrighteous” (24:15). Thus, ironically, Paul was charged with something that was *identical* to the belief of his accusers. After two years of custody, Paul said the following in his defence before Festus: “I have in no way committed an offense against the law of the Jews, or against the temple, or against the emperor” (25:8).

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53 Kilgallen: *Paul before Agrippa*, 13.

In his defense speech delivered before Agrippa, Paul explains that the content of the accusation against him – the faith in resurrection – is in continuity with the Jewish religion, which, in fact, was a *religio licita* in the Roman Empire, and did not violate Roman law in any way: “And now I stand here on trial on account of my hope in the promise made by God to our ancestors, a promise that our twelve tribes hope to attain, as they earnestly worship day and night. It is for this hope, your Excellency, that I am accused by Jews! Why is it thought incredible by any of you that God raises the dead?” (26:6–8). Pesch notes that here Paul points out the inconsistency on the part of his accusers, who *betray their own faith*.<sup>54</sup>

Verse 6 (καὶ νῦν ἐπ’ ἐλπίδι τῆς εἰς τοὺς πατέρας ἡμῶν ἐπαγγελίας γενομένης ὑπὸ θεοῦ ἕστηκα κρινόμενος) can be translated also as follows: And now for the hope of the promise made to our fathers by God, I stand here judged. As pointed out by Culy and Parsons, the *aoristos participium medio-passivum* form (γενομένης) of the verb γίνομαι (to come into existence, be created, become something<sup>55</sup>), alongside the preposition ὑπό, emphasises the acting party from whom the action in question originates. This grammatical structure highlights the one who is responsible for the noun (here: ἐπαγγελίας) modified by the *participium*. Thus, by saying the above words, Paul confirms that the promise due to which he was accused originates from God.<sup>56</sup>

The New Oxford Annotated Bible provides the following translation of the question included in verse 8: “Why is it thought incredible by any of you that God raises the dead?”. Yet, based on the original text (τί ἄπιστον κρίνεται παρ’ ὑμῖν εἰ ὁ θεὸς νεκροὺς ἐγείρει;), this sentence can be translated also as follows: Why is it *judged* incredible with you if God does raise the dead? The same verb κρίνω (*passivum*:

54 Rudolf Pesch: *Die Apostelgeschichte: 2. Teilband (Apg 13-28)*, Zürich, Benziger Verlag, 1986, 276–277.

55 BDAG, 173–176.

56 Culy–Parsons: *Handbook*, 491–492.

to judge, criticize, condemn<sup>57</sup>) – which was in *participium imperfectum passivum* in verse 6 – is in *praesens imperfectum passivum* here. Thus, Paul’s rhetorical question also underpins that the charges brought against him concern his faith in resurrection. Keener notes that in certain cases, historians of the antiquity argued to support events that otherwise seemed unlikely. Paul has no doubt about that God raises the dead (26:8), since he himself met the one raised by God on his way to Damascus (26:15).<sup>58</sup>

Therefore, we might say that Paul fell victim to the partiality of the Roman governors: it should have been obvious to them that no charges brought against the apostle constituted a violation of Roman law, but he was accused based on controversial religious issues (25:18–19). Yet, the following part of the apologia clearly shows that despite being a *victim*, Paul stands before his audience as a *witness*, whose life is a fulfilment of God’s plan.

#### 4.6. Paul as a persecutor (26:9–11)

In verses 26:9–11, Paul recounts his former role as persecutor. According to Keener, the apostle thus confirms the credibility of his testimony to Christ, which is not the result of Paul’s own premises: “Indeed, I myself was convinced that I ought to do many things against the name of Jesus of Nazareth” (26:9).<sup>59</sup> Standing before his audience as the one who is *persecuted*, Paul had once been a *persecutor* himself. As pointed out by Culy and Parsons, the personal pronoun in verse 9 is indicated alongside a reflexive pronoun (Ἐγὼ μὲν οὖν ἔδοξα ἑμαυτῷ), putting strong emphasis on the speaker, highlighting the personal character of the account.<sup>60</sup> F. F. Bruce argues that Paul uses the emphasized personal pronoun to point out that while he

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57 BDAG, 502–504.

58 Keener: *Acts*, 584.

59 Keener: *Acts*, 584.

60 Culy–Parsons: *Handbook*, 493.

used to be a Pharisee, thus he had believed in resurrection, he himself considered Jesus's resurrection to be impossible and felt obliged to fight against such heresy.<sup>61</sup>

#### 4.7. *A light from heaven (26:12–15)*

The Acts of the Apostles recalls the story of Paul's calling three times. The first is placed in the account of the events narrated by Luke (9:1–19), while in the other two cases, the calling is recounted by Paul's own words (22:1–21; 26:1–29).

A paper authored by Charles Hedrick provides a summary analysis concerning the three recounts of the calling. Hedrick summarizes the history of the scholarly research and notes that a detailed comparative analysis is yet to be prepared from the aspect of Luke's literary method. He argues that while the three accounts share similar motifs and purport to describe the same incident, they utilize different literary modes.<sup>62</sup>

According to Hedrick, the differences and "contradictions" among the three accounts are to be explained by Luke's literary technique. He finds that facts necessary for understanding the event in one of the narratives are provided in the others. In fact, the complete story of Paul's conversion can only be determined by bringing together features from all three narratives, as the entire story is not completely narrated in any of the three accounts.<sup>63</sup>

We agree with Hedrick on that the tensions between the three accounts should not be considered corrections or modifications made by Luke, and the possible contradictions should not be seen as mistakes or inattention on Luke's part. Nonetheless, the reasons

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61 Bruce: *Acts of the Apostles*, 499.

62 Charles W. Hedrick: Paul's Conversion/Call. A Comparative Analysis of the Three Reports in Acts in *Journal of Biblical Literature*, Sep. 1981, Vol. 100, No. 3, Atlanta, The Society of Biblical Literature, 1983, 417.

63 Hedrick: *A Comparative Analysis*, 432.

underlying the differences between the three narratives should not necessarily be attributed only to Luke's theologically and stylistically motivated goals set as a historian. Perhaps the differing narratives of the conversion story are simply the result of historical reality. Paul always adjusts his speeches to his audience – the same is true in the case of the apologia delivered before Agrippa.

Paul quotes Jesus's words said in his vision as follows: "Saul, Saul, why are you persecuting me? It hurts you to kick against the goads" (26:14). Keener points out that this was a widely known Greek proverb in antiquity, referring to the "mad futility of opposing deity".<sup>64</sup> According to Culy and Parson, this idiom expresses when someone hurt themselves while actively resisting authority, causing themselves damage or suffering as a result of their own reaction.<sup>65</sup> Agrippa had no problem understanding this expression, while the same proverb would have been useless in Paul's speech delivered before his people (22:1–21), so he omitted it.

#### 4.8. *Paul as a servant and a witness (26:16–18)*

In this narrative, Paul neither mentions the loss and regaining of his sight, nor the mediation of Ananias. Here, Paul receives the calling directly from Jesus in a heavenly vision, juxtaposing it, in a way, with the authorization and permission received from the high priests (26:12). Jesus said to Paul: "But get up and stand on your feet; for I have appeared to you for this purpose, to appoint you to serve and testify to the things in which you have seen me and to those in which I will appear to you. I will rescue you from your people and from the Gentiles—to whom I am sending you to open their eyes so that they may turn from darkness to light and from the power of Satan to God, so that they may receive forgiveness of sins and a

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<sup>64</sup> Keener: *Acts*, 585.

<sup>65</sup> Culy–Parsons: *Handbook*, 496.

place among those who are sanctified by faith in me” (26:16–18).

Pesch points out that the calling formulated by Jesus echoes the Book of Ezekiel, where – symbolizing the resurrection to a new life – the one being called must stand up on his feet and listen to the words of the calling (Ezek 2:1). On the other hand, the sentence that includes the promise of protection in verse 17 is in connection with the stories of the calling of Isaiah and Jeremiah. Jesus sends Paul to his people (Isa 6:8) and the Gentiles (Jer 1:10) and promises to protect him from the awaiting dangers (Jer 1:8).<sup>66</sup> The motifs of the mission included in verse 18 – the opening of the eyes (Isa 42:7) and the turning from darkness to light (Isa 42:16) – echo the prophecies of Isaiah.<sup>67</sup> F. F. Bruce notes that the parallels with the prophets of the Old Testament refer to that Paul is called to a prophetic ministry.<sup>68</sup>

The above statement that Paul adjusts his speeches to his audience is clearly shown here. In his apologia delivered before Agrippa, Paul testifies to that the fulfilment of Old Testament prophecies continue in the lives of Jesus’s followers. Therefore, in his testimony, Paul says nothing other than what the prophets had proclaimed.

#### 4.9. *Paul’s obedience and its consequences (26:19–21)*

Addressing Agrippa once more in verse 19, Paul tells him that he was not disobedient to the heavenly vision, but obeyed it, as once did the prophets of his people. Bruce notes that this is a rhetorical figure called litotes: Paul emphasises his obedience by denying disobedience.<sup>69</sup> In verse 21, Paul explains that the reason why the Jews seized him in the temple and tried to kill him was precisely his obedience to the heavenly vision. Pesch notes that by such deeds, the

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66 Pesch: *Die Apostelgeschichte*, 277–278.

67 Pesch: *Die Apostelgeschichte*, 278.

68 Bruce: *Acts of the Apostles*, 501.

69 Bruce: *Acts of the Apostles*, 502.

Jewish leaders disobediently rejected their own universal mission.<sup>70</sup>

According to the abovementioned finding of Squires, various themes intertwine in the Acts of the Apostles, showing the continuous fulfilment of God's plan. Squires adds that the plan is usually not realized explicitly but with indirect instruments.<sup>71</sup> Paul's conversion is one of the instrumental moments in the fulfilment of God's plan.<sup>72</sup> Thus, it is no surprise that in his apologia, Paul speaks of the obedience to God's will and the consequences thereof. According to Pesch, when Paul understands that he went astray by acting as a persecutor, he simultaneously embarks on the road of his true mission as a new *convert*.<sup>73</sup> In this way, he undertakes turning into *persecuted* from *persecutor*, as, wittingly or unwittingly, he would definitely make enemies along the way: "For this reason the Jews seized me in the temple and tried to kill me" (26,21). Later, near the end of his life, Luke formulates the thought in his letter to Timothy that those who follow the command of Christ will be *persecuted* (2Tim 3,12).<sup>74</sup>

#### 4.10. Paul's testimony (26:22–23)

Conzelmann notes that Paul's speech ends with a concluding summary of the essence of faith in verses 22 and 23. The message is essentially the same as that of the previous verses but expressed even more clearly.<sup>75</sup> Jesus's promise to protect Paul (Acts 26:17)<sup>76</sup> was fulfilled. This is evidenced by the fact that Paul stands there,

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70 Pesch: *Die Apostelgeschichte*, 278.

71 Squires: *The Plan of God*, 26–27.

72 Squires: *The Plan of God*, 32.

73 Pesch: *Die Apostelgeschichte*, 278.

74 On the apostle Paul's last imprisonment and his second letter to Timothy, see the study by Péter Balla in this volume.

75 Hans Conzelmann: *Acts of the Apostles*, trans. James Limburg, A. Thomas Kraabel, Donald H. Juel, Philadelphia, Fortress Press, 1987, 211.

76 In the following, when making reference to the Acts of the Apostles, only the numbers of the chapter and the verse will be indicated.

testifying to both small and great, saying nothing but what the prophets and Moses said would take place (26:22). The term “small and great” (μικρῶ τε καὶ μεγάλῳ) is an example of merism. Luke’s narrative indicates two contrasting phrases, thus referring also to those in between them.<sup>77</sup>

Although the speech is delivered in a purely judicial environment, and Paul himself uses the term ἀπολογέομαι (to speak in one’s own defence against charges presumed to be false, defend oneself<sup>78</sup>) at the beginning of the speech (26:2), the testimony to Christ turns the *apologia* into a *sermon*. Inter alia, this is made clear by the fact that at the end of his speech Paul uses the word μαρτύρομαι (to affirm something with solemnity, testify, bear witness<sup>79</sup>) instead of ἀπολογέομαι to describe his hearing (26:22). The situation was turned by Paul himself: instead of being a *victim*, he stands before his judges as a *witness*. He used his defense speech to make a testimony, rendering his interrogation an opportunity for evangelization.

## 5. The Effect and the consequences of the testimony

In relation to the interrupted speeches in the Acts of the Apostles, Daniel Lynwood Smith notes that the intentional interruption of the speaker by the audience was a literary device in antiquity centred around key conflicts and narrative watersheds.<sup>80</sup> However, in addition to being a literary device, interruption was also a rhetorical device applied to highlight the impact of the speech on the audience.<sup>81</sup> As pointed out by Smith, interruption is present in both volumes of Luke-Acts. In chapter 7 of the Acts of the Apostles, Stephen is not

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<sup>77</sup> Culy–Parsons: *Handbook*, 500.

<sup>78</sup> BDAG, 102.

<sup>79</sup> BDAG, 549.

<sup>80</sup> Daniel Lynwood Smith: Interrupted Speech in Luke-Acts in *Journal of Biblical Literature*, Vol. 134, No. 1, Atlanta, The Society of Biblical Literature, 183.

<sup>81</sup> Smith: *Interrupted Speech*, 187.

only the first martyr mentioned in Luke's narrative, but also the first follower of Jesus to be interrupted twice in a row.<sup>82</sup>

### 5.1. *Festus's exclamation and the reply (26:24–25)*

Initiated by Festus's intervention, a dialogue is formed at the end of the interrogation. Marshall notes that while the governor's sentence may seem an interruption, Paul, in fact, got to the end of his speech and conveyed his message. Festus, on the other hand, remained unable to grasp the theological aspect of the speech.<sup>83</sup> He nonetheless sensed the apostle's purpose of delivering the good news of God's grace, and could not remain silent. He clearly saw the *content* of Paul's speech but was unwilling to embrace its *message*, thus he exclaimed: "You are out of your mind, Paul! Too much learning is driving you insane!" (26,24).

Smith – quoting Richard I. Pervo – argues that the interruption is used by Luke in the speech as "the equivalent of a double underline", to reiterate the key theological themes: the reality of the resurrection and the proclamation of the good news to the Gentiles. The powerful speech of Jesus's followers provokes immediate emotional reaction: "their words can be resisted, but they cannot be ignored".<sup>84</sup> Festus, too, could only think that Paul went insane (μαίνομαι: to be mad, be out of one's mind<sup>85</sup>). Speaking the sober truth, Paul could only reject the accusation of being out of his mind (26:25).

### 5.2. *Paul's question to Agrippa and the reply (26:26–28)*

Paul turns to Agrippa to confirm this statement. He refers to the events taking place in public and the fact that the king is well aware

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82 Smith: *Interrupted Speech*, 187.

83 Marshall, *The Acts of the Apostles*, 398.

84 Smith: *Interrupted Speech*, 189–190.

85 BDAG, 541.

of them. As the witnesses of Jesus's resurrection did not remain silent, and their community is not an underground movement.

In verse 27, Paul addresses the king with a direct question: "King Agrippa, do you believe the prophets? I know that you believe." This sentence is crucial because it carries a hidden message that the prophets of the Old Testament foretold the coming of the Messiah. Paul then claims that he knows Agrippa believes the prophets. Peterson points out that Paul said this for a reason, since Agrippa enjoyed certain rights regarding the temple and the appointment of the high priest. According to Paul, the fact that Agrippa believes the prophets is a sufficient basis for him to believe the good news about Jesus Christ as well.<sup>86</sup> Stott notes that throughout the entire speech, Paul sought the king's salvation, not his favour. That is why Paul did not content himself with telling the story of his own conversion but also called Agrippa to *convert*.<sup>87</sup> Yamazaki-Ransom argues that Paul's rhetorical question forced Agrippa to respond, not in relation to the apostle's claim of innocence, but in relation to his testimony about the resurrection of Jesus. Although Luke presents Agrippa as someone who listens (25:22; 26:3), as the primary addressee of Paul's apologia, he proves to be deaf to hearing the word of God.<sup>88</sup>

According to Pesch, Agrippa's skilfully balanced response hides the sensation of being touched by Paul's words:<sup>89</sup> "Quickly you will persuade me to play the Christian"<sup>90</sup> (26:28). The interpretation of that remark is debated by scholars. Opinions are especially divided

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86 David G. Peterson: *The Acts of the Apostles*, Grand Rapids, Wm. B. Eerdmans Publishing Company, 2009, 674.

87 Stott: *The Message of the Acts*, 361–362.

88 Yamazaki-Ransom: *The Roman Empire*, 190.

89 Pesch: *Die Apostelgeschichte*, 280.

90 Another possible translation mentioned in the New Revised Standard Version: "Are you so quickly persuading me to become a Christian?"

regarding the meaning of the phrase ἐν ὀλίγῳ (in a short time<sup>91</sup>, quickly<sup>92</sup>), and the parallel with the term ἐν ὀλίγῳ καὶ ἐν μεγάλῳ (whether in a short or a long time<sup>93</sup>) in verse 29. Yamazaki-Ransom summarizes the three most common conclusions of the various interpretations: 1: Agrippa's answer is positive, and he really became a Christian. 2: Agrippa's response is sarcastic. 3: Agrippa formulated his answer as a question. The first possibility cannot be substantiated based on Luke's narrative. The second and third statements are possible, but in both cases the answer is negative.<sup>94</sup>

### 5.3. *The purpose of Paul's apologia (26:29)*

According to Soards, Paul's reply to King Agrippa's answer in the following sentence reveals the purpose of his speech:<sup>95</sup> "Whether quickly or not, I pray to God that not only you but also all who are listening to me today might become such as I am—except for these chains" (26:29). Paul knows that only God can give his listeners the grace of conversion, since he alone could lead him out of darkness into light. Such a controversy: albeit standing in *chains* before his audience, Paul who is the one who is truly *free*. According to John Calvin: „This answer doth testify with what zeal, to spread abroad the glory of Christ, this holy man's breast was inflamed, when as he doth patiently suffer those bonds wherewith the governor had bound him, and doth desire that he might escape the deadly snares of Satan.”<sup>96</sup>

91 Henry George Liddell – Robert Scott: *A Greek-English Lexicon with a revised supplement*, Oxford, Clarendon Press, 1996, 1215.

92 BDAG, 623–624.

93 BDAG, 623–624.

94 Yamazaki-Ransom: *The Roman Empire*, 192.

95 Soards, Marion L., *The Speeches in Acts*, Louisville, Kentucky, Westminster John Knox Press, 1994, 123.

96 John Calvin: *Commentary on the Acts of the Apostles*, vol. II, translated by Henry Beveridge, Grand Rapids, Christian Classics Ethereal Library, 1999, 307.

Pesch argues that Luke's recount of the apologia is not for the attending audience only. The Lukan purpose is to convey the message to everyone who would ever *read* these lines.<sup>97</sup> The good news of God's grace echoes from the pages to this very day. In addition to attesting to his innocence, albeit being a *victim*, Paul stands before us as a *witness*.

#### 5.4. *Confirmation of the innocence of the accused (26:30–32)*

The following verses reveal the judgement rendered by the king and the governor after the hearing. "Then the king got up, and with him the governor and Bernice and those who had been seated with them; and as they were leaving, they said to one another, 'This man is doing nothing to deserve death or imprisonment.' Agrippa said to Festus, 'This man could have been set free if he had not appealed to the emperor'" (26:30–32). Thus, *innocent*, Paul should be released. Him being a *victim* can be traced back to the same root: despite the fact that, in a legal sense, the superior authority was inclined to acquit him, the case based on untrue charges was not closed. The contradiction in the trial is aptly formulated by Pesch as follows: „Called like the prophets, to be a witness by the Messiah, Paul, the converted persecutor was persecuted by the Jews, while they themselves were the ones who did not follow the prophets and Moses."<sup>98</sup>

Jürgen Roloff points out the parallel between Paul's hearing before King Herod Agrippa II and the interrogation of Jesus before King Herod Agrippa I mentioned in the Gospel of Luke (Luke 23:6–12). Here, too, although convinced of the defendant's innocence, the governor – still unsettled by the Jewish leaders – asks the king's help for resolving the case. In the Gospel of Luke too, the king shows apparent curiosity about the accused (Luke 23:8), whose innocence, though

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97 Pesch: *Die Apostelgeschichte*, 280.

98 Pesch: *Die Apostelgeschichte*, 279.

strongly symbolically expressed, is clearly declared (Luke 23:11).<sup>99</sup>

Hogan points out that in many ancient novels and historical works, trials and legal proceedings – despite the narrative emphasis – fail to resolve the case. In most litigations described in one or more speeches, events outside the legal process determine the outcome. Usually, some intervention by gods or other people makes further litigation unnecessary. Hogan, however, notes that most strikingly, the Acts of the Apostles does not reveal – not even at the end of the book – the outcome of the case.<sup>100</sup>

But is the problem really not solved? In a study, Roland Kany raises the question as to why the Acts of the Apostles was not continued in antiquity.<sup>101</sup> Historical works, such as those of Thucydides and Polybius, were often continued by several historians of the posterity, picking up the threads where the great predecessor left them. Kany, on that basis, asks: Why wasn't the Acts of the Apostles continued in the 2nd or 3rd century by someone who knew what eventually happened to Paul in Roman captivity, or what happened to Peter and the rest of the twelve? Someone who knew how the first Christians reacted to the destruction of the temple, how the followers of Jesus lived in Asia Minor, Syria, Egypt or North Africa. Who knew how Christianity was strengthened in Europe, how new structures were formed, how the mission progressed – and the list of questions could go on and on. As Kany has no certain answer, he formulates eleven theses to take stock of the possibilities. His fourth thesis reads as

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99 Jürgen Roloff: *Die Apostelgeschichte*, Göttingen, Vandenhoeck & Ruprecht, 1981, 349.

100 Hogan: *Forensic Speeches*, 175.

101 Roland Kany: Warum fand die Apostelgeschichte keine Fortsetzung in der Antike? Elf Thesen zu einem ungelösten Problem in Jörg Frey, Clare K. Rothschild, Jens Schröter (ed.): *Beihefte zur Zeitschrift für die neutestamentliche Wissenschaft. und die Kunde der älteren Kirche*, Berlin, Walter de Gruyter, 2009, 327–348.

follows: “The Acts of the Apostles achieved its goal with its conclusion. Nothing more can and needs to follow.”<sup>102</sup>

## 6. Conclusion

We have no certain answers as regards the final outcome of the case as Luke-Acts ends with Paul remaining in custody for two years in Rome, “proclaiming the kingdom of God and teaching about the Lord Jesus Christ with all boldness and without hindrance” (Acts 28:31).

Nonetheless, it is important to bear in mind that ultimately the Apostle Paul’s life is no tragedy. It is not a story of the triumph of evil over justice. It does not show the derailment but much rather the fulfilment of God’s plan. According to the words of Jesus recorded by Luke in his Gospel, those who follow him will be arrested, and brought before kings and governors, but all that will be an opportunity to *testify* (Luke 21:12–13). In addition, as clearly shown in the Acts of the Apostles, Paul was aware of that his journey to Rome and his proclamation of the good news of God’s grace there renders his life a fulfilment of God’s plan (Acts 19:21; 23:11; 27:24).

The main agenda of the Acts of the Apostles is formulated by the words of the resurrected Jesus directed to the disciples in verse 1 of chapter 8: “But you will receive power when the Holy Spirit has come upon you; and you will be my witnesses in Jerusalem, in all Judea and Samaria, and to the ends of the earth.” This is fulfilled throughout the work: the gospel message spreads to Jerusalem in chapters 1–7, to Judea and Samaria in chapters 8–12, and all the way to Rome, the capital of *imperium sine fine* in chapters 13–28. The fulfilment of this prophecy shines through the life of Paul the Apostle, too, as he becomes *persecuted from persecutor*, testifying

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102 “Die Apostelgeschichte hat mit ihrem Schluss ihr Ziel erreicht. Es kann und muss eigentlich nichts mehr folgen.”

– even as a *victim* – to the power of God. The same shows in the apologia of chapter 26, where Paul summarises his message in verses 22 and 23: “To this day I have had help from God, and so I stand here, testifying to both small and great, saying nothing but what the prophets and Moses said would take place: that the Messiah must suffer, and that, by being the first to rise from the dead, he would proclaim light both to our people and to the Gentiles.”

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**Enikő Sepsi – Ádám Bethlenfalvy**

# **REPRESENTATIONS OF VICTIMHOOD IN ART AND THEIR REFLECTION IN THE IMAGINATION OF UNIVERSITY STUDENTS**

## **1. Introduction**

In addition to psychology and the law, victimhood is a key topic of various genres of art, too. It is, of course, no surprise, as sacrifice is not only instrumental in the Judeo-Christian culture as part of Biblical stories and as the sacrifice of Christ, but victimhood itself is a human experience spanning ages, linking the individual to the development of social relations. Artistic representations of victimhood can reach out to and provoke thoughts of recipients of various backgrounds and ages, as they ask fundamental questions about the contradictions of human existence. Our paper focuses on a study examining victim representations in various genres of art and strives to explore their reflections in the imagination of university students. Our research investigates the ways young adults resonate with these works of art and think about the topic of victimhood.

## **2. Frameworks of the research**

Initiated by Professor Andrea Domokos, an inter-faculty research group has been created at the Károli Gáspár University of the Reformed Church in Hungary to conduct interdisciplinary research on the various aspects and elements of victimhood, making use of several different methods. The research group aimed at examining the

topic of victimhood, parallely exploiting the methodology of law, psychology, theology, and arts, striving to integrate all the different aspects. This volume is one of the results of the process.

Engaged in the fields of art studies and art pedagogy, we took interest primarily in the cross-genre aspects of victim representations, and the way they spark the imagination of young adult university students. We consider our study to be art-based research. It is a “qualitative research approach referring to the application, at any stage of the research process, of any single form of art or several forms of art combined in relation to the creation, interpretation, and communication of knowledge.”<sup>1</sup> We used works of fine arts, literature, motion picture, and theatre in our study, and we involved the participants in activities requiring creative thinking at certain stages of the research. Before detailing our research methods and results, we strive to define the concept of victim, offer insight into the topic of artistic representation of victimhood, and present certain relevant artistic projects and art-related research.

### 3. Definitions

We began defining the relevant concepts after the conclusion of our art-based research, thus our approaches related to the definitions did not directly influence the research results. Etymologically, the Hungarian term for victim [“*áldozat*”] is related to the verb bless [“*áld*”] and the noun blessing [“*áldás*”]. The digital database *Arcanum* interprets the Hungarian term “*áldozat*” as sacrifice (in Latin: *sacrificium*),<sup>2</sup> such as offerings – animals or crop – that appear in the Old Testament as a thanksgiving sacrifice, indicating the action itself. The sacrificial lamb of the Old Testament is considered the

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1 Judit Juhász: Megismerés, élmény és alkotása művészetalapú kutatásokban, *Kövász*, vol. XXIII, 2019/1–4, 6.

2 In Hungarian, the same word („*áldozat*”) is used for „victim” and „sacrifice”.

forerunner of Christ by the New Testament, emphasizing the gesture of devotion in His sacrifice. The “substitution” in Jesus’s suffering is also active: the act of self-surrender.

The Catholic Lexicon points out the gift nature of the offering, aimed at the recognition of the covenant, domination, reconciliation, obedience. The object itself is called “*victima*” in Latin.<sup>3</sup>

In the Hungarian folklore, the concept of foundation sacrifice (edifices) and sacred springs are also known. The significance of the altar and the sacrifice-related places is also remarkable. As a modern-age example, floral tributes can be mentioned; one of the most famous and spectacular instances was related to the death of Princess Diana. In Hungary, the tribute paid with flowers and other items to the shoes on the Danube bank created by Gyula Pauler as part of the National Holocaust Memorial is also a parallel; the “offerings” are probably placed by women. In the Hungarian language, “*áldás*” means blessing that creates something good, while “*áldozás*” means sacrifice, the process of receiving something good.

In summary, from a historical aspect, sacrifice is an action (rite) of community nature, conducted for the community. A major shift occurs if victims of aberrated/impotent individuals appear, such as the victims of the series of child murders in Betlehem. Does it seem as if today society (compassion) was tasked with naming the victim and freeing them from their victimhood? Or is the transformation still of individual nature, while the good arising from it is of community nature? These are the questions we should ask ourselves before defining the relevant concepts and presenting the art-based research.

#### 4. Victims as a topic of art

The topic of victims and victimhood has appeared in arts since the Biblical ages. Here are a few examples:

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3 <https://lexikon.katolikus.hu/A/%C3%A1ldozat.html> (Accessed: 9 May 2024)

### Fine arts

1. Painting: In Christian iconography, the best-known representation of the victim is the crucifixion of Jesus. Many painters, such as Michelangelo, Caravaggio and El Greco created memorable works on this subject. These paintings depict not only the physical suffering but also the spiritual aspect of self-sacrifice.
2. Sculpture: In ancient Greek and Roman art, depictions of mythological victims are common, such as the sacrifice of Iphigeneia by Agamemnon (he was forced to order the sacrifice as king despite his feelings for his daughter). Such works often emphasize the inevitability of fate and tragedy.

### Literature

1. Ancient Drama: Dramas by Sophocles and Euripides, such as *Antigone* and “*Iphigeneia at Aulis*,” explore various forms of sacrifice, including heroic self-sacrifice and human sacrifices to the gods.
2. Modern literature: The 20th century literature, such as Albert Camus’s “*The Plague*”, often deals with the issue of victimhood in a social and existential context. World War II and its aftermath inspired many works on sacrifice and suffering.

### Music

1. Opera: Richard Wagner’s opera *Parsifal* deals with the theme of sacrifice and redemption with deep philosophical and religious layers. The victim appears here not only on a physical, but also on a spiritual and emotional level.
2. Contemporary music: John Adams’s opera *The Death of Klinghoffer* explores the modern political context of victimhood, based on a real-life terrorist attack on the cruise ship *Achille Lauro*.

### Motion picture

1. Drama: Ingmar Bergman's film *The Seventh Seal* revolves around the theme of sacrifice and the inevitability of death. The central question of the film is the value of life and sacrifice in a seemingly meaningless world.
2. Action and War Movies: In modern movies, sacrifice often takes the form of heroic self-sacrifice, such as Steven Spielberg's *Saving Private Ryan*, where soldiers sacrifice their lives to save a comrade.

### Theatre

1. Classical theatre: William Shakespeare's play *Julius Caesar* examines the political and personal dimensions of sacrifice, especially in the relationship between Brutus and Caesar.
2. Contemporary theatre: Arthur Miller's play *Death of an Agent* presents the sacrifice of modern man and the illusion of the American dream.

A leading Czech theorist and critic of visual arts and literature, Jindřich Chalupčický argues in a relevant study that art itself is, in fact, a victim, and it must distant itself from society that is considered sick. "The suffering that the artist takes on themselves is manifested in withdrawal from society. The artist degrades, humiliates, and ridicules themselves. Alfred Jarry styles himself as the hideous Ubu with stunning thoughtfulness. Larionov, Goncharova, Mayakovsky, Lifshitz, Burliuk and others roam the streets with their faces painted and in fantastic outfits. Dadaists present themselves in a completely undignified, grotesque manner. This is not merely degrading but a real torment of ourselves and others. Artaud makes plans for the Cruel Theatre."<sup>4</sup> In his volume titled *Teoria dell'arte d'avanguardia* (1962), Renato Poggioli observed the following: "Eventually, artists

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4 CHALUPECKÝ, Jindřich, Art and Sacrifice / Opera e sacrificio, flash Art, 80/81(1978), February-April, 33-35; Thematic compilation titled Danger in Art / Pericolo in Arte. <https://artpool.hu/performance/forrchalupceky.html> (Accessed: 23 May 2024)

regard themselves as victims – sometimes as a comic, and sometimes as a tragic victim.” The latter option seems even more frequent. For example, in certain areas of contemporary art and art criticism, the artist is more and more often seen as *agnus dei*, whose shed blood redeems the sins of the entire tribe. Like others, Poggioli also argues that artists are simply psychopaths. (...) However, the artist’s sense of self-sacrifice is rooted very deep down and cannot be explained solely by the effects of scientific theories. Nor can it be traced back to any individual psychological deviance. It is society that is sick, not the artist. As Mircea Eliade remarks in *Myth and Reality* (1963) “We should see that artists, far from being the neurotics they are often said to be, are, on the contrary, more healthy physically than many modern men.”<sup>5</sup>

As shown by the above example, the issue of art and victims can be addressed not only thematically, but also existentially, as victimization or sacrifice is an integral part of creating art.

## 5. Participatory works of art and victimhood

In addition to the works of art listed above, many more participatory works of art have been centred around victimhood. To shed a light on their approach, let us overview a few examples. The Theatre in Education (TIE) performance of the Káva Cultural Group titled *Hinta* [Swing] is an example of participatory performances addressing a much-discussed part of victimhood, namely *bullying*, accompanied by an exceptionally well-documented research.<sup>6</sup> Realised during school time with the participation of groups of fifth- or sixth-graders, the three-hour-long program consists of the following:

In the scenes of the performance, the story of a four-member group unfolds. Spending their weekdays on a playground, they

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5 Idem.

6 András Sereglei: *Hinta*, András R. Sereglei, Káva Kulturális Műhely, 2007. <https://kavaszinhas.hu/hinta/> (Accessed: 6 May 2024)

mostly engage in activities that put one of them in a humiliating position (“swinging him”). There is no clear reason behind all their actions and no real meaning of the continuous aggression. Neither is it clear what the world of adults (indicated by the appearing teacher) has to do with all that is happening. These connections are omitted from the storyline, and the gaps are filled by the participants of the performance, based on their experiences and imagination. Thus, a new story emerges from time to time, the meaning of “bullying” is always redefined, and, thus, a specific learning process is created for each group.<sup>7</sup>

Comprehensively documenting twenty participatory performances, an interpretive research examined the process of creating and implementing the performance, and its impact on the participants. According to the research, for some of the participating groups, the experience reinforced the sense of community. The groups unable to get involved collectively learned more about the functioning of violence at an individual level. In some of the participating groups, the community expressed things related to their own functioning that had previously been left unsaid: about their mechanisms of exclusion and abuse, and about the victims of such mechanisms. The role of the school and the teachers was also discussed in several occasions in connection with the fictitious story.<sup>8</sup> Another study using quantitative methods with a control group reached similar results.<sup>9</sup>

As the above examples show, although works of art and the structured, creative encounter with them do not eliminate the complex problem, they can lead to awareness, discussion, or even confrontation at the individual and/or community level regarding

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7 Kata Horváth – Márton Oblath: *A performatív módszer*, Budapest, Káva – Anblokk – Parforum, 2015, 29.

8 Horváth–Oblath: *A performatív módszer*, 31.

9 Lilla Lendvai–László Horváth– Gabriella Dóczy-Vámos – Zsófia Jozifek: Egy komplex színházi nevelési előadás hatása a bullying észlelésére. *Alkalmazott Pszichológia*, vol. XX, 2020/4, 113.

school bullying that results in victimization. More and more schools find this topic important: on the one hand because of the mental health of the students and to achieve a healthy community, and on the other hand because research shows that this type of abuse has a strong impact on the students' school performance.<sup>10</sup>

Other examples of participatory performances explicitly aim to prevent the victimization of socially vulnerable groups, such as the performance titled *Kiállok érted* [I stand up for you].<sup>11</sup> The play strives to raise awareness among the most vulnerable target groups by presenting the processes, thereby realizing prevention goals. Nonetheless, the performance has a key social awareness effect for those outside the vulnerable groups, too. The story is about girls who grow up in extreme poverty and experience the world in a harsh, emotionally cold environment, receiving little love and attention. In the session following the play, the experts, inter alia, address the question of how people living in prosperity can help young people who are balancing on the margins of society.

The variety of performative methodologies that strive to help process victimization and escape vulnerable situations is confirmed by the Káva Cultural Group's crime prevention project. The volume issued by the workshop presents the four methodologies of the *Juventas Project* implemented in children's homes: educational drama, prison theatre, forum theatre and sociodrama.<sup>12</sup> Above, we primarily overviewed the methods of participatory art with theatrical elements,

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10 David A Schwartz–Andrea Hopmeyer Gorman–Jonathan Nakamoto–Robin L. Toblin: "Victimization in the peer group and children's academic functioning," *Journal of Educational Psychology*, vol. XCIII, 2005/3, 433.

11 Bíró Bence: *Kiállok érted*, Edit R. Romankovics, Láthatáron Csoport – KVTársulat, 2015. <https://lathataroncsoport.hu/eloadas/kiallok-erted/> (Accessed: 7 May 2024)

12 Kata Horváth (ed.): *Dráma és színház a bűnmegelőzésben – A Káva Kulturális Műhely JUVENTAS programja*, Budapest, Káva Kulturális Műhely, 2022. [https://issuu.com/kavaszinhas7/docs/12\\_borito\\_final\\_el\\_lap-merged](https://issuu.com/kavaszinhas7/docs/12_borito_final_el_lap-merged) (Accessed: 7 May 2024)

while the topic of victimhood and crime prevention is addressed by countless other methodologies of various forms of art.

The theme of victimhood thus appears in many forms and contexts in art, reflecting the fundamental questions and conflicts of human life and culture. Therefore, a thoughtful selection process led to our choice of the examined works of art. On the one hand, we strove to examine several types of art, and on the other hand, we looked for works that can be thought-provoking and motivating for today's generation of university students. In the following, we shall briefly analyse the selected works of art.

## 6. The works of art selected for the research

Displayed in a gallery in Milan, Andrea Mantegna's *Lamentation of Christ* refers to the sacrifice par excellence, the sacrifice of Christ. Remarkably, it is best seen kneeling down, that is, it „bends us into its own space”, gently „brings the spectator to their knees.”



1. image: Andrea Mantegna: Lamentation of Christ

The iconographic references included in Peter Bruegel the Elder's painting titled *The Procession to Calvary* (group of weeping women, the cross "hidden" in the geometric centre) were well understood by the contemporary audience, since the painting refers to the time of the Protestant persecutions in the Low Countries with the red Spanish soldiers. Explaining and revealing the field of meaning in a full-length movie, the Polish director Lech Majewski sensed activity in the painting, even despite its apparent stillness. The movie preserves the picturesque nature of the visual world, but at the same time, as a rite of passage, it takes us to the original time of the work of art and into the events of the contemporary scene.



2. image: Peter Bruegel: *The Procession to Calvary* (1564)

From among the contemporary works of visual art, we chose Sara Berti's installation titled *The Lamentation of Christ*. The original starting point of the work is a famous terracotta sculpture from Bologna, created by Niccolò dell'Arca in 1462-1463. *The Massacre of the Innocents* is also based on a classic work, a 1611 painting by Guido Reni.



3. image: Niccolò dell'Arca: Lamentation over the Dead Christ



4. image Sara Berti: Lamentation of Christ, 2004, wood, coloured terracotta, ash, 170 cm × 30 cm × 170 cm. Photo: Stefano Stagni.





5–6. image. Sara Berti: Massacre of Innocents, 2006, wood, coloured terracotta, salt, 100 cm × 200 cm × 200 cm. Fotó: Stefano Stagni.

From among the related literary works, we chose a quote from *Édes Anna* [*Anna Édes*] penned by Dezső Kosztolányi, well known by all Hungarians from their studies in high school:

“Though they had seen many horrific scenes in their time the officers shrank from this bestial and merciless assault. Each time one of them crossed into the living room he wore the look of horror. Every face bore the same look since they couldn’t understand what had happened and were striving to understand it. Anna’s face alone remained clear. She didn’t understand, any more than they did, why she had done it, but she knew she had and, since she had, she knew deep down that there must have been some urgent compelling

reason for it. The view is necessarily clearer from the inside than the outside.”<sup>13</sup>

We chose *Iszony* [Revulsion] authored by Németh László (1947) for a similar reason. The protagonist of the novel, Nelli Kárász, is forced to face the various forms and consequences of victimhood through her own life and marriage. Nelli’s marriage to Sándor Takaró is one of the most important contexts in which victimhood appears. For Nelli, marriage does not mean fulfilment, but a kind of duty, which she undertakes due to social norms and expectations. In the marriage of Nelli Kárász, the daughter of an impoverished tenant of a property in the Hungarian plain, and Sanyi Takaró, a wealthy peasant, two opposite temperaments, mental types, lifestyles, and social environments try to fit together – hopelessly. Against Nelli Kárász’s will, she enters into a marriage of convenience with the „village bull” for financial reasons. The birth of her daughter becomes an excuse to keep Sanyi away, whose life-stirring revelry only accentuates Nelli’s suffering and loneliness “I had a feeling that it could also be beautiful; to be alone in the world. One acts and no one understands, they sacrifice themselves and no one notices, they are unhappy and at the same time as hard and bright as the stars above their head.”<sup>14</sup> Nelli’s thoughts indicate that her actions are not driven by intellectual determination: she moves to her mother and then back, but the marriage only gets worse when Sanyi’s affair with the servant is revealed. Her marriage does not turn into tragedy (as she strangles him with the pillow), nor does the cold beautiful woman unwittingly become her husband’s murderer, because only in this way can she be freed from the burdens of marriage. The difference between the two characters runs deeper. Sanyi Takaró seeks to mold

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13 *Anna Édes* by Dezső Kosztolányi, translated by George Szirtes, Revived Modern Classics, 1993. Chapter 18: Terror.

14 László Németh: *Iszony*. <https://konyvtar.dia.hu/html/muvek/NEMETH/nemeth00039/nemeth00041/nemeth00041.html> (Accessed: 21 May 2024)

his wife's nature to fit into a more frivolous social circle, while Nelli remains unaware of the events occurring behind the wall she has built around herself. This disconnect ultimately leads to tragedy.

The paradox inherent in János Pilinszky's *Merénylet* [Assassination] compels us to distinguish between something that happened and something that was committed:

„It happened, albeit I did not commit it,  
and it did not happen, albeit I committed it.”<sup>15</sup>

Euripides's play *The Trojan Women* is a profound and harrowing depiction of sacrifice and suffering, depicting the events of the aftermath of the Trojan War from the perspective of the defeated Trojan women. The play was presented at the Dionysus festival in Athens in 415 BC and is one of the most sombre and dramatic works penned by Euripides. Depicting the horrors and consequences of the Trojan War, *The Trojan Women* sheds a light on the tragedy of human suffering, sacrifice, and the senselessness of war. The play is set in the period after the Trojan War, after the Greeks captured Troy. The main characters are the Trojan women, who fell into the hands of the Greeks and are enslaved. The former queen, Hecuba, and other prominent Trojan women, such as Andromache and Cassandra, try to come to terms with their situation and their inevitable fate.

Hecuba and the royal family: Hecuba, the former queen of Troy, lost her husband Priam and many of her children during the war. At the beginning of the play, he already knows that the fate of his daughters and grandchildren is sealed. The character of Hecuba is a symbol of maternal sacrifice and deep pain. She herself, too, falls into the hands of the Greeks and is enslaved, but he does not give up hope and his dignity.

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15 János Pilinszky: *Merénylet*. <https://konyvtar.dia.hu/html/muvek/PILINSZKY/pilinszky00001/pilinszky00170/pilinszky00170.html> (Accessed: 16 May 2024)

Cassandra: Hecuba's daughter, gifted with divination powers by Apollo. She foresees the future and her own tragic fate. She becomes Agamemnon's concubine and is well aware of that this relationship will only bring more death and suffering. Cassandra's sacrifice is not only physical, but also mental and spiritual, as she foresees her own and her family's tragedy, and yet she is forced to endure it.

Andromache and Astyanax: Hector's widow, Andromache, also falls into the hands of the Greeks and is forced into slavery. His son, Astyanax, is one of the most tragic victims in the play, killed by the Greeks for fear that he might grow up to avenge his father's death. Andromache loses both her husband and her son, and her own suffering is in itself a huge sacrifice. Euripides shows that the victims of war are not only the men who fight, but also the women and children, whose suffering and sacrifice are often even greater and more senseless. The play emphasizes the cruelty of war and the worthlessness of human life in the machinery of war.

The play was directed by Tadashi Suzuki within the framework of MITEM (Madách International Theatre Meeting).<sup>16</sup> The Japanese director builds the image of the female victims and the sense of vulnerability on a barely moving, almost frozen scene and on intensely panting and wheezing sounds produced with various breathing techniques typical of Suzuki. We see a European drama with Japanese gestures and voices: repressed emotions, enormous inner tension, immobility.

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16 Euripides: *The Trojan Women*, Directed by Tadashi Suzuki, SCOT – Suzuki Company. <https://szinhaz.org/esemenyek/a-trojai-nok/> (Accessed: 15 May 2024)



7–8. image. Euripides: *The Trojan Women*. Directed by Suzuki Tadashi (April 21-22 2023, Budapest). Photos: Zsolt Eöri Szabó

A movie directed by Péter Gárdos, *Hajnali láz* [Morning Fever] was chosen because the transformation victimhood it depicts. The film is

based on the story of Gárdos's parents and shows the transformation of the victimhood through the lives of survivors recovering from the horrors of World War II. Meeting in a post-war rehabilitation camp in Sweden, Miklós and Lili, the main characters of the story reinterpret the concepts of sacrifice and survival through their love. At the beginning of the film, Miklós and the other survivors clearly appear in the role of victims. Freed from the concentration camp, they bear severe physical and mental wounds. Miklós's lung disease and the short lifespan predicted by the doctors further increase the hopelessness and feeling of victimization. Determined not to let himself be defeated by his illness and the horrors of the past, Miklós writes a letter to the Hungarian girls in the camp. Lili replies to Miklós's letter, and their correspondence and subsequent encounter builds a deep relationship between them. This relationship not only brings hope, but also new purpose and meaning to their lives. A healing force, love helps both to overcome victimhood and believe in the future again. Miklós's character gradually transforms from the role of victim to survivor and warrior. He fights his illness physically and becomes spiritually revived by the love he feels for Lili. Leaving victimhood behind, Miklós finds a new goal: building a future with Lili. This transformation is one of the most important messages of the film, which shows that love and relationships can heal and revive even in times of great torment. Lili character also starts out as a victim, since she, too, has lost her family and her homeland, trying to get by in a foreign country. However, her relationship with Miklós gives her a new purpose and hope. Their relationship is based on mutual help to process the past and build a new future. Lili's victimhood is thus also transformed, and a new meaning is gained in her life through survival and love. By the end of the film, the shared story of Miklós and Lili shows the triumph of hope and human endurance. Although the horrors of the past and the challenges of the present are still present, their love and commitment

to each other transforms them and gives them a new perspective on their lives. Their transformation from the role of victim is one of the strongest messages of the movie, which emphasizes the resilience of the human spirit and the power of love for life.

## **7. Research method**

Our research was implemented under auspices of the workshop of Art Science, Art and Media Pedagogy Workshop of the Benda Kálmán College of Excellence in Humanities and Social Sciences revolved around the ways the most outstanding examples of the victim-depictions of our culture are reflected in the imagination of university students. One of our key topics was whether university students view victimhood as transformative. In the spring semester of 2023, 14 students of the Art Science, Art and Media Pedagogy Workshop participated in five research sessions, each of which lasted 90 minutes. The sessions were centred around the oral and practical analysis of the above works of various genres (paintings, literary works, films and theatrical performances), focusing on the depiction of victimhood. The analysed works were chosen by the heads of research, but at several points we offered the participants the opportunity to add further works to the list (they, for example, came up with the topic of victimhood in the media). The process resulted in the concept of an exhibition that unfolds the theme of victimhood and can be viewed as an independent, community work of a sort. We used dramatic methods enabling active participation at certain points of the research, thus we strove to connect the students to our topic not only intellectually, but also tactilely and emotionally.

We used several data collection methods to document the process. Audio and video recordings were made of the sessions, two participant observers (a student and a doctoral student mentor teacher)<sup>17</sup> took notes, and the participants provided short written reflections and created visual documentation during the process. The collected data were subjected to content analysis along the key questions raised by the students and in the relevant literature.

## 8. Topics found emphatic by the university students

We strove to assess the topics and questions that students find the most intriguing as regards the works of art that offer room for free association. Some suggestions were discussed for a rather long time in the group, and some topics became recurring elements of the discourse. We shall reflect on these first.



9. image: Students workshoping

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<sup>17</sup> We would like to thank the thorough and sensitive notes taken by Száva Szántó and Dániel Hegyi, and their participation in the group work!

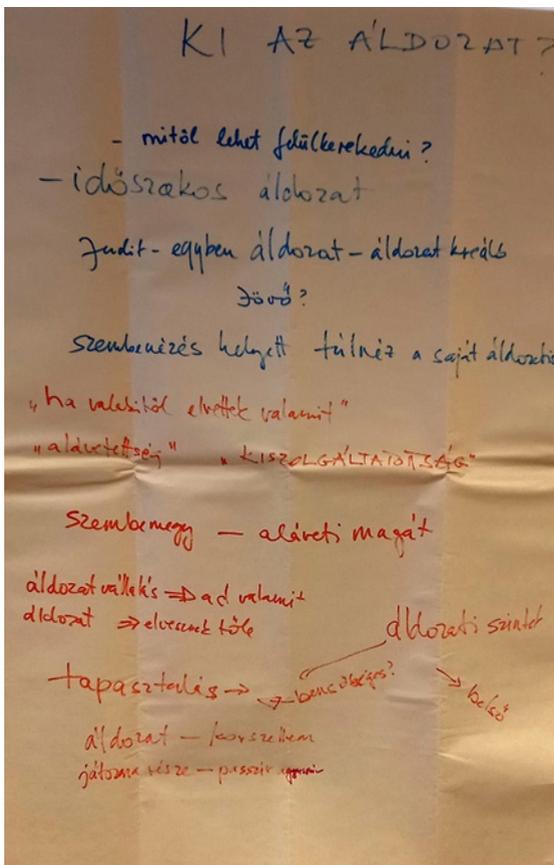
One recurring theme was defining the difference between victimization and sacrifice. Interpreting the works, the students approached the difference from several aspects. One such distinction grasped the difference by considering the nature of the transaction:

“I’m still lost in the issue of the difference between sacrifice and victimization. In my opinion, sacrifice means the act of giving, while a victim is a person from whom something has been taken. Therefore, this might be a transaction of a kind.”<sup>18</sup>

Speaking of the works, martyrdom was also mentioned in connection with Christ’s sacrifice, and some interpreted the resurrection of Jesus as a reward for his sacrifice. Continuing this line of thought, an exciting dialogue unfolded about whether victimhood can give anything to an individual or a community. While thinking related to transactions can also be considered a kind of fiscal approach, an imprint of a society based on consumption, the psychological and mental dimension of thinking became much more important for the students in the conversation. This is more closely related to examples of more profane sacrifices, such as the sacrifice made for an important experience or knowledge in their lives.

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18 Participant 3. Based on audio footage, 20 March 2023



10. image: Workshop product

Another axis along which the students distinguished between victimization and sacrifice was the issue of agency and control. While someone who makes a sacrifice decide to act in this way themselves, victimization often leads to incapacitation, and, by definition, this is not a choice.

The relationship between victimhood and agency also arose in connection with two literary works. The students argued that the main characters of *Revulsion* and *Anna Édes* contributed to the tragedy due to their inability resulting from their victimhood. Not capable of escaping her situation, Anna Édes killed due to helplessness, while the heroine of *Revulsion* acted unconsciously, but she, too, had to face the absence of recognizable options. In the small group task, when the question was whether Nelli was the victim, almost all members of the group argued that the victim was, in fact, Sanyi. According to the students' unanimous opinion, Nelli, averse to the marriage, should not have got married only to eventually kill her husband, and it was definitely wrong of her to give life to their little girl (who was also considered a victim of the marriage by the group). However, as the work progressed, it became more and more a common position that Nelli herself was a victim just like Sanyi, and that both should have been more capable of compromise. The group pointed out that Anna Édes, no longer able to endure the psychological strain, became an offender instead of being transformed.

A key question for the participants of our research was to what extent is victimization or considering oneself a victim constitutes a decision. This question arose most articulately in connection with Péter Gárdos's movie *Hajnali láz*, where the feelings of each character about surviving the Holocaust displays the feelings about victimhood in a contrasting tone. Does someone not willing to see themselves as a victim, like Miklós and Lili in the movie, constitute a victim? In contrast to them, Judit identifies with victimhood and was unquestionably seen as a victim by the group, too. According to the university students, the question arises whether the chance of survival is linked to the identification with victimhood? The students gave the possibility of transforming and escaping victimhood serious consideration. Based on above examples, they argued that conscious relation to victimhood is key to retaining agency despite

one's situation. Intriguingly, agency is viewed as a crucial therapeutic factor also in the literature on victim rehabilitation.<sup>19</sup> Discussing the above issues, the question logically arose as to which factors does addressing one's own victimhood depend on? What hinders Judit in transforming her own role? The students primarily identified interpersonal and emotional obstacles: jealousy, mistrust, and the fixation on his relationship with Lili. Judit was seen as both as a victim and a creator of victimhood, as her override mechanism was of anti-life nature: she hindered the couple's prosperity and did not allow victimhood to become a part of her identity. When Judit was compared to Anna Édes in Kosztolányi's novel, as another example of the failed transformation of victimhood, additional factors arose in terms of Anna. The students believed that she was primarily hindered by seeing her own social role unquestionable: "Anna is a handmade-type girl who is not used to questioning things."<sup>20</sup> A debate arose among the students about whether Anna Édes could have prevented her victimisation. While some believed that she could have run away earlier, others saw the obstacle to this more in her upbringing, the weight of social expectations related to servanthood, and internalization of those factors. As one student put it: "She could have run away even at the beginning, but due to her upbringing, she lived in a system of rules [that told her] not to run."<sup>21</sup> Another student argued that "she didn't see such an example, a role model from her social class."<sup>22</sup> As a useful product of this discussion, the students found that the ability to develop a conscious relation to one's individually created, or socially projected role can be learned.

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19 Sharon Eytan – Ronel Natti: From looking for reason to finding meaning: a spiritual journey of recovery from sexual trauma, *Journal of Interpersonal Violence*, vol. XXXVIII, 2023/11-12, 7414.

20 Participant 8. Observation log, 28 March 2023.

21 Participant 4. Observation log, 28 March 2023

22 Participant 6. Observation log, 28 March 2023

The movie *Hajnali láz* gave rise to the need to systematize the levels of victimhood. “Everyone can be a victim at some level. I would compare sacrifice to a disease. So, having someone’s wallet stolen is like catching a cold. You fall victim to a crime, but it’s different from being taken away during the Holocaust, as that is rather like having cancer.”<sup>23</sup> Sacrifice was grasped as “a more intimate experience”, while victimization was seen as “external.” This issue was brought up by the students in relation to János Pilinszky’s poems *Stavrogin takes his leave* and *Stavrogin Returns*, and they also added the movie titled *The Fifth Seal* to the discussion.

*Stavrogin takes his leave*

I am bored. Give me my cloak, please.  
 Before you commit anything,  
 think of the rose-garden,  
 or, rather, of a single rose-tree,  
 of one single rose, gentlemen.<sup>24</sup>

*Stavrogin returns*

You have not remembered the rose-garden,  
 You have done what you should not have done.  
 From now on you shall be hunted,  
 and lonely as a butterfly-collector.  
 All of you will end up under glass.  
 Under the glass pane, pinned on needle points  
 glitter, glitter the host of butterflies.  
 It is you who glitter, gentlemen.  
 I am afraid. Give me my cloak, please.<sup>25</sup>

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23 Participant 3. Based on audio footage. 21 April 2023

24 János Pilinszky: *The Desert of Love. Selected Poems*. Translated by János Csokits and Ted Hughes. Anvil Press Poetry, 1989, p. 64.

25 János Pilinszky: *The Desert of Love. Selected Poems*. Translated by János Csokits and Ted Hughes. Anvil Press Poetry, 1989, p. 66.

Referring to Pilinszky 's poem *Assassination*, many pointed out the factor of conscience, arguing that some are inclined to take on the role of the victim and the sufferer, as it saves them from being the ones who have to commit crimes. While the distinction is quite clear, it is an important phenomenon that the students tried to compare the extreme situations of victimhood appearing in the works of art with their own everyday experiences of victimhood. On one occasion, the topic of school abuse and bullying, investigated with drama methods, also allowed them to parallel their personal experiences, or even to connect them with the situations appearing in the works. As a consequence of bullying, the possibility of a victim becoming an offender (victimizing others) also emerged (such a phenomenon is referred to in the literature as well).<sup>26</sup> The students saw Judit as someone who, due to her victimhood, has no vision, only past. As regards Judit's relationship to her own victimhood, the students argued that "instead of facing it, she overlooks it."<sup>27</sup> Because of this, the students argued, the couple turns from victim to victim-creator. The relationship between the two roles arose in relation to several works.

Chagall's painting titled *The sacrifice of Isaac* (1966) was included in the list of the examined works in the wake of one of the student presentations and became the subject of passionate discussions.<sup>28</sup> The painting depicts a moment of heavenly intervention in the form of an angel, and the interpretation of the powerful use of colour raised content questions about who is the actual victim in this story.

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26 Rashmi Shetgiri: Bullying and victimization among children, *Advances in Pediatrics*, vol. LX, 2013/1, 33-51.

27 Participant 6. Observation log, 27 March 2023

28 The university students added Caravaggio's painting *The sacrifice of Isaac* (1603) to the list of the examined works.



10. image: Marc Chagall: Sacrifice of Isaac.

As one of the students argued: “I think that Abraham was depicted with this red colour in the first place because he is the victim. Not Isaac, but Abraham, and this time, I think, he is God’s victim. There is a strange contrast in this, that even though you physically endure an act – like Isaac – you may not be a victim, as Isaac does not know what is happening to him.”<sup>29</sup> Others returned to the debate that arose at several points regarding the distinct concepts of sacrifice and victimhood: “Abraham is the acting party. So, it’s like as if he was the one undertaking it... he is the one making the sacrifice, while Isaac himself is the victim.”<sup>30</sup> As in other cases, the students saw awareness and agency as the key factors in the interpretation of victimhood.

The duality of victim and “victim creator” became crucial also in the interpretation of *The Trojan women* and opened the door for

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29 Participant 5. Based on audio footage, 20 March 2023

30 Participant 7. Based on audio footage, 20 March 2023

the interpretation of contemporary events. The students associated the story examining the effects of the war with the events of the war in Ukraine, and the controversial situation of the enlisted soldiers became the focus of the discussion. According to the observers, this issue involved even the otherwise more reserved students in the conversation. One of the students argued that “in a war, the soldier kills people. He makes sacrifices for his nation, defends his country; on the other hand, he can also be evaluated as an aggressor.”<sup>31</sup> As regards those who volunteer to join the army, the following argument was voiced: “In this case you are not only making a sacrifice, but also accepting that you will become an offender. In my opinion, that is in the extreme.”<sup>32</sup> Someone believed that “the soldier cannot process the fact that eight thousand people die in the war every day.” The students also compared the effect the two positions have on the conscience. According to one of them, “the conscience of the victim is lighter, while that of the offender is heavier.” Due to the nearby ongoing war and the play’s powerful and extreme representation of war, the conversation ends with one of the students expressing a firm position: “War is unnecessary. It doesn’t make sense.”

*The Trojan Women* also offered the opportunity for students to reflect on the concept of victimhood in different ages and cultures. The question arose as to what extent do the norms of a specific culture or historical period influence whether someone is seen as a victim by others, or whether they see themselves as a victim. The students asked if it is possible or even worthwhile to reflect on this retrospectively or across cultures.

Offering a strong and diverse representation of victims, the staging of the play raised further questions. For example, was Helen the cause of the outbreak of the war or can she be considered a victim? The students listed the following questions that could influence their assessment of Helen:

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31 Participant 12. Observation log, 27 March 2023

32 Participant 9. Observation log, 27 March 2023

- Did she leave her husband voluntarily or was she kidnapped? Did she fall in love with Paris, or did he kidnap her? If she was kidnapped, then she should be considered a victim, since then, according to the students, she had no choice in terms of the outbreak of the war.
- How did Helen choose? Was she responsible for the decision?
- And is it her responsibility or fault that the men clashed because of her choice?

The students gave the connections between the concepts of responsibility and sacrifice serious consideration. It also occurred to them that Helen might be a victim of her own beauty.

It was an important observation regarding the whole process that at several instances, the connection between the artwork and the students' own experiences allowed them to connect with the topic. For example, some students were able to link their school bullying memories and experiences to a certain topic. Also, a strong artistic experience – such as a single moment of *Game of Thrones* – was from time to time linked to the analysis of the works. Another memorable moment was when a student from the former Upper Hungary (today Slovakia) spoke about the sacrificial aspects of living as a Hungarian in the land where he was born.

At the end of the process, we asked the students to create an exhibition concept titled *Victim*.

## 9. Exhibition concept

No restrictions were applied in relation to the development of the concept. The students were allowed to use the artworks analysed during the sessions, but it was not obligatory. The only condition was set as regards the target age group: the exhibition was to target young adults. The groups were asked to address several issues that were

present in the discussion throughout the process and to emphasize what they perceive as important in terms of victimhood today.

As an important aspect, the exhibition was to be thought-provoking, by, for example, creating situations where the visitor would wonder who the victim is and why. Thus, instead of offering clear answers, the emphasis was to be on asking questions. As another aspect, the exhibition had to be designed as “relatable and alienating” at the same time, and it was to offer a chance not only to get involved but also to view the topic from a certain distance. For the students, it was instrumental to show different cultures and, thus, multiple relationships in the exhibition. Finished after several rounds of consultation, the concept of the exhibition was divided into the following three spaces:

The first room presents the theme of victimhood through works of art, displaying, *inter alia*, the works examined during the sessions. This offers the viewers a safe space of arrival and exhibits the representations of the theme in European culture.

The second room present various cultures, one at a time. The first presented culture would be that of Japan. Incidents in Japanese history would be presented through examples of family history, including the arrival of Christian missionaries, and the stories of Hiroshima and the “comfort women” would offer multiple points of view.

The third room would display a representation of our present-day social reality. An extremely specific idea was a street scene enclosed in a glass cage depicting an abusive incident. Forced to remain witnesses without the option to intervene, this would drag the visitors out of their comfort zone. According to the plans, visitors would only be able to exit this last room by passing in front of a mirror. The students primarily strove to make the visitors think about the question of “where is my place in the story”?

## 10. Conclusion

Our qualitative research examined the reflections of pronounced victim representations of European and Hungarian art in the imagination of university students. In our five-session process, we found that the works of art of various genre initiated meaningful discussions, the students exploited the room for free association offered by the artworks and reacted to the emerging contradictions by interlinking them and their peer environment.

The student documenting the process as a participating observer reported the following subjective impressions about the process as a whole:

“In my opinion, the students were happy to participate in the research and took part in the discussions and debates with genuine interest. I think the conversations about what the victim did or could have done to escape their role were particularly interesting. According to my observations, this question came up in relation to several artworks, and the creation of tableaus also raised the question of what the victim and the community can do to stop victimization and bullying. In that regard, several proposals were made to add drama pedagogy classes and psychology to the curriculum.”

Overall, we can conclude that the university students easily integrated their own individual experience in the discussions about victimhood. Exiting the field of the arts, they included also the media in their reflections which sometimes far exceeded their own individual experiences.

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## GIVING UP VICTIMHOOD WITH ALEJANDRO JODOROWSKY'S METHOD

The youth of Alejandro Jodorowsky, a Chilean theatre artist and film director, was determined by his passion for arts, particularly poetry. Fascinated by handmade theatrical prop and marionettes, he later became entirely captivated by theatre. He admittedly never appreciated psychological theatre dedicated to imitating reality. Never aiming at miming reality or directing a play based on text, Jodorowsky's theatre belonged to the realm of endless imagination. After his years in Chile, Jodorowsky created performances in Mexico, whose participants, instead of actors playing scripted characters, were the members of the audience staging their own troubles, traumas, and inner drama. Jodorowsky argues that within every person, there is an action forestalled by normal circumstances. He, as an artist, intends to create the environment suitable for facilitating the realization of these repressed actions.<sup>1</sup> According to Jodorowsky, the shift of his theatre and theatrical research to the therapeutic dimension dates back to his years in Mexico. The creator took interest in theatre as a tool for self-discovery: „One does not go to the theatre to escape from himself, but to reestablish contact with the mystery that we all are.”<sup>2</sup>

After his experiments in Chile and Mexico, Jodorowsky moved to Paris, and kept improving his therapeutical method. From the

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1 Alejandro Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, translated by: Rachael LeValley, Vermont, Inner Traditions, 2010, 28-31.

2 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 28.

early noughties, he created the Mystical Cabaret. The sessions or “conference-happenings”<sup>3</sup> were held every Wednesday, visited by five hundred spectators. These public, community events, free of advertisements and charge, dealt with therapeutic themes, where volunteers from the audience staged their own problems, traumas, and complexes, healed or dissolved by the host before the eyes of all those present.<sup>4</sup> Outside the community sessions of the Mystical Cabaret, however, Jodorowsky was visited by patients reaching out to him with their individual issues, apparently unsolved problems, expecting a solution from the artist’s method – a method, defined by Jodorowsky himself as follows: an elaborate program based on the problems of people, an act or a series of acts to accomplish in life in a given time frame, designed to crack the character with whom they have identified themselves (false self-image) in order to help them reunite with their deeper self.<sup>5</sup> Jodorowsky’s method and art is thus centred around this transformation, as, according to the artist, “at our side are always the barriers that prevent us from fulfilling ourselves. Father, mother, true? It is this damn mind-set that has said to us: be a victim, live like a victim, and make yourself a victim.”<sup>6</sup> The reference to the mother and father arises from Jodorowsky’s following thoughts on the family:

(...) it hurts us, it is like a trap, it shortens our life, it bothers us psychically and socioculturally, it forces us into a limited level of consciousness, it robs us of our essential self, it inculcates ideas in us that are not our own, and at the moment when

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3 Gilles Farcet: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, translated by: Rachael LeValley, Vermont, Inner Traditions, 2010, 3.

4 Gilles: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 8

5 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 49.

6 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 285

we find ourselves in the world, all of this collapses and we have to build a life from scratch. We forgive ourselves because no one is guilty. Generation after generation, each one is victim to the one before. We end up with many centuries of being victims, but in the end, you understand that there is no reason for resentment.<sup>7</sup>

It is therefore no coincidence that after outlining their symptoms, the patients arriving in Jodorowsky's house explore, together with the artist, their family past, relations and inherited family patterns going back several generations. Jodorowsky even points out the possible underlying cause of their symptoms, as he is convinced that most problems and traumas are rooted in and can be traced back to the family history. But since, according to Jodorowsky, recognising the problem and its causes will not in itself lead to the solution or to leaving the victimhood behind, the detailed discussions are followed by an action or a series of actions prescribed to the patient. The creator believes that only action can bring genuine change, as implementing the action requires and embodies the patient's intent to change and be changed.<sup>8</sup> There are several examples among the practical application of Jodorowsky's method, where the person reaching out to him struggles with a problem or trauma arising from family relations, events, or relationships of the past. Below, I shall present some of such examples and cases. The first two examples have been featured in the documentary on Jodorowsky's healing techniques.<sup>9</sup> In the first examined case, we meet a man who had been abused by his father, and who attempted suicide on several occasions. The second

7 Javier Esteban: A Synthesis of Experiences, in *The Transformative Power of Shamanic Psychotherapy*. Translated by. LeValley, R. Vermont: Inner Traditions, 2010, 200.

8 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 118.

9 Alejandro Jodorowsky: *Psychomagic, A Healing Art*. [Documentary]. Paris: Satori Films. 2019.

example is the story of a Mexican woman whose fiancé committed suicide on their wedding day.

First example: Now living in Paris, a man, along with his siblings, was abused by their father as a child. The man has recently attempted suicide several times, and the thought of death by his own hands has permeated his everyday life. The healing process, again, starts with outlining his family relations and past. The series of actions that make up the process takes place in Spain. Lying on two huge flat rocks, the man experiences Jodorowsky breaking a few white porcelain plates placed on each other atop his upper body with a hammer. After cleaning most of the debris from his body, Jodorowsky, slowly and with apparent force, draws a line along his sternum with a wooden stick, and placing a palm on the right and the other palm on the left side of his chest, imitates tearing his chest apart. Then Jodorowsky puts a pile of black, rubberlike cords on the man's chest, and they move them together, crumpling them into a knot. The man throws the knot behind his back. Jodorowsky helps the patients into a sitting position and, holding his head and torso, pretends to blow air into his back, back of his head and forehead, covering his eyes and mouth for a moment at the last blow. In the next scene, the patient is standing in front of a spectacular mountain panorama, watching a pile of dirt and a shovel in front of him. Then he speaks the following words: "I decided to give back to the earth this body of pain. I sacrificed my life, my childhood to rescue my brothers and sisters from the evil of my sick father. Today I yearn to die." The man thus lays down in the pre-dug hole, being buried up to his neck, with an overturned, transparent, multiply perforated bowl covering his face. Circling in the air, the vultures immediately strike. Through a camera fixed inside the bowl, we watch the vultures devouring a pile of glistening offal thrown around the body of the man. After some time, Jodorowsky scares the vultures away with a few cries, and helps the man out of the shallow grave. He pours several bottles of white liquid all over

the man's naked body. After the patient wiped himself clean with a towel and put on new clothes with Jodorowsky's assistance, the artist places the photo of his father on his chest, tied to the end of the string of a red balloon, and says the following words: "This is your father. Take it and set yourself free from your father." The patient takes the photo, and lets it go, along with the red balloon, both floating up in the air. In an interview conducted two months later, Jodorowsky's former patient says that he has come to several recognitions, for example that life in Paris is not meant for him. Smiling, he claims having much less suicidal thoughts.



1. image: Jodorowsky, A. *Psychomagic, A Healing Art*. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.



2. image: Jodorowsky, A. Psychomagic, A Healing Art. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.



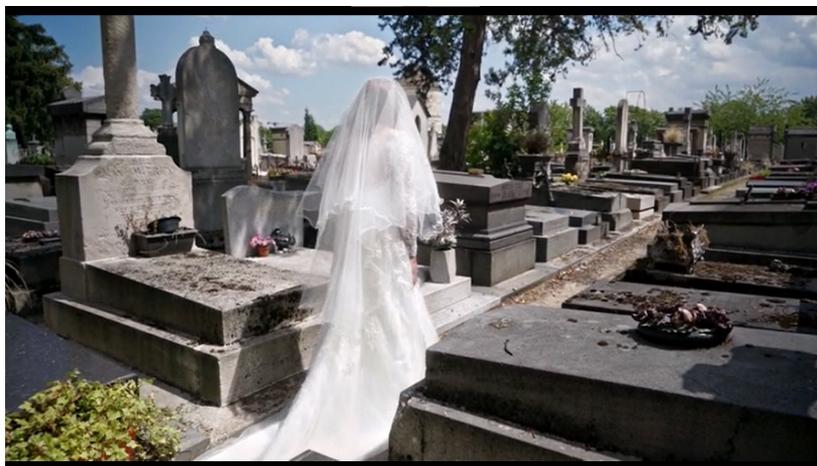
3. image: Jodorowsky, A. Psychomagic, A Healing Art. [Film]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.

Second example: in 2018, Jodorowsky met a Mexican woman whose fiancé committed suicide on their wedding day in 2010. He was an experienced parachutist, who used to call his fiancée before each jump to tell her how much he loved her. The same thing happened on that morning, at the man's apartment: after speaking the above words to his bride, he threw himself out of the window and fell on the balcony of a neighbour downstairs. After the tragedy, the woman left Mexico where she and her fiancé planned their future together. She returned after eight years, hoping to be healed. Accompanied by Jodorowsky, she first visits the death scene where, standing in front of the multi-storey building, she recollects the events. In the next scene, she visits her fiancé's grave in her wedding dress, and a church after that. There, she takes off her white dress, walks up to the altar with the dress in her arms, and places it to a platform resembling the one where the body of the dead lies in state for viewing and visitation. The part behind the platform then opens, a supporting structure rises from it, and a man in a suit throws the veiled dress on top of it. The structure sinks back into the depth, and the opened doors close. In the next scene of the healing process, the necessary equipment is put on the woman on the ground, but soon after we see her in a helicopter, preparing to jump together with a parachutist. In the minutes after their landing, the woman cries: "I'm free! I finally did it." The next scene takes place three days later. The woman says the following:

I felt like this has always been the necessary step for me. Literally. I needed the jump to set myself free. It is not that I would forget what happened; that I will always remember. But now I don't feel its weight as a sin, something that I must carry as remorse, as a sense of lack, because I had no chance to say goodbye. Now I believe that I will find something that can recharge me both mentally and spiritually, to be able to carry on and be happy.



4. image: Jodorowsky, A. Psychomagic, A Healing Art. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.



5. image: Jodorowsky, A. Psychomagic, A Healing Art. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.



6. image: Jodorowsky, A. Psychomagic, A Healing Art. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.



7. image: Jodorowsky, A. Psychomagic, A Healing Art. [Documentary]. Paris: Satori Films. 2019. Cinematography by: Pascale Montandon-Jodorowsky.

After the above two examples, I shall present three cases centred around the aforesaid cross-generation victimhood and its dissolution with the Jodorowsky-method. The following examples, however, are not featured in the documentary, but in Jodorowsky's book titled *Psychomagic: The Transformative Power of Shamanic Psychotherapy*,<sup>10</sup> namely in the form of letters. As, instead of charging a fee, Jodorowsky asks nothing in exchange for the healing process but that the patients, if they find the time, write down the process of the actions, the hardship it caused, and the feelings they experienced. According to Jodorowsky, people who wish to be cured can pay for his advice with such narratives – letters –, but the documents also allow for him to monitor whether the suggested actions were implemented properly. The first two cases concern the issues of identification with one's mother, while the third letter is related to processing the death of parents.

First case: A man named Gerard turned to Jodorowsky because he had suffered from feeling a perpetual, unsatisfied emotional demand regarding his wife for a long time. The artist advised him to buy two big church candles and a ball of red wool to carry out the act with his mother. Gerard did as Jodorowsky prescribed. Easter Monday, after having lunch together, Gerard and his mother went to Notre Dame to look for two church candles. Then he invited her to have dinner, and talked a lot, about God, about life, and their family in the restaurant. After they arrived home, a bit before midnight, they went to her room, and positioned the lit candles on the mantel, oriented north to south, as advised by Jodorowsky. Then they tied themselves firmly together with the red wool. They were tied together completely: feet, legs, pelvis, body, arms, hands, head, and eventually ended up in an embrace. Their arms were around each other, and when one moved, the other had to follow. At that

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10 Alejandro Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, ford. Rachael LeValley, Vermont, Inner Traditions, 2010.

moment, Gerard revived the events of his early childhood, then adolescence, with his mother: "I had believed in those days that I always had to follow her instructions, to see things as she saw them, to do as she did, to think as she did..."<sup>11</sup> Then Gerard felt a heat in the level of his stomach, then the feeling disappeared. He and her mother stayed attached until midnight. They were both very calm. At midnight, Gerard began to cut the wool: "First, on the bottom, the feet, the childhood . . . We each cut half of the knots, the lines, but she had me cut a few more than she did. When we were able to separate ourselves, I thought, »Now, from this instant, I am free«. I said her thank you, and I hugged her."<sup>12</sup> They then talked again for a long time, but she was tired. So, Gerard blew out the candles, took one, and returned home. The last part of the series of acts prescribed by Jodorowsky consisted of Gerard's making his mother a gift. Impulsively, Gerard thought that the only gift worthy of compensating for the gap provoked by the act was to thank her for what she gave him: "Saturday, 9 May, at midnight, I wrote with my blood, »I thank you for everything you have given me. I love you. God bless you.« Then I sealed this letter with wax from the Notre Dame candle, which I had lit while writing. This act transformed my life. I ceased hanging over my wife like I had in the past due to an emotional demand coming from my childhood."<sup>13</sup>

Second case: A painter turned to Jodorowsky, not for the first time. Having experienced strong asthma attacks, he had reached out to the artist for help before. He appeared to have been healed applying the method, but later the symptoms returned, and the painter started having strong asthma attacks again. Jodorowsky

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11 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 159-160

12 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 160.

13 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 160.

therefore suggested a new healing act, as “an act can sometimes make a difficulty disappear without exactly eradicating it in its depth. It is appropriate then to prescribe a new act.”<sup>14</sup>

The painter first asked Jodorowsky why he had a strong asthma attack after a visit to a pestiferous ossuary in Naples, after a year without any symptoms or relapse. He also asked why, since the day of the opening of his exhibition titled “Angels” (the opening, by coincidence, being June 8, the eve of the twentieth anniversary of his mother’s death), the asthma attacks returned and required daily medication once more, which the painter thought he would never need again. He, in fact, believed himself to be definitively healed after having buried all his medicines under his mother’s tomb exactly one year earlier at Jodorowsky’s advice. Actually, he had not had one attack until the said day in Naples. Jodorowsky then said that maybe, the painter does not allow himself success in the profession he loves because his mother had died after a long illness “without having been able to blossom.”<sup>15</sup> Jodorowsky, therefore, advised his patient to paint a skeleton and to draw over it an angel so the opaque dress would completely hide the bones. In addition, Jodorowsky proposed the painter that he should, in a way, raise his mourning by giving his mother the status of angel, that is, the drawn angel would symbolize his deceased mother. This idea meant a lot to the painter. He followed the advice and, in spite of his current inability to paint, he forced himself to go to the studio to make the drawing. He painted the skeleton first, but as he did not like it, he made another one over it. Then he painted the white angel. Some days later, he had a strong asthma attack with bronchitis, which took a while to get over. “I was in despair and so tired that I was forced to go to the mountains for a rest. The biggest confusion prevailed in me, as

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14 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 160.

15 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy* 161.

did a great doubt about everyone and everything.”<sup>16</sup> Jodorowsky’s advice failed him this time, to the point of provoking a reverse result to what he actually wanted. He was very disconcerted until he finally thought about it, and it occurred to him that in drawing the angel, I had made two skeletons – two skeletons for one angel. “I understood that unconsciously I still had a strong attraction to mourning, this mourning, which even made me sick.”<sup>17</sup> Upon his return, he remade the painting. This time, he drew a skeleton, then an angel. The following day, he decreased to half the dose of the medicine. The day after, he actually ceased taking anything. He said the following as the conclusion of the letter written to Jodorowsky: “I was cured! Thank you!”<sup>18</sup>

Third case: Jacqueline’s father committed suicide when she was twelve years old. She told Jodorowsky that due to problems with money, she also had suicidal thoughts. Jodorowsky explained that, overdosing on pills, her father committed suicide in a relatively calm way and that – even though she has not (yet) killed herself – Jacqueline was slowly committing suicide, following her father’s footsteps. She also told the artist that, following several years of cerebral degeneration, her mother died three weeks after her father. “I needed to express, in an act, something that was certainly suppressed for a long time. I needed liberation and, I believe, a miracle.”<sup>19</sup>

Jodorowsky suggested her to buy a dozen beautiful oranges (firm, heavy ones), go to a nursing home, and give the oranges as gifts to a dozen residents. But before giving them the oranges, for twelve

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16 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 161.

17 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 161.

18 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 161.

19 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 144.

minutes each, chat with these twelve people. In addition, Jodorowsky asked Jacqueline to write down and tell him the effect she felt. Her father died on a Saturday, so Jodorowsky told her to complete the act on a Saturday.

I thought that the nursing home would make me reflect on my father's age (at first, I did not dream about associating this act with my mother), that the oranges were a symbol of fertility and that in going to see people roughly the same age as my father, I would no longer reject him. If, on this occasion, I gave him life, I equally authorized myself to live and to no longer feel pressured to reproduce his act. Besides, twelve oranges, twelve people, it was for me the symbol of the twelfth arcana, the Hanged Man, in the tarot. It was necessary then that I follow through, that I go to the extreme of my pain in order to find joy; maybe it is necessary that I die one good time to be reborn and occupy my true place.<sup>20</sup>

The days before the act, Jacqueline was not feeling well, she had palpitations, anxiety, and experienced a sense of suffocation. She looked for a public nursing home, thinking the people there would perhaps be more needy, less enclosed than the elderly living in private institutions. She found herself forty-three kilometres away, in a city sharing a name with her husband. A friend advised her to call the director and gain access by pretending to be a psychologist doing research on the loneliness of the elderly and say that she wished to speak with a dozen people. Arriving at the place, Jacqueline quickly understood that she faced something for which she was ill-prepared. All the people she met were, for the most part, “mentally insane.”

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20 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 144.

I had a closed heart as I found there an element of my past, which had made me suffer a lot: my mother, some years before her death had also “lost her head,” and I had always rejected her, though I was never able to admit it. I found there something very painful. I had not chosen this place by coincidence. In spite of the pain, there was no question of turning around. I needed to do this; I had to do it. The pain clenched me; there had been so much suffering in these people's lives...<sup>21</sup>

Jacqueline felt a lot of love for all the elders, and it was difficult for her to pay attention to the time that passed with each person. She knew that the whole act suggested by Jodorowsky must be scrupulously respected. However, even though twelve minutes were prescribed per person, she spent about five hours talking to the first resident she met without looking at her watch. From then on, she forced herself to concentrate, which, in turn, forced her to place herself in the present moment and be vigilant. She realized that love given (by her) is felt by the other, and transmitted messages are not necessarily stronger because they are longer. Some of the residents no longer had teeth, so they could not eat the orange and did not want to take it. Jacqueline told them to give it as a gift to whomever they pleased. One man, whoever, refused to take the orange even to give it to someone. Jacqueline became really frustrated, as she had already chatted with that resident, but since he outright refused the orange, she did not know if she could count him as one of the twelve people. All that complicated her act a lot, and she was afraid of failing. This man followed Jacqueline everywhere while she chatted with the others and, finally, she was able to convince him to take the orange. Suddenly, the man fell. He had deformed legs and could not move without the help of an apparatus on which he supported

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21 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 145.

himself. Everyone looked at him, but no one moved. Jacqueline helped him as much as she could to get up. While he went up the steps, she was behind him so that he wouldn't fall back and break his back. "That may seem strange, but I was not afraid that he would fall on me and make me slide down the stairs. I felt this force of love surrounding us. Finally, this gentleman was able to go where he wished to go."<sup>22</sup> However, as it was already lunchtime, Jacqueline had to interrupt the process. She still had an orange, which meant that she still had one person to see, so she was worried that her act would not be valid. Leaving, she found her husband waiting for her, and they talked about all that happened. Although Jacqueline gave each person no more than twelve minutes, she still felt like she had left a lot of happiness, having contributed to easing a bit of suffering. Each of the persons she talked to thanked her for the visit and the conversation. Each time she said goodbye, the resident thanked her. "I believe that even if the intellect loses all or part of what we call a »sense of reality«, the heart still senses the love it is offered. That is, more or less, what I felt there."<sup>23</sup> At one o'clock, Jacqueline returned to see the twelfth person with the twelfth orange. It was a man in a wheelchair, who had had a leg amputated. She then left, aware that this act had made her conscious of the fact that there are so many places where an enormous amount of suffering reigns, and everyone can, in his own way, contribute to easing this suffering. In going to this nursing home, she found herself facing her mother and her father: "my parents both died in a three-week interval. I felt like a totally abandoned child; thanks to my visit to the nursing home, I felt I had given life to them both again."<sup>24</sup>

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22 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 146.

23 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 146-147.

24 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 147.

When she called Jodorowsky to report what happened and tell him how she felt, he proposed her to go back to the exact place where she bought the oranges the first time, again, on a Saturday. Then, said Jodorowsky, Jacqueline must seat herself at the door of a church and slowly eat the orange, taking twelve minutes to do it. Thus, Saturday, July 14, she went to the market. At twelve o'clock, very precisely, she took the orange that appeared to be the most beautiful and bought it. She took her bike, and accompanied by her husband, found a church where she could sit in front. She remembered a church named "Notre Dame de la Paix", which she had never entered before because its modern architecture did not attract her. She dreaded that the door would be locked – as all churches are usually locked outside of normal opening hours. She parked her bike, and by a miracle, when she pushed the door, it was not locked. "The interior of the church formed a quarter circle. There was a lot of stained glass – modern, of course – but I felt very well."<sup>25</sup> Before starting to eat the orange, she sat down to pray and give thanks. The priest arrived. He prayed and then fussed about the church. Jacqueline waited for the priest to leave because she did not dare to eat her orange right in front of the door. Upon leaving the church, she left the door open, as she believed that her act could not have been completed if the door had been closed; apart from that, she had the impression that the access to happiness was impossible for her. Then she took her bike and set off with her husband, who had been waiting for her outside. After a short while, they both returned to the church and were comforted to see that the priest's car was gone. This time, Jacqueline was afraid that the door would be locked. Not only was the door unlocked, but it remained grandly open just as she had left it. With real ease and pleasure, she sat herself in front of the opened door and began to peel her orange.

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25 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 147-148.

Earlier in the week, I said that twelve minutes to eat an orange would be terribly long – evidently, I do not ever take time to savour it. I inhale . . . Twelve minutes after one o'clock was, for me, a beautiful revolution, the way to end this chapter of my life and move toward a total transformation. I began by enjoying the first section. What I felt, I will not forget. As I write these lines, I experience the same emotion. I ate that quarter little bit by little bit. I was moved, I wanted to cry – all the while feeling joy. This time, I felt well and, maybe for the first time, gave myself the right to life. It was life I tasted, that passed through me, that poured into me. I really felt, before, that I had forbidden myself something very strong. Life, without a doubt . . . There, I knew God's door had always been open and that it was only me who closed it. I was in total communion with God.<sup>26</sup>

After having savoured a quarter of the orange, Jacqueline looked at the time and saw that four minutes had passed. Her emotions were very intense. "I believe that for the first time, I knew what an orange tasted like. It was a discovery. In fact, it was as if I had eaten my first orange. I wanted the time to flow a bit slower to enjoy it longer."<sup>27</sup> But Jodorowsky prescribed that she was to eat the orange precisely in twelve minutes, thus, at twenty-four minutes after one o'clock, she finished it. She then entered the church and stayed there for a while without thinking about anything at all. Then she left with her husband, who had waited for her on a bench, very close, because it was important that he be near her on this day. She finished her letter to Jodorowsky-with the following lines: "While I ate my orange, I experienced a feeling of acceptance of life inside myself. (...) I want to heal from my past, and I must say that, for the moment, it is my twelve-year-old daughter

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26 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 147-148.

27 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 148-149.

who helps me move forward. I love her above everything else, and I wish her happiness; but I know she will not find this happiness if I do not reflect an image of someone who wants to live.”<sup>28</sup>

A key and the initial step of the method developed by Alejandro Jodorowsky is thus exploring the past and relations of the patient's family, and investigating their inherited family patterns, as the artist is convinced that most problems and traumas are rooted in and can be traced back to the family history. According to Jodorowsky, however, recognising the problem and its causes will not in itself lead to the solution or to leaving the victimhood behind. The detailed discussions are therefore followed by an action or a series of actions prescribed to the patient. The creator believes that only action can bring genuine change, as implementing the action requires and embodies the patient's intent to change and be changed.<sup>29</sup>

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28 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 149.

29 Jodorowsky: *Psychomagic: The Transformative Power of Shamanic Psychotherapy*, 118.



## EMOTIONS IN CRIMINAL PROCEEDINGS

The relationship between law and psychology holds a lot of excitement and promise. The natural law roots of legal theory reach through social determinations to the psychological layer of natural human relations and human nature. Community relations, the natural order of these relations, and the role of individual considerations and actions in them provide the ground for legal regulation. The coercing power of the state is necessary for the operation of criminal law but is in itself not sufficient to provide for its proper functioning. Citizens do not accept punitive measures based on respect for state power alone. Intertwined social relationships of citizens, often based on irrational motives complement or even precede state regulations by establishing practical legal principles and justice relationships of normative force.<sup>1</sup>

Psychologists are interested in examining the relationship between legal and psychological phenomena, as law and legal practice form the borders of interaction in interpersonal and community relations. Inner motivations of individuals in such interactions can be examined in real-life situations that differ in many respects from the sterile world of scientific laboratories.<sup>2</sup> Their behaviour in such situations can be examined thoroughly in a natural contrast to situations where there is nothing at stake for them. Here real motivations cannot be as easily overridden by the intention to meet the expectations of

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1 Frivaldszky, János: *Basic questions and elements of legal philosophy*. Improved and Expanded Edition. Budapest: Szent István Társulat, 2013.

2 Hunyady, György - Berkics, Mihály, editors: *The social psychology of law is the missing link*. Budapest: ELTE Eötvös Publishing House, 2015.

researchers. This increases the external validity and general value of scientific analysis of legal processes. Human behaviour has clear outcomes in the judiciary system linked to personal responsibility. Even if this does not necessarily make the behaviour more conscious and planned, the principles, emotions, and individual or social determinations that really shape everyday behaviour can be perceived.

The relationship between law and psychology has been addressed by numerous scientific conferences, associations, journals, and review volumes, which would be too many to list within this study. We will focus on a single strand of this relationship, the role of emotions in the judicial system.

Research examining the relationship between law and emotions has achieved significant results in recent decades, providing new findings to the general psychological understanding of emotions and perhaps also to clarifying questions in legal theory. Researchers of this interdisciplinary field do not necessarily perceive emotions as an irrational, inexplicable force whose main effect is to distort rational processes. Instead, they are often seen as helping us to more fully understand the role legal norms play in our social relations. The present study aims at providing an overview of the theoretical models and research results defining this field of research. We also intend to apply the approach emphasizing the role of emotions in order to better understand the effects of trauma suffered by the victim and the possibilities of restorative justice.

## **1. The role of emotion in legal theory**

For a long time, legal theory has treated emotions and logical reasoning as opposing processes. Legal positivism has long emphasized rationality and objectivity as the cornerstones of legal decision-making and has seen emotions as confounding influences that must be separated from the law. This perspective, rooted in the Enlighten-

ment, characterized emotions as subjective and irrational, therefore elements to be excluded from legal analysis. However, by the end of the 20th century and the beginning of the 21st century, psychology, neuroscience, and sociology all delivered numerous scientific results proving that emotions were fundamental components of human cognition and behaviour.

A systematic study of the relations between law and emotions can lead to a paradigm shift in jurisprudence as well. By integrating the results of the mentioned related sciences, legal scholars are examining more and more in-depth how emotions may become integral part of legal reasoning, decision-making and functioning of institutions.

Kahan and Nussbaum are at the forefront of this change of perspective as they consider two competing conceptions of emotion in their pioneering 1996 study.<sup>3</sup> The *mechanistic conception* portrays emotions as irrational impulses or physiological responses that impair decision-making. Emotions such as anger or fear are seen as automatic reactions that shape behavior without allowing a person to think rationally. Based on this conception, the extreme emotional conditions may lower the burden of responsibility of the offender, and be used as a defense for mitigating the sentence. Should the defendant act out of intense anger, they might be held less responsible for the committed actions, because of the interference of his emotions with his ability to see clearly the consequences of his act and behave in a more controlled manner. However, according to Kahan and Nussbaum, this view treats the appearance and functioning of emotions in an overly simplified manner. Contrasted to this, they argue in favour of *an evaluative conception*, in which emotions are not regarded as merely intense irrational reactions, but rather responses on the part of the person based on personal judgments about social values. In this view, emotions are shaped by the way people evaluate situations based

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3 Kahan, Dan M. - Nussbaum, Martha C: Two Conceptions of Emotion in Criminal Law, *Columbia Law Review*, 96, 1996/2, 269-374.

on their own values and beliefs. Anger can arise, for example, when someone perceives injustice, that is, such emotion also includes moral evaluation of the event. Emotions are linked to cognitive processes in this conception, and may thus justify the need to examine their reasonableness and appropriateness in the judicial process.

A similarly significant study from Susan Bandes, published also in 1996, sheds light on the emotions of the victims and third parties giving support to them.<sup>4</sup> She also examines the role of empathy in legal decision-making, particularly in criminal trials. Using the example of a victim impact statement<sup>5</sup>, she demonstrates that empathy plays a critical role in shaping how legal actors (judges, prosecutors, lawyers, or the jury) understand and interpret the experiences of others. Based on her analysis, the stories told in the courtroom are not only regarded as neutral presentations of the facts but also as the basis for fundamental emotional experience, even affecting the judgments delivered in the cases. Victim impact statements are particularly effective tools for eliciting empathy from justice actors, which can potentially influence their sentencing and other aspects of the proceedings. Bandes warns of the resulting bias caused by uncontrolled empathy, which can lead to unfair distinctions between different victims and defendants. By exploring the possible positive and negative legal effects of empathy, Bandes opens a far-reaching debate about the role of emotions in legal decision-making. Her work inspired a series of subsequent research on the role of narratives and emotions in the courtroom, particularly in the context of criminal justice. Her study, like Kahan and Nussbaum's, is a pioneering contribution to subsequent research in the interdisciplinary research field of law and emotions.

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4 Bandes, Susan: Empathy, narrative, and victim impact statements. *The University of Chicago Law Review* 63, 1996/2, 361-412.

5 The statement on the impact on the victim (victim impact statement) states how the crime committed against the victim affected him and what negative personal consequences it entailed.

Later research raised questions about emotions necessarily countering objectivity and rationality aimed at by the law. Abstaining from emotions is based on prejudices about them being irrational and chaotic, but they may represent a valuable side of human behaviour governed by rules of its own. Therefore, they should not be excluded, but integrated into the legal analysis. The approach of Abrams and Keren exemplifies how the scope of the study of the relationship between law and emotions is broadened to include psychology, sociology, and philosophy.<sup>6</sup> They call attention to the studying of emotions, encouraging researchers in the field to investigate in different areas how emotions (e.g. empathy, fear, anger) influence the actors of the justice system, such as judges, attorneys, jurors, and litigants.

Susan Bandes and Jeremy A. Blumenthal's study published in the *Annual Review of Law and Social Science* provides a comprehensive overview of the field of law and emotions, as it has taken shape for decades of research.<sup>7</sup> The article summarizes a wide range of interdisciplinary research on emotions and the law, showing how emotions influence legal processes at multiple levels, from legislation to the courtroom. With interdisciplinary openness, drawing on insights from cognitive psychology, neuroscience, and moral philosophy, they examine how emotions shape legal reasoning and decision-making. Emotions, as they underline, are no external influence that sometimes disrupt the legal process based on rational inferences, but are deeply embedded in legal thinking. They show how anger, fear, and shame appear in the functioning of legal institutions and influence not only individual legal actors but also the legislation and so legal norms themselves. They examine how emotions are managed in various legal contexts, such as sentencing, victims' rights, and

6 Abrams, Kathryn, – Hila Keren Who's Afraid of Law and the Emotions. *Minnesota Law Review* 94, 6/2010, 1997–2074.

7 Bandes, Susan A. - Jeremy A. Blumenthal: Emotion and the Law. *Annual Review of Law and Social Science* 8, 2012/1, 161–81.

judicial decision-making, and argue that understanding these emotional dynamics is essential to a more complete understanding of the dynamics of law. They help capture the different ways in which emotions relate to legal processes, and their studies have inspired a range of subsequent research, from legal norms relating to the regulation of emotions in the courtroom to demonstrating their role in shaping legal norms and practices.

Grossi's study looks beyond the courtroom, drawing general conclusions about the limitations of legal positivism based on pioneering works in the field and pointing out that emotions may shape legal policy, the general attitude towards the justice system, and even the creation of legal systems.<sup>8</sup> It reinforces the recognition that law cannot be fully understood without considering the emotional forces that shape human interactions and institutional dynamics.

The *Emotion Review* discusses the relationship between law and emotion in his introduction to his studies, Maroney presents how this field of research developed and became institutionalized.<sup>9</sup> He also emphasizes that one of the most important challenges in the field is the development of methods that can capture the complex interactions between emotions and legal reasoning. Empirical research, especially in areas such as judicial behaviour and legal decision-making, is increasingly precise, drawing on both qualitative and quantitative methods from psychology and sociology. The author considers methodological diversity to be essential for further development of the field, with which researchers can explore the details of the dynamics of emotions in the frames of a legal process.

The field of law and emotions continues to develop dynamically today and has become a defining area of interdisciplinary research.

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8 Grossi, Renata: Understanding Law and Emotion. *Emotion Review* 7, 2015/1, 55–60.

9 Maroney, Terry A: A Field Evolves: Introduction to the Special Section on Law and Emotion. *Emotion Review* 8, 2016/1, 3–7.

More than two decades<sup>10</sup> after her first edited volume, Bandes, together with a wide range of co-editors, compiled the overview study volume entitled *Research Handbook on Law and Emotion*, which, with its 2021 edition, reflects the advancement in the research and the growing institutionalization of the field.<sup>11</sup> This handbook provides a comprehensive overview of the current state of the field, addressing new areas of research such as the impact of digital technologies, and examining the role of cultural and political differences. In recent decades, in addition to the basic questions of introducing emotions into legal thinking, researchers in the field are increasingly turning to more detailed questions of the regulation and role of emotions in legal processes.

## 2. Emotional reactions of victims

A closer examination of the emotions experienced by victims (e.g. anger, pain, or fear) can play a central role in exploring the emotional aspects of justice. Following Bandes' analysis, we have already seen the impact of the emotions experienced by the victims on the decisions made in the justice system.<sup>12</sup> Rose and her co-authors found that victims who were perceived as "appropriately upset," that is, displaying emotions consistent with social expectations, were more likely to be viewed as authentic and deserving of sympathy.<sup>13</sup> The verdict can be fundamentally affected by the fact that those victims

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10 Bandes, Susan A., ed. *The Passions of Law*. Critical America. New York, NY: New York University Press, 1999.

11 Bandes, Susan A., Jody L. Madeira, Kathryn D. Temple, and Emily Kidd White, eds., *Research Handbook on Law and Emotion*. Edward Elgar Publishing, 2021.

12 Bandes: *Empathy, narrative*, 1996.

13 Rose, Mary R., Janice Nadler, and Jim Clark: Appropriately Upset? Emotion Norms and Perceptions of Crime Victims. *Law and Human Behavior*, 30, 2006/2, 203–219.

who do not meet these emotional expectations (their emotional reactions are of lower or higher intensity) may face scepticism from members of the justice system or the public. This scepticism can result in a loss of credibility, which may affect the outcome of the case. Emotional norms thus shape the handling of victims' emotions in the legal system and serve as an invisible but powerful factor in legal decision-making. Rose et al. further argue that these expectations differ depending on the type of crime.<sup>14</sup> For example, victims of violent crimes such as assault or robbery are often expected to show more visible signs of anger or distress, while victims of property crimes are expected to show lower emotional responses. Failure to meet these implicit expectations, they say, can affect how jurors interpret testimony, which can have unintended consequences in sentencing or even dismissing a claim.

While the research of Rose et al. focuses on external observers' perception of victims' emotions, the study of Lemay et al. examines the internal experience of emotions such as pain and anger and the interpersonal consequences of these.<sup>15</sup> This research provides valuable insight into how victims cope with their pain and how these emotions manifest in their interactions with others in the framework of the judicial system. Feelings of pain and anger are deeply intertwined with the experience of victimization. For example, the victim may feel pain because the crime violated his trust in others or the safety of his personal space, but at the same time, he may also feel anger towards the offender and even the social system as a whole, because the former committed it and the latter did not prevent the crime from being committed. The study reveals that while anger is generally seen as an emotion that encourages action (e.g. justice or revenge),

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14 Rose, Mary R., Janice Nadler and Jim Clark: *Appropriately Upset?*, 2006/2, 203–219.

15 Lemay, Edward P., Nickola C. Overall, and Margaret S. Clark: Experiences and Interpersonal Consequences of Hurt Feelings and Anger. *Journal of Personality and Social Psychology* 103, 2012/6, 982–1006.

feelings of pain often lead to withdrawal or passive behaviour.

All of these feelings have important implications for how victims participate in the legal process. Victims who feel aggrieved rather than angry are less likely to actively seek justice or contact authorities, which can affect the success of their case. Victims who feel predominantly angry may be more prone to retaliate, which may shape their role in the process. In addition, the interpersonal consequences of these emotions are significant. The feeling of being offended can lead to isolation if the victims withdraw from supporting actors and institutions. Fearing condemnation or lack of empathy, they may be reluctant to share their experiences with the actors of the procedure. On the other hand, anger can manifest as confrontational behaviour that can alienate people and lead to tension with judicial bodies. For example, a victim who expresses his anger too forcefully in the courtroom may appear uncooperative or overly emotional, which may affect his credibility in the eyes of a judge or jury.

Based on all this, the question arises, how awareness can be raised with respect to the distorting effect of emotional expectations, and how the attention of professionals can be drawn to their biased approach resulting from the expression of the victim's emotions, as well as how actors of the judicial system can be trained not to measure the victim's emotional reactions to social expectations.

Victims may also need different emotional support depending on the dominant emotion they experience. Those who feel hurt may benefit from a restorative justice approach that focuses on healing and reconciliation, while those who feel anger may seek a retributive response that focuses on punishing the offender. At the same time, justice must also take into account that the emotions of the victims are complex. A single approach to victim protection may not serve the diverse emotional needs of victims. Legal and judicial professionals, including legal representatives of the victims and those who assist them, should also develop their competencies

and skills to be able to react to the multifaceted emotional dynamics that appear in legal cases.

The emotional experiences of victims of crime and the perception of and coping with these emotions in the judicial system are critical areas of any study in the field of law and emotion. The detection and regulation of the victims' emotions can significantly influence the effectiveness of the legal process, from assessment of credibility to delivery of the judgement. Legal practitioners must remain aware of the biases introduced by emotional norms and develop more nuanced approaches to addressing the complex emotional needs of victims. In this way, the legal system can move towards a more fair and more empathetic approach to the protection and support of victims.

### *2.1. Feelings of victimhood appearing in post-traumatic stress syndrome*

Post-traumatic stress syndrome (PTSD) is a significant and complex emotional reaction that often affects victims. In particular, PTSD in victims of violent crime is a multifaceted experience involving many emotional, cognitive, and interpersonal dimensions. Fear, helplessness, and terror are key emotional responses that prevent victims from fully processing the trauma, leading to the persistence of distressing symptoms.

Amstadter and Vernon looked at how emotional responses vary depending on the type of trauma and found that different traumas elicit different emotional responses that may influence the likelihood of developing PTSD.<sup>16</sup> In their study, they compared victims of different types of trauma, such as physical violence, sexual violence, and car accidents, and found that emotions such as fear, helplessness, and anger were common among them. However, the intensity and

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16 Amstadter, Ananda B. – Laura L. Vernon: Emotional Reactions During and After Trauma: A Comparison of Trauma Types, *Journal of Aggression, Maltreatment & Trauma* 16, 2008/4, 391–408

combination of these emotions varied depending on the nature of the trauma, which in turn influenced post-trauma emotional coping. Victims of violent crimes, for example, often report heightened feelings of fear and helplessness during the trauma, which significantly increases their risk of developing PTSD.

The new diagnostic criteria for PTSD (DSM-IV A2) stipulate that a person must experience intense fear, helplessness, and terror as a result of the trauma to be diagnosed with PTSD. These studies on victims of violent crimes provided empirical support for this criterion, showing that these intense emotions, particularly fear and helplessness, strongly predicted later PTSD. Post-traumatic guilt and shame often emerge during trauma processing and can be exacerbated by social reactions, personal expectations, and the victim's perception of the event. For example, a victim of sexual violence may feel shame or guilt even if they are not responsible for the attack. These results underline the central role of emotional experiences experienced during trauma in the development of psychological malfunctioning.

Brewin et al. further investigated the role of fear, helplessness, and terror in the development of PTSD among victims of violent crime.<sup>17</sup> Some emotions have been found to be an important factor in why some individuals develop PTSD while others have not. Victims who experienced greater intensity of fear and helplessness during the traumatic event were more likely to exhibit classic PTSD symptoms, including flashbacks, nightmares, and hypervigilance. Feelings of helplessness have been identified as a key factor contributing to the victim's ongoing feelings of vulnerability and lack of control, which are central to the disorder caused by PTSD.

The combination of fear, helplessness, and terror creates a psychological environment in which the trauma cannot be worked through,

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17 Brewin, Chris R. – Bernice Andrews – Suzanna Rose: Fear, Helplessness, and Horror in Posttraumatic Stress Disorder: Investigating *DSM-IV* Criterion A2 in Victims of Violent Crime, *Journal of Traumatic Stress*, 13, 2000/3, 499–509.

leading to repeated reliving of the event, a hallmark symptom of PTSD. According to Brewin and colleagues, these emotional reactions prevent the victim from integrating the traumatic experience into their cognitive framework, causing fragmented and fractured memories. As a result, victims often relive the trauma not as a distant memory but as a present experience, with all the accompanying emotional and physiological distress.

This finding is consistent with Brewin and Holmes' cognitive explanation.<sup>18</sup> The cognitive model of PTSD articulates the concept of "dual representation theory," which holds that memories of trauma are stored in two separate memory systems: verbally accessible memory (VAM) and situationally accessible memory (SAM). VAM includes memories that are integrated into the individual's autobiographical memory and can be verbally recalled. In contrast, SAM consists of fragmented sensory and emotional memories that are triggered by environmental cues, leading to flashbacks of the trauma.

In the case of victims of violent crime, the inability to integrate the trauma into the VAM often results in a dominance of the SAM, resulting in the traumatic event being experienced as a present reality rather than as a past event. The sensory and emotional intensity of these memories keeps the trauma "alive" in their minds, making it difficult to move beyond the event. Therapeutic interventions for PTSD should focus on helping victims process the trauma so that it can be integrated into the VAM and no longer dominate their emotional and cognitive lives.

In addition to fear and helplessness, other emotions such as shame and self-blame play a crucial role in maintaining PTSD. Harman and Lee's study highlights how victims' shame and self-critical thoughts contribute to the continued experience of PTSD symptoms, par-

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18 Brewin, Chris R, and Emily A Holmes: Psychological Theories of Posttraumatic Stress Disorder, *Clinical Psychology Review*, 23, 2003/3, 339–76.

ticularly feelings of current threat.<sup>19</sup> Shame can arise especially in victims who blame themselves for the trauma or who feel that their responses to the trauma were inappropriate. This is common for victims of sexual violence, where social stigma and victim-blaming attitudes can increase feelings of shame. Self-blaming cognitions, by making harsh judgments about the victim's behaviour or perceived weaknesses, can also lead to maintaining feelings of unworthiness and vulnerability.

Victims who are prone to self-blame are more likely to experience chronic PTSD symptoms because they continually reinforce negative beliefs about themselves and this interferes with their ability to cope with the trauma. This internalized criticism prevents the victim from getting over the event.

PTSD also has significant interpersonal consequences for victims, as it affects their relationships with others. Harman and Lee noted that victims who are living with shame and self-criticism often isolate themselves from others because they believe they don't deserve support or that others don't understand their trauma. This withdrawal can lead to feelings of loneliness and further worsening of PTSD symptoms. In addition, the heightened state of arousal and hypervigilance characteristic of PTSD can cause strain in relationships, as victims may react disproportionately to perceived threats or emotional triggers.

The interpersonal effects of PTSD are not limited to personal relationships but extend to the way victims interact with legal and social institutions. Amstadter and Vernon highlighted how the emotional reactions of victims during and after trauma can affect their interactions with law enforcement, therapists, and other professionals.<sup>20</sup>

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19 Harman, Rachel, – Deborah Lee: The Role of Shame and Self-critical Thinking in the Development and Maintenance of Current Threat in Post-traumatic Stress Disorder, *Clinical Psychology & Psychotherapy*, 17, 2010/1, 13–24.

20 Amstadter, Ananda B. – Laura L. Vernon: *Emotional Reactions*, 2008/4, 391–408.

Those who are perceived by outside professionals as appropriately emotional are more likely to receive empathy and support, whereas victims who display emotions that do not conform to expectations of the society may face scepticism or judgmental reactions.

### 3. Emotions Shaping Restorative Justice

Restorative justice is a specific conflict management approach that focuses on reconciliation and restoring relationships rather than punishment. It tries to reduce the damage caused by crime by restoring direct dialogue between victim and offender. The role of emotions in this process is crucial, as emotions such as fear, anger, shame, guilt, and forgiveness play a fundamental role in shaping the interaction between victims, offenders, and the community. Understanding how these emotions work in restorative justice can promote healing and reconciliation while reducing recidivism and distress of the victim.

The starting point of restorative justice is for victims and offenders to work together in order to deal with the emotional and psychological damage caused by the crime. Unlike retributive justice systems, focusing primarily on punishment, restorative justice seeks to address the emotional needs of both victims and offenders, creating opportunities for expressing emotions and mutual understanding.

Lloyd and Borrill examine the impact of restorative justice on victims, particularly while reducing PTSD symptoms.<sup>21</sup> Their research shows that participating in such a process allows victims to work on their trauma more effectively by providing a space to meet the offender, ask questions, and express their feelings. For many victims, this opportunity is a key part of the healing process. By allowing victims to express their anger, fear, and pain in a controlled

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21 Lloyd, Alex – Jo Borrill: Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress, *Psychological Injury and Law*, 13, 2020/1, 77–89.

environment, they can regain a sense of control over their life story that has often been lost in ordinary criminal justice procedures. This emotional engagement is critical in reducing PTSD symptoms as it helps victims cope with the traumatic memories associated with the crime.

Shapland goes further by emphasizing the role of forgiveness in restorative justice.<sup>22</sup> Although forgiveness does not necessarily appear in restorative justice, it often appears as a “byproduct” of emotional reconciliation. Forgiveness can be a powerful emotional release for victims and offenders alike, helping to release feelings of blame and guilt.

The needs-based reconciliation model developed by Shnabel and Nadler provides a theoretical framework for understanding the emotional dynamics between victims and offenders in restorative justice.<sup>23</sup> According to this model, reconciliation is most successful when the emotional needs of both parties are met. Victims often seek validation and a sense of justice, while offenders seek moral redemption and reintegration into the community. Meeting these emotional needs is essential for true reconciliation. The feelings of fear, helplessness, and anger experienced by victims following a crime can be alleviated if their need for empowerment is met. Restorative justice offers a framework where victims may regain a sense of control by confronting the offender and sharing what they went through. In many cases, the fact that the offender acknowledges the emotional pain caused, results in a transformation in the victim’s attitude. Such acknowledgment is crucial in their emotional healing process as it makes their suffering valid and allows them to regain control over their emotional life.

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22 Shapland, Joanna: Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful? *Oxford Journal of Law and Religion*, 5, 2016/1, 94–112.

23 Shnabel, Nurit – Arie Nadler: A Needs-Based Model of Reconciliation: Satisfying the Differential Emotional Needs of Victim and Perpetrator as a Key to Promoting Reconciliation, *Journal of Personality and Social Psychology* 94, 2008/1, 116–32.

Offenders' emotions often revolve around shame and guilt. These emotions can burden offenders and, if left untreated, prevent reintegration into society. Restorative justice provides an opportunity for offenders to seek forgiveness and moral redemption by acknowledging the harm they have caused and taking responsibility for their actions. According to Shnabel and Nadler, when offenders are able to express remorse and make amends, their feelings of shame are reduced, making it easier for them to reintegrate into the community. This emotional shift is crucial to reducing recidivism because it encourages offenders to move beyond their past actions and adopt a new identity that is more valuable for society.

The concept of forgiveness plays a significant role in restorative justice, although it is not always a necessary or desired outcome, as we have seen before. Shapland also notes that forgiveness should not be forced or expected from victims.<sup>24</sup> Forgiveness in this context can be understood as a personal emotional process rather than a legal or moral obligation. It also explores how forgiveness works as a form of emotional release for both victims and offenders. For victims, forgiving the offender can help reduce the feelings of anger and resentment that often accompany long-term emotional distress. In this sense, forgiveness serves as a form of emotional closure, allowing victims to move on without the emotional burden of the crime. For offenders, forgiveness can alleviate feelings of shame and guilt, promoting emotional healing and reducing the likelihood of reoffending.

Suzuki and Jenkins extend this line of thought by examining the role of self-forgiveness in offenders.<sup>25</sup> Self-forgiveness is seen as necessary for offenders to break out of the cycle of shame and guilt that often perpetuates criminal behaviour. Restorative justice programs

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24 Shapland: *Forgiveness and Restorative Justice*, 2016/1, 94–112.

25 Suzuki, Masahiro – Tamera Jenkins: The Role of (Self-)Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance, *European Journal of Criminology*, 19, 2022/2, 202–19.

that emphasize emotional reconciliation, including self-forgiveness, can help offenders move beyond their past actions and toward a more community-oriented future.

At the same time, victims can find emotional healing through the process of confronting and dialoguing with the offender, even if they do not experience forgiveness. The key to successful restorative justice is not necessarily forgiveness, but rather the emotional reconciliation that occurs when victims and offenders are able to engage in meaningful dialogue that acknowledges the harm and seeks to repair it.

Empathy is another key emotion in restorative justice, as it allows both victims and offenders to understand each other's emotional states. Shapland also highlights the importance of empathy in facilitating emotional reconciliation between victims and offenders. If offenders can face the victim's suffering, they are more likely to take responsibility for their actions and seek to make amends. For victims, empathy from the offender can be emotionally empowering as it shows that the offender acknowledges their pain and suffering.

Empathy is important not only for the emotional dynamics between victims and offenders but also for the wider community involved in the restorative justice process. Restorative justice often involves community members who provide emotional support for both parties and help facilitate the healing process. Empathy on the part of the community can help victims feel supported and validated while also encouraging offenders to take responsibility for their actions.

Although emotions are central to the success of restorative justice, dealing with emotions can be challenging. Lloyd and Borrill note that for some victims, confronting the offender can be emotionally demanding, especially if little time has passed since the traumatising event.<sup>26</sup> In such cases, restorative justice may exacerbate feelings of

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26 Lloyd, Alex – Jo Borrill: Examining the Effectiveness of Restorative Justice, 2020/1, 77–89.

fear and anxiety rather than promote emotional healing. It is essential that mediators provide emotional support and ensure that victims are emotionally ready to participate in restorative processes.

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# **REINTEGRATION IN CORRECTIONAL EDUCATION: HOW TO SUPPORT JUVENILE OFFENDERS?**

## **1. Abstract**

Juvenile offenders live lives afflicted with multiple social disadvantages themselves and breaking out of that cycle is far from self-evident. Resilience and the Broaden-and-Build Theory of emotions both show resources in recovery from life crises and establishing personal growth. Our research has examined the impacts of those two factors on juveniles' life satisfaction and autonomous growth orientation. We collected data from four juvenile detention centres (N=102) and were able to show the expected correlations in two multiple linear regression models. According to our results, positive emotions and resilience that contribute to life satisfaction and autonomous growth can considerably promote later reintegration into society through personal growth orientation.

## **2. Theoretical background**

The issue of juvenile delinquents raises the question as to how the correctional measures aimed at creating opportunities and the pedagogical approaches used to that end can be reconciled with punishment measures as a response to criminal behaviour. Significantly restricting their freedom, juvenile detention centres (or juvenile correctional institutions) also reinforce social norms in the lives of

the detainees to strengthen competencies for breaking out from the cycle of crime. These institutions help young people to continue their studies and improve the skills required for a constructive adult lifestyle. To provide a solid base for all that, juvenile detention centres attempt to develop a positive balance in the life of their inmates by providing institutional frameworks. Based on the premises of positive psychology, our research examines the impact of juvenile detention centres on the detainees' current life satisfaction and plans for a future where happiness is not only hedonistic euphoria but a mode of functioning that sets the basis for mental health and future growth.

### 2.1. *Marginalization of juvenile delinquents*

The chapters of this volume are centred around understanding the situation of victims and providing interdisciplinary tools for helping them. Focusing on the perpetrators, this paper stands out in a certain way. Therefore, we first argue that juvenile delinquents live lives afflicted with multiple social disadvantages themselves, and, alas, breaking out of that cycle is far from self-evident. In families with low income, children are often left with insufficient parental monitoring, and the limited resources may hinder access to proper education and stable life conditions.<sup>1</sup> Poor socioeconomic conditions resulting from the parents' low education level can have a significant impact on the educational attainment of the children as well.<sup>2</sup> In comparison with the under-18 population as a whole, the proportion of those who completed no more than 4-6 grade levels in primary

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1 Judit Hegedűs – Márta Fekete – Szandra Sipos: Zárt intézeti neveltek családdal kapcsolatos nézetei, *Metszetek-Társadalomtudományi folyóirat*, Vol. 5., 2016/4, 138.

2 Orsolya Nyilas: Hátrányos helyzetű társadalmi csoportok és a felnőttképzés: esély az integrációra?, *Educatio*, Vol., 2016/3, 451.

education is much higher among juvenile delinquents.<sup>3, 4</sup> Low education level can undermine aspirations and future-oriented goals and can hinder the escape from permanent poverty.<sup>5</sup> In addition to family background, the low level of educational integration can also have a negative impact on the youths' perception of social mobility.<sup>6</sup> Interlinked, these circumstances increase the likelihood of deviance and delinquency.

Violation of the law often appears more profitable than a rule-abiding lifestyle, therefore studying or getting employed do not seem to be a realistic alternative to crime for these young people.<sup>7</sup> Family environment may reinforce exposure to negative social influence, and, thus, may predict the risk of criminal behaviour.<sup>8</sup> On the other hand, even though peer influence might be more significant in that regard, the family background may also be interlinked with alcohol and substance use,<sup>9</sup> and criminal offenses are very often committed

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3 Kálmán Joubert – István Vavró – Éva Bodzsár: A fiatalkorú elítéltek biodemográfiai vizsgálata, *Statisztikai szemle*, Vol. 77., 1999/4, 225.

4 Hungarian Central Statistical Office: Az ismertté vált bűncselekmények és elkövetőik Magyarországon, Ed. Andrea Szalainé Homola, 2008.

5 Szilvia Kőszegi: Fiatalkorú bűnözők re-integrációs esélyei, *Gazdaságetika*, Vol. 5., 2013/7. [http://epa.oszk.hu/02000/02065/00007/pdf/EPA02065\\_gazdetika\\_koszegi.pdf](http://epa.oszk.hu/02000/02065/00007/pdf/EPA02065_gazdetika_koszegi.pdf). (Access date: 24 March 2024).

6 Balázs István Hörich: Tanulói eredményesség a mobilitási aspirációk tükrében, *Doktori disszertáció*, Debreceni Egyetem. 2022. <https://dea.lib.unideb.hu/items/ea1f241c-de1a-435c-9306-71fadc13c817> (Access date: 25 March 2024).

7 Orsolya Bolyky – Eszter Sárík: A bűnelkövetéshez vezető út megismerése visszaeső elítéltek körében–előkészítő szakasz, *Börtönügyi Szemle*, Vol. 37., 2018/3, 5.

8 Samuel Fikiri Cinini – Sazelo Michael Mkhize: Criminal Behavior and Youth Crime: A Juvenile Delinquency Perspective on Adverse Childhood Experience, in Sevgi Güney (ed.): *Criminal Behavior – The Underlyings, and Contemporary Applications*, *Intech Open*, London, 2023.

9 Mihály Balla: A fiatalkorban kialakuló szerhasználat és a család kapcsolata, *Módszertani Közlemények*, Vol. 62., 2022/1, 95.

under the influence of narcotics.<sup>10</sup> Thus, it is no surprise that the vulnerable adolescents raised in institutional care are particularly affected by substance use: regular smoking is the most frequent, followed by alcohol consumption, and trial or use of soft or hard drugs, with variable intensity.<sup>11</sup> Most of the juvenile delinquent population come from families with many children.<sup>12</sup> Research shows that the level of parental monitoring is significantly lower in these large families. In addition, socioeconomic status and parental attitude also influence the level of attention paid to children.<sup>13</sup> Moreover, those sentenced to serve time in juvenile detention centres often come from families with criminal background, which may be a predictor of juvenile delinquency.<sup>14</sup>

## 2.2. *Juvenile detention centres as tools of social reintegration*

In line with international practices, Hungarian legislation prescribes that for the protection of the youth, a measure of penalty involving the deprivation of liberty can only be imposed against a juvenile offender as a last resort. Also, in addition to punishment, the justice system requires

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10 Dóra Horváth – Andrea Rucsja – Ilona Sztojev-Angelov: Fiatalkorú elítéltek drogfogyasztásának okairól, *Egészségtudományi Közlemények*, Vol. 7., 2017/1, 58.

11 Anýžová Petra – Buriánek Jirí – Podaná Zuzana: The national policy toward alcohol and substance use among adults and juveniles – Czech Republic.

12 Tsutomu Sakuta: Social Factors Leading to Juvenile Delinquency, *The Keio Journal of Medicine*, Vol. 45., 1996/4, 287.

13 C.E. Tygart: Juvenile Delinquency and Number of Children in a Family: Some Empirical and Theoretical Updates, *Youth & Society*, Vol. 22., 1991/4, 525.

14 David P. Farrington: Family influences on delinquency, in David Springer - Albert Roberts (eds.): *Juvenile justice and delinquency*, Sudbury, Mass, Jones & Bartlett Publishers, 2011, 203.

the fulfillment of the objectives of education and reintegration.<sup>15</sup> The administration of justice may take the form of imposing correctional education in a juvenile detention centre, where the key objective is to promote the juveniles' personal development and social integration through a set of educational tools. The professional program applied in juvenile detention centres includes the restoration of mental health, the enhancement of skills and education level, the transfer of basic norms and guidelines for a healthy lifestyle.<sup>16</sup> To avoid stigmatisation and leave an opportunity to reintegrate into society, serving time in a juvenile detention centre does not hinder the issuance of a certificate of good conduct.<sup>17</sup> The frameworks for assessing correctional education is provided by the Criminal Code. The court may order correctional education if placement in a detention centre is necessary for the juvenile to be raised and educated successfully. In practice, the court orders placement in a detention centre if the juvenile's environment is not capable of providing sufficient conditions to raise the juvenile properly, which is assessed by the family background investigation.<sup>18</sup> A measure or penalty involving the deprivation of liberty is ordered mostly for crimes against property and against recidivist offenders, but the court usually imposes correctional education also if the juvenile offender is socioeconomically vulnerable.<sup>19</sup> A significant number of juvenile delinquents come from marginalised, dysfunctional, or broken families, or have a past in the child care service, with lives interwoven

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15 Cintia Szilvia Szajkó: A fiatalkori bűnözés okai, *Thesis*, University of Miskolc, 2018.

16 Henrietta Regina Farkas: A javítóintézeti nevelés kiszabásának bírói gyakorlata Magyarországon, *Iustum Aequum Salutare*, Vol. 11. 2015/4, 79.

17 Andrea Rosta: *A fiatalkorú bűnözés kriminológiája és szociológiája*, Budapest, L'Harmattan Kiadó, 2014.

18 Krisztina Lénárd – Andrea Rác: A javítóintézeti nevelés, mint támogató intézmény dezintegrációs hatásai, in Tibor Papházi (ed.): *Javítóintézet, Család, Gyermekvédelem*, Budapest, Kapocs Könyvek, 2004, 61–116.

19 Farkas: *A javítóintézeti nevelés kiszabásának bírói gyakorlata Magyarországon*, 79.

with failures, instability, emotional deficit, backwardness, aggressive environment, and substance abuse.<sup>20</sup> The special educational programs, individual educational plans, and group sessions aim to develop self-esteem, responsibility, and consciousness of social utility, and strive to compensate for deficiencies in emotional, mental, communicational, cultural, and social skills.<sup>21</sup> On the other hand, we should also highlight the limits of the role played by juvenile detention centres in the practice of social reintegration. This, however, does not arise from the malpractice of the institutions but from the deficiencies of the surrounding social context.<sup>22</sup> Despite the successful professional programs, in the absence of proper aftercare and opportunities, the work towards rehabilitation is mostly restricted to the correctional institution itself. On being released, adolescents or young adults usually return to the same environment from which they were previously removed, most likely without any significant change. The same shows in one of our interviews, in the perception articulated by a 20-year-old girl who was about to be released from the correctional institution: “*To tell the truth, I’m scared of being released. I visited my family a few times, and I felt uncomfortable, but I didn’t know why. Now I see that it was because I was the only one that changed in my home.*” Another interviewee, who would soon turn 18 and be released from the juvenile detention centre, shared similar fears with us: “*Although I have a family, I’m scared when I think about coming of age. In the detention centre, they showed me what family life is like, they taught me what love is; the educators replaced everything I didn’t have. I don’t want to go home, so I will request aftercare. I told Mum and the others about that, but they didn’t understand why I made this decision, why I wanted to study and be away from them. They will*

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20 Szajkó: *A fiatalkori bűnözés okai.*

21 Endréné Réthy: Az integráció és az inklúzió (befogadás) zavarai a fiatal bűnelkövetőknél, In Judit Hegedűs (ed.): *A javítóintézet világa*, Budapest, Eötvös József Könyvkiadó, 2010, 20.

22 Lénárd – Rácz: *A javítóintézeti nevelés, mint támogató intézmény dezintegrációs hatásai*, 61.

*never understand.*” Precisely due to such subjective and professional experiences, the professional community is united in formulating a need for a system that protects both the juvenile and their family and promotes a more efficient follow-up.<sup>23</sup>

### *2.3. Interdisciplinary foundations of reintegration: the psychological approach*

A persistent issue basically in any society around the world,<sup>24</sup> juvenile delinquency is rooted in a complex, multilayer social problem. The phenomenon includes the legal and criminal law frameworks, assisted by a multidisciplinary approach to integrate the psychological, sociological, and criminological perspectives, also considering socioeconomic factors.<sup>25</sup>

#### Positive emotions and resilience

The concept of resilience is based on the examination of disadvantaged children from the aspect of developmental psychology, which found that not all children exposed to trauma develop a psychiatric disorder. Striving to explore the causes, the research examined the factors that may increase or reduce of the risk of mental illness. Troubled families and the lack of social support were identified as risk-increasing factors, while predictability, proper care, and a safe environment were listed

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23 Réthy: *Az integráció és az inklúzió (befogadás) zavarai a fiatal bűnelkövetőknél*, 20.

24 Oriana Binik et al.: Neighborhood social capital, juvenile delinquency, and victimization: Results from the international self-report delinquency study-3 in 23 countries, *European Journal on Criminal Policy and Research*, Vol. 25., 2019/1, 241.

25 Rosta: *A fiatalkorú bűnözés kriminológiája és szociológiája*.

among the protective factors.<sup>26</sup> In early publications, successful high-risk children were referred to as “invulnerable” or “stress-resistant”, the term “resilience” was coined later.<sup>27</sup>

In the case of vulnerable, disadvantaged young people, the existence of resilience and positive emotions is questionable. It requires the development of a suitable framework, the creation and application of a proper educational program, positive guidance from and socialization with the educators, and proper interest shown by the adults as regards the life of the youth.<sup>28</sup> Examining the living conditions of male detainees in juvenile detention centres, research found that the detainees need multisided support to develop resilience and positive emotions. That research, too, found that the quality of education, and the promotion of the objectives for the future through education are key in that regard. The development of empathy and other social skills were also found important. Personal resilience is instrumental also in the possibility of a future punishment involving the deprivation of liberty.<sup>29</sup> The differences between recidivists and non-recidivists can be traced back to factors such as self-esteem, self-efficacy, resilience, and plans for future success. Those who internalized the above factors or did so to a higher degree than their

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26 Ernesto Caffò – Carlotta Belaise: Psychological aspects of traumatic injury in children and adolescents, *Child and Adolescent Psychiatric Clinics of North America*, Vol. 12., 2003/3, 493.

27 Ann S. Masten – Marie-Gabrielle J. Reed: Resilience in development, in C. R. Snyder – Shane J. Lopez (eds.): *Handbook of positive psychology*, New York, Oxford University Press, 2022, 74.

28 Bonnis Todis et al.: Overcoming the Odds: Qualitative Examination of Resilience among Formerly Incarcerated Adolescents, *Exceptional Children*, Vol. 68., 2001/1, 119.;

29 Sheryl Feinstein et al.: Resiliency in adolescent males in a correctional facility, *Journal of Correctional Education*, Vol. 59., 2008/2, 94.

peers are less likely to be engaged in a delinquent activity later.<sup>30</sup>

Barbara Fredrickson's<sup>31</sup> *Broaden and Build Theory* points out a factor that can be well linked to resilience. The theory shows that positive emotions serve to build personal resources and endure hardship by sustaining resilience and a positive attitude, they assist personal growth after a crisis and recovery from stress or grief. According to that theory, positive emotions widen the array of thoughts, action urges, and perceptions. Through positive emotions, people show an enhanced preference for variety and openness to a wider range of behavioural alternatives. Positive emotional experiences lead to a cognitive shift resulting in a broader awareness. This enables creative and resilient new ideas.

Dunn and Schweitzer<sup>32</sup> found that the broadening effect of positive emotions influence also social relations. People experiencing emotions with positive valence rather than neutral are significantly more trusting. Their research showed that while happiness and gratitude increased trust, it was decreased by anger. In an earlier study, Fredrickson found that people were more empathic to each other when experiencing positive emotions, and they had a better understanding of the intention behind other people's actions.<sup>33</sup>

Albeit transitory, positive emotions can accumulate to become the building blocks of permanent personal resources. Fredrickson sees the relation between positive emotions and increasing personal resources as self-reinforcing positive feedback. One of his studies

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30 Brent B. Benda: Factors that discriminate between recidivists, parole violators, and nonrecidivists in a 3-year follow-up of boot camp graduates, *International Journal of Offender Therapy and Comparative Criminology*, Vol. 45., 2001/6, 711.

31 Barbara Lee Fredrickson: Positive Emotions Broaden and Build, *Advances in Experimental Social Psychology*, Vol. 47., 2013/1, 1–53.

32 Jennifer Dunn – Maurice E. Schweitzer: Feeling and believing: the influence of emotion on trust, *Journal of personality and social psychology*, Vol. 88., 2005/5, 736.

33 Fredrickson: *Positive Emotions Broaden and Build*, 1–53.

showed an interconnection between flourishing (optimal mental health), positive emotionality, and cognitive resources.<sup>34</sup> Positive emotions experienced during everyday events (e.g. playing, studying, spiritual activities) build more resources over time, ultimately resulting in upward spiral dynamics predicting a higher level of flourishing.

Similar results were found by earlier research that examined positive emotions and resilience. Resilient persons were able to turn positive emotional experience into a buffering factor. Developed in that way, their protection system promoted the development of coping mechanisms in the future.<sup>35</sup> Another research showed a link between positive emotions and resilience in adolescents. The positive correlation between positive emotions and resilience was confirmed, supporting the Broaden-and-Build Theory. Positive emotions are instrumental in enhancing resilient behaviour in individuals under stress. Strikingly, the interpretation of the results showed no positive correlation between resilience and social adaption. According to the researchers' explanation, the underlying reason is that while earlier research tested the hypothesis on survivors of traumatic events, the adolescents examined in this study did not report any such event, which represents a significant difference compared to the previous samples.<sup>36</sup>

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34 Lahnna I. Catalino - Barbara L. Fredrickson: A Tuesday in the life of a flourisher: The role of positive emotional reactivity in optimal mental health, *Emotion*, Vol. XI., 2011/4, 938.

35 Michele M. Tugade – Barbara L. Fredrickson - Lisa Feldman Barrett: Psychological Resilience and Positive Emotional Granularity: Examining the Benefits of Positive Emotions on Coping and Health, *Journal of Personality*, Vol. 72., 2004/6, 1161.

36 Najam Sahar – Naila Muzaffar: Role of family system, positive emotions and resilience in social adjustment among Pakistani adolescents, *Journal of Educational, Health and Community Psychology*, Vol. 6., 2017/2, 46.

## Forward-looking components of psychological well-being

Resilience and the Broaden-and-Build Theory are both forward-looking factors in recovery after crisis and founding personal growth. Ryff<sup>37</sup> highlighted six dimensions of psychological well-being and mental health (self-acceptance, personal growth, purpose in life, positive relations with others, environmental mastery, autonomy). Several of those dimensions pertain to the future and the ability to grow. Self-acceptance is a central feature of mental health, referring both to the acceptance of the self and one's past life, contributing also to self-actualization. A precondition of optimal psychological functioning is development and, thus, growth of oneself. That requires the recognition of the actualities of the present and forward-looking possibilities, with a desire for life-span development and self-actualization. Purpose in life can also be linked to the belief that there must be a meaning to life. We need to clearly understand the purpose of life, have a sense of control over one's own life and an intention to exercise such control. Another crucial dimension of mental health and an important stage of adult development is the ability to love, and to create positive, trusting relations with others. Environmental mastery means the ability to create an environment suitable for one's psychic conditions, and, thus, the ability to advance in the world and take advantage of the possibilities offered by the environment. Autonomy includes self-determination, independence, and the regulation of behaviour from within. The fully functioning person does not look to others for approval but evaluates oneself by personal standards and makes decisions on their own behaviour on that basis.

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37 Carol Diane Ryff: Happiness is everything, or is it? Explorations on the meaning of psychological well-being. *Journal of Personality and Social Psychology*, Vol. 57., 1989/6, 1069–1081.

## Purpose in life, future-oriented goals

Future-oriented goals and preparation for adulthood is instrumental in adolescence, when goals related to future education, occupation, and family appear.<sup>38</sup> Providing structure to current life, consciously accessible and personally meaningful goals indicate what individuals are striving to achieve or avoid in the future. In this way, young people gradually become capable of developing strategic plans for achieving such goals and making preparations adapted to their living conditions.<sup>39</sup>

Personal goals are usually associated with personal economic status, work, and performance.<sup>40</sup> Extrinsic goals include external appearance and economic status, while intrinsic goals include expanding relationships and personal development. The realization of these goals requires a plan of behaviour enabling the achievement of the given goal and the designation of the necessary tools by the individual. Nonetheless, all that is still insufficient, as the realization of a given goal also requires the proper assessment of the individual's own motivation, virtues, fields of interest, and the requirements and rules of their immediate environment.<sup>41</sup>

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38 Jari-Erik Nurmi – Millicent E. Poole – Virpi Kalakoski: Age differences in adolescent future-oriented goals, concerns, and related temporal extension in different sociocultural contexts, *Journal of Youth and Adolescence*, Vol. 23., 1994/4, 471–487.

39 Joachim C. Brunstein – Gabriele Dangelmayer – Oliver C. Schultheiss: Personal goals and social support in close relationships: Effects on relationship mood and marital satisfaction, *Journal of Personality and Social Psychology*, Vol. 71., 1996/5, 1006–1019.

40 Alexandra Molnár – Katalin Mező: Tanulásban akadályozott fiatalok jövőképeinek vizsgálata. *Különleges Bánásmód-Interdiszciplináris folyóirat*, Vol. 7, 2021/3, 57–67.

41 Szilvia Jámbori: Az iskolai környezet szerepe a serdülők jövő-orientációjának alakulásában. *Magyar Pedagógia*, Vol. 103., 2003/4, 482.

A special approach to purposes of life, the catastrophe model<sup>42</sup> argues that personal goals and, thus, personal growth occur in response to emotional or psychic traumas. Challenges created by traumas may help people to rediscover important values and impel them to attain new organisations within their personality system realized through goals. All in all, the model argues that the primary impetus to positive change is provided by environmental stress and difficulties, therefore, the development of one's personality is a response to challenges. Focusing on factors other than positive emotions, this concept is an alternative to Fredrickson's<sup>43</sup> theory described above. In the lives of detainees, these factors most probably have parallel effects on current life satisfaction and on the articulation and subsequent realization of purposes in life that also lead to social mobility and personal success.

### 3. Research questions

We examine the impacts of positive emotions and personal resilience underlying the forward-looking dimensions of life satisfaction and psychological well-being. We developed two regression models to examine the said interrelations.

#### *Research question 1*

Our first model examines whether positive emotions and resilience have a positive correlation with life satisfaction. To show the additional impact of psychological factors and compare the power of external and internal factors relative to each other, we also involved demographic factors as predictor variables in our model.

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42 Kennon M. Sheldon – Tim Kasser – Kendra Smith – Tamara Share: Personal goals and psychological growth: Testing an intervention to enhance goal attainment and personality integration, *Journal of Personality*, Vol. 70., 2002/1, 5–31.

43 Fredrickson: *Positive Emotions Broaden and Build*, 1–53.

### *Research question 2*

Our second model examines whether positive emotions and resilience have a positive correlation with the autonomous growth dimension of psychological well-being. The autonomous growth dimension shows whether young people feel the need of independence, self-controlled personal development, and the achievement of long-term goals. We also involved demographic factors as predictor variables into this model.

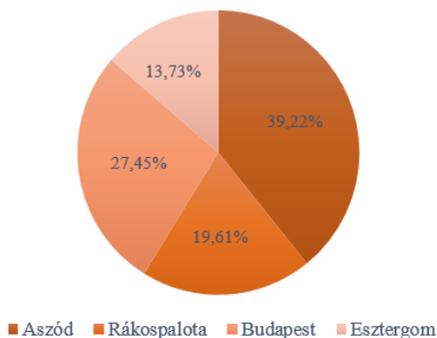
## **4. Methodology**

The research program titled *Background of purposes in life serving social integration among juveniles living in and outside detention centres* (senior researcher: Dr. Paszkál Kiss) examines the determinants of young people's life satisfaction and purposes in life in a marginalized situation. In the major research we highlighted the role of three sets of factors. This paper describes the role of the experienced positive emotions and resilience. In analyses to be published later, we shall present the role of coping with negative events, social identification and social support. Our research has been conducted with the approval of the Research Ethics Committee of the KRE BTK Institute of Psychology (approval number: BTK/8079-1/2023).

### **4.1. Sample**

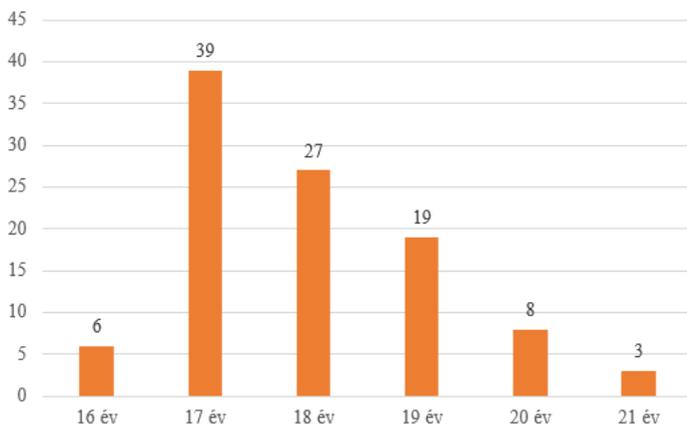
In our research, we interviewed the detainees above the age of 16 of the *Esztergom Special Children's Home Centre, Primary School and Vocational School*, the *Rákospalota Juvenile Correctional Institution and Central Special Children's Home*, the *Aszód Juvenile Correctional Institution, Primary School, Vocational School, and Special Vocational School*, and the *Budapest Juvenile Correctional Institution* located in Szőlő Street (Chart 1).

*Chart 1. Distribution of respondents by institutions*



After filtering out those who showed an extreme degree of agreement bias and those who showed no variations in their answers, and after checking the validity of the criteria and the answers, the data of 102 respondents were analysed in total from the original 129 respondents.<sup>44</sup>

*Chart 2. Distribution of respondents by age*



<sup>44</sup> We excluded from the analysis the respondents who chose answer No. 5 in more than two thirds of the items of at least three scales, and those whose answers showed a deviation that was 1.5 deviations less than the mean in the case of at least three scales.

In terms of the age group, individuals between the age of 16 and 21 participated in the research (Chart 1), with 17.93 years (SD=1,18) as their mean age. In response to an open-end question, the participants declared themselves to be of Hungarian (44%), Roma (37%), or Hungarian-Roma mixed (14%) ethnicity, while 2 respondents indicated other category, and 2 respondents did not answer this question. In terms of the gender ratio 69 (67.65%) male and 33 (32.35%) female respondents participated in the research. The girls came from the Rákospalota and the Esztergom institutions, while the boys were detainees of the Aszód and the Budapest institutions. The said four juvenile detention centres differ also in terms of their profile: all of the detainees of the Budapest Correctional Institution are boys in remand, while some of the in-remand and sentence-serving detainees of the Rákospalota institution are girls. In the Aszód Correctional Institution, all of the youth are inmates serving their sentences, while there are both juveniles serving their sentences and girls with special needs in the Esztergom institution. The distribution ratio of the said three groups was as follows (Chart 4): 15 persons with special needs (14.71%), 35 persons in remand (34.31%), and 52 persons serving their sentences (50.98%).

The criminal offenses committed by the respondents vary. The delinquencies that gave rise to the sentences imposing correctional education in a detention centre include theft, robbery, burglary, public nuisance, truancy, escape from custody, battery, consumption, possession, or distribution of narcotics, human trafficking, prostitution, extortion, threat, and fighting.

4.2. Tools

The questionnaire package included a total of 13 scales and sets of questions.<sup>45</sup> For the current research, four of the listed questionnaires were used (1. *Responses of the Modified Discrete Emotions Questionnaire*<sup>46</sup> pertaining to positive emotions (Cronbach-alpha=0.82), the Connor—Davidson Resilience Scale<sup>47</sup> for resilience (Cronbach alfa=0.83), the Ryff Scale of Psychological Well-being,<sup>48</sup> and the Satisfaction with Life Scale<sup>49</sup>.

Table 1: Descriptive statistics of scales

	Minimum	Maximum	Mean (M)	Standard deviation (SD)	Cronbach-alpha value
Positive emotions	1.1	4.8	3.18	0.77	n=10 α=0.817
Resilience scale	59	123	98.78	12.3	n=25 α=0.832
Ryff Autonomous growth	2.25	5	3.83	0.74	n=4 α=0.644
Life satisfaction	0	10	5.28	2.98	n=1

45 The questionnaire included the following scales and sets of questions: abbreviated version of the Resilience Scale (CD-RISC); Coping Inventory for Stressful Situations CISS-21 scale; Tangney-Baumeister-Boone Self-control Scale; Multidimensional Perceived Social Support Scale; Relationship Structures ECR-RS scale; EXITS scale for the measuring of multiple membership; Institutional Collective Self Esteem Scale; Scale for Modified Discreet Emotions; questionnaire for the Social and Emotional Adjustment Scale; Possible Selves Questionnaire; Ryff Psychological Well-being Scale; Satisfaction With Life Scale, and questions pertaining to social mobility.

46 Fredrickson: *Positive Emotions Broaden and Build*, 1–53.

47 Kathryn M. Connor – Jonathan R. T. Davidson: Development of a new resilience scale: The Connor-Davidson resilience scale (CD-RISC). *Depression and anxiety*, Vol. 18. 2003/2, 76–82.

48 Carol Diane Ryff – Corey L. M. Keyes: The structure of subjective well-being revisited; *Journal of Personality and Social Psychology*, Vol. 69., 1995/4, 719–727.

49 “Overall, how satisfied are you with your life now?” (11-point scale).

From among the subscales of *Scale of Psychological Well-being*, we chose *Purpose in Life* and *Personal Growth* for analysis, as those are linked more closely to future plans. Unfortunately, however, the reliability indexes of these subscales were insufficient. Therefore, we carried out principal component analysis on all items of the scale. Our indicator named *Autonomous growth orientation*<sup>50</sup> was obtained from all items by a principal component analysis with varimax rotation, from the resulting 6 factors we used the one with the greatest explanatory power (*Cronbach alpha*=0.64).

We added a set of demographic questions to the analysis assembled by us: gender, where the individual was raised (in a children’s home or a family), and educational level (no qualification vs. at least primary school qualification). The distribution of respondents along these demographic questions is presented in *Table 2*.

*Table 2. Sociodemographic characteristics*

<b>Demographic variables</b>	n	%
<b>Gender</b>	102	100
Male	69	67.6
Female	33	32.4
<b>Where did the respondent grow up?</b>	102	100
Children’s home	22	21.6
Family	80	78.4
<b>Educational attainment</b>	102	100
Less than 8 grade levels	51	50
At least 8 grade levels	51	50

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50 The following items are interlinked in the factor: “Life has always been about constant learning, change, and evolving for me.” (factor weight=0.76), “I am generally considered as a helpful person who likes to spend time with others.” (factor weight =0.7), “I am rather good at organising my various everyday duties.” (factor weight =0.64), “I am not insecure about my standpoint even if everybody else has a different opinion” (factor weight =0.58).

### 4.3. *Examination procedure*

The research was preceded by making personal contact with the participants. We presented our research plan and conducted structured interviews with the head or deputy head, the psychologist, and an educator of the given institution. These conversations provided a better insight into the professional programs and method of operation of the institution, while the introduction of the youth living in the institution added a personal aspect to the research. We asked questions about the past and structure of the institution, the daily routine of the inmates, the education, the composition of the inmates and the reasons for being placed in the institution, and the relationship of the youth with the institution and its rules. At the end of each conversation, we described the planned test battery and asked for suggestions on any changes, the wording, and the proper approach to the adolescents.

Considering the special characteristics of the sample, we decided to present the questionnaire in person, where the interviewer asked the respondents orally and recorded their answers. We anticipated that a more personal interview situation would make it more comfortable for the adolescents, it would facilitate the understanding of the questions, and increase the motivation to answer. The first round of data collection pertaining to the correctional institutions was conducted in March 2024. Our work in the institutions was assisted by coordinators. We conducted data collection on a total of ten occasions, with 4-6 interviewers asking the questions in person on each occasion, which took approximately 50 minutes on average. The answers were entered from the printed questionnaires into the online database by the interviewers, and the data were analysed by SPSS 28 and JASP 0.18.3 statistical program packages.

## 5. Results

We examined our research questions in multivariable models. We present our results starting with the explanatory power of the overall models, followed by the independent impact of the variables included.

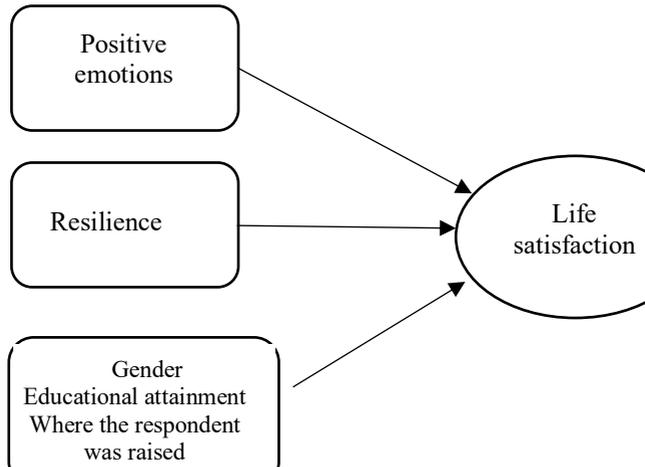
### Analysis of research question 1

First, we sought an answer to the question as to what extent do positive emotions, personal resilience, and sociodemographic factors predict life satisfaction in the case of detainees of juvenile detention centres. To answer the question, we used a multiple linear regression model (Chart 3). The predictor variables were the mean of the experienced positive emotions, personal resilience, gender, educational attainment, and the type of environment where the respondent was raised (family or children's home), while the explained variable was the Satisfaction with Life Scale.<sup>51</sup>

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51 As a prerequisite of the procedure, we measured the association between positive emotions and resilience with Spearman's rank-order correlation ( $r_s=0.252$   $p=.011$ ). Based on that, the said two independent variables are indeed linked but the link is weak. We found no correlation between the other predictor variables; thus, the prerequisite of the multi-criteria regression model was not deformed when examined with correlation analysis. The prerequisite of deviation homogeneity was checked by using the Levene-test. Also, for scale-type variables, the prerequisite of deviation homogeneity was deformed nor in the case of positive emotions ( $F(1,99)=2.667$   $p=.106$ ) neither resilience ( $F(1,100)=0.534$   $p=.467$ ), as no significant difference in variance can be shown. Examining with the Shapiro-Wilk test, the positive emotions subscale of the Modified Discrete Emotions Scale showed normal distribution ( $W(101)=0.981$   $p=.147$ ), but the normal distribution of Resilience was deformed ( $W(101)=0.965$   $p=.009$ ). Therefore, proper caution should be taken at analysing the results. Other prerequisites include that the variables are to be scale-type or dichotomous type, their variance should not be zero, and the sample size must also be sufficient.

*Chart 3: Multiple linear regression model predicting life satisfaction*



In a stepwise analysis, positive emotions, resilience, and – as the only one of the three socio-demographic factors – educational attainment proved to have individually significant predictive power. Positive emotions explain 11,8% of life satisfaction variance as the strongest predictive factor ( $F(1,99)=14.384$   $p<.001$ ). In the second step, the explanatory power was raised to 15.4% when personal resilience was introduced ( $F(2,98)=10.081$   $p<.001$ ). In the third step, with educational level added, the three variables explain 17.9% of life satisfaction variance. Which again was significantly higher ( $F(3,97)=8.276$   $p<0.001$ ) than the explanatory power of the previous model. Overall, the examined psychological factors are significant, although not strong predictors of the juveniles' life satisfaction. Positive Betas show that the growing values of all three factors are associated with increased life satisfaction.

*Table 4: : Result of multiple linear regression predicting life satisfaction*

Scale	Beta coefficient	Standard error	Standard Beta	t-value	p-value
<b>Modell 1</b>					
Constant	0.887	1.180		0.752	.454
Positive emotions	1.370	0.361	0.356	3.793	<.001
<b>Modell 2</b>					
Constant	-3.621	2.295		-1.578	.118
Positive emotions	1.185	0.363	0.308	3.264	.002
Resilience	0.052	0.023	0.215	2.274	.025
<b>Modell 3</b>					
Constants	-3.866	2.263		-1.708	.091
Positive emotions	1.140	0.358	0.297	3.185	.002
Resilience	0.050	0.022	0.208	2.236	.028
Educational attainment	1.076	0.535	0.183	2.010	.047

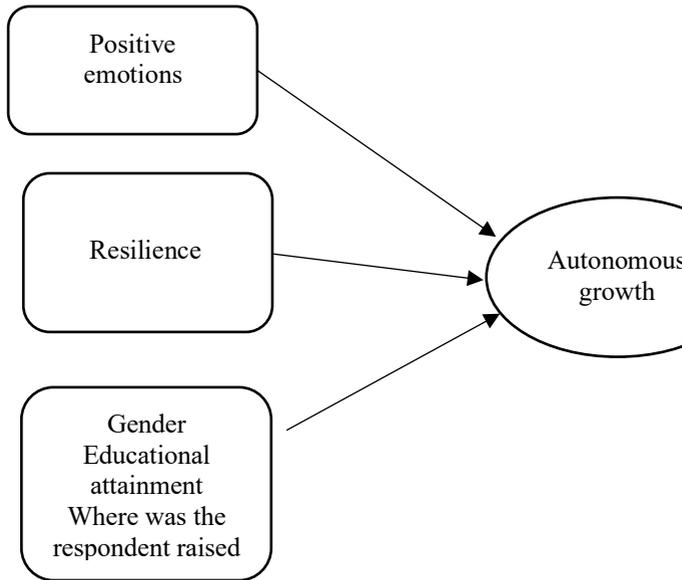
## Analysis of research question 2

Our second analysis sought an answer to the question as to what extent positive emotions, personal resilience, and sociodemographic factors together predict the tendency to autonomous growth in the case of youth living in juvenile detention centres. Similarly to the previous analysis, we developed a multiple linear model with the same predictor variables, but in this case, our target variable was our Autonomous Growth factor formed from the items of the Ryff Psychological Well-being Scale. (Chart 4).<sup>52</sup>

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<sup>52</sup> Predictor variables of the second model are identical to those of the first model, therefore the preconditions of statistical consequence are fulfilled in the same manner.

*Chart 4: Multiple linear regression model predicting autonomous growth*



Again, we examined the impact of the predictor variables with the stepwise entry method. This time, we entered resilience first as the strongest predictor variable, which explained 19.7% of the variance of autonomous growth, showing a significant impact ( $F(1,99)=25.586$   $p<.001$ ). Entered second, positive emotions alongside resilience increased this explanatory power to 24.6% ( $F(2,98)=17.330$   $p<.001$ ). Sociodemographic variables (gender, educational attainment, and the type of environment where the respondent grew up) had no significant impact on autonomous growth orientation. The 24.6% explanatory power based on the two psychological factors is higher than that of the previous model, although it still cannot be considered strong.

*Chart 5: Result of multiple linear regression predicting autonomous growth*

Scale	Beta coefficient	Standard error	Standard beta	t-value	p-value
<b>Modell 1</b>					
Constant	1.149	0.533		2.158	.033
Resilience	0.027	0.005	0.453	5.058	<.001
<b>Modell 2</b>					
Constant	0.733	0.538		1.362	.176
Resilience	0.024	0.005	0.399	4.478	<.001
Positive emotions	0.232	0.085	0.243	2.723	.008

## 6. Discussion

Our research examined the impact of positive character traits on the life satisfaction and autonomous growth orientation of the detainees of juvenile detention centres. We anticipated that even in such an extremely marginalized situation, social reintegration is not shaped only by socialization and social disadvantages, but the role of positive resources can also be shown. The theoretical background was provided by Fredrickson's<sup>53</sup> *Broaden and Build Theory*, which argues that positive emotions ensure the expansion of our repertoire of actions leading to success and resources required for growth. The latter can be linked with resilience, that is, the ability of elastic resistance.<sup>54</sup> Our results confirmed that for youth living in juvenile detention centres, resilience and positive emotions are important resources in creating the mental functioning that can be described as flourishing in positive psychology.<sup>55</sup> Flourishing is a joyful state

53 Fredrickson: *Positive Emotions Broaden and Build*, 1–53.

54 Christian T. Gloria – Mary A. Steinhardt: Relationships among positive emotions, coping, resilience and mental health, *Stress and health*, Vol. 32., 2016/2, 145–156.

55 Martin E. P. Seligman: *Flourish – élj boldogan! A boldogság és jól-lét radikálisan új értelmezése*, Budapest, Akadémiai Kiadó, 2011.

serving as a solid basis for personal growth for all people. Perhaps surprisingly, our empirical results show that the factor of flourishing is far from negligible in the case of juvenile delinquents.

In summary, our research results fit well with other findings, showing that positive emotions and resilience have a beneficial impact on personal growth even in the marginalized social position of juveniles in detention centres. These factors have a complimentary effect on the current well-being and, in that context, autonomous growth, allowing young people to show development orientation, open up to their peers, organise their lives consistently, and defend their viewpoints if need be.

Our results show that contributing to autonomous growth, the reinforcement of positive emotions and resilience in juvenile detention centres can significantly facilitate later reintegration into society through personal growth orientation. The staff of the correctional institution are instrumental in reinforcing resilient functioning, and their supportive attitude is key in developing positive emotions.<sup>56</sup> On the other hand, Bilicha et al. (2022) found<sup>57</sup> that psychoeducation in the positive mindset training increased the level of self-acceptance, which, in turn increased the psychological well-being of youth living in juvenile detention centres even further.

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## THE ANALYSIS OF VICTIMHOOD IN LABOUR LAW

### 1. The Analysis of the Principle of Equal Treatment in Labour Law

The general prohibition of discrimination is provided for in the Fundamental Law. It states that all persons are equal before the law and that all persons have legal capacity. Hungary guarantees the fundamental rights to everyone without discrimination based on any ground such as race, colour, sex, disability, language, religion, political or any other opinion, ethnic or social origin, wealth, birth or any other circumstance whatsoever.<sup>1</sup> Women and men have equal rights.<sup>2</sup> The Constitutional Court has also explained in one of its decisions that equality of rights does not imply equality of natural persons according to extra-legal criteria. A person, as a member of the society, can and does differ from other people according to his or her vocation, education, earnings, etc. The State has the right – and to some extent the duty – to take account of the differences that actually exist between people when enacting legislation.<sup>3</sup>

In terms of victimhood, it is important to consider when it is possible to establish a breach of the principle of equal treatment. With regard to the principle of equal treatment, the provisions of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter: Equal Treatment Act) should be taken as a basis. The Equal Treatment Act must be applied also when examining the principle of equal treatment in labour relations. With regard to equal

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1 Article XV (2) of the Fundamental Law of Hungary (11 April 2011)

2 Article XV (3) of the Fundamental Law of Hungary (11 April 2011)

3 Decision No. 61/1992.(XI.20.) of the Constitutional Court

treatment, specific cases of discrimination are covered by the Equal Treatment Act. Under the Equal Treatment Act, direct discrimination, indirect discrimination, harassment, segregation, victimisation, and any instruction given to that effect shall constitute a violation of the principle of equal treatment.<sup>4</sup> Unless otherwise provided in the Act, a conduct, measure, criterion, omission, instruction, or practice (hereinafter jointly “provision”) shall not constitute a violation of the principle of equal treatment if it limits a fundamental right of the party suffering the disadvantage in an inevitable situation with the objective of enforcing another fundamental right, provided that the limitation is appropriate for achieving, and proportionate to, that objective, or in a situation not covered by the previous point, it is justified by a reasonable ground that is directly related to the legal relationship concerned, as confirmed by objective assessment.<sup>5</sup> A provision shall constitute direct discrimination if, as a result of it, a person or group is treated less favourably than another person or group in a comparable situation is, has been or would be treated on grounds of any of their characteristics, whether actual or presumed, which is not defined in a taxative way by law.<sup>6 7</sup> A provision that does not constitute direct discrimination and apparently complies with the principle of equal treatment shall constitute indirect discrimination if it puts, to a considerably higher extent, certain persons or groups bearing certain characteristics in a position more disadvantageous

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4 Section 7 (1) of Act CXXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter: Equal Treatment Act)

5 Section 7 (2) (a)-(b) of the Equal Treatment Act

6 Such as sex, race, colour, nationality, membership of a national minority, language, disability, state of health, religion or belief, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, gender identity, age, social origin, property, part-time or fixed-term nature of the occupational relationship or other employment-related relationship, membership in a representative organisation, any other status, characteristic, or attribute (hereinafter: characteristic).

7 Section 8 of the Equal Treatment Act

than that in which another person or group in a comparable situation is, has been, or would be.<sup>8</sup> A conduct of sexual or other nature that violates human dignity shall constitute harassment if it is related to a specified characteristic of the person concerned and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.<sup>9</sup> A provision shall constitute segregation if it separates, without the explicit permission of an act, certain persons or a group of certain persons from other persons or the group of persons in a comparable situation on the ground of a characteristic specified in the Equal Treatment Act.<sup>10</sup> A conduct shall constitute victimisation if it causes, is aimed at causing, or threatens to cause injury to a person in relation to that person's raising a complaint, launching a proceeding, or participating in such a proceeding because of the violation of the principle of equal treatment.<sup>11</sup>

However, a provision shall not constitute a violation of the principle of equal treatment if it is aimed at eliminating the inequality of opportunities, on the basis of objective assessment, concerning a specifically designated social group, provided that it is based on an act, a government decree issued on the basis of authorisation by an act, or a collective agreement, and it is for a fixed term or until a specific condition is met, or it is applied pursuant to the statutes of a political party in the course of electing the managing or representative body of the political party concerned, or in the course of naming candidates for elections pursuant to the act on electoral procedure.<sup>12</sup> The provision mentioned above may not violate any fundamental right, grant any unconditional advantage, or exclude the assessment of individual aspects.<sup>13</sup>

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8 Section 9 of the Equal Treatment Act

9 Section 10 (1) of the Equal Treatment Act

10 Section 10 (2) of the Equal Treatment Act

11 Section 10 (2) of the Equal Treatment Act

12 Section 11 (1) (a)-(b) of the Equal Treatment Act

13 Section 11 (1) (a)-(b) of the Equal Treatment Act

The Equal Treatment Act contains specific provisions in relation to employment. The act lists the conducts that result in direct or indirect discrimination by the employer against the employee. In such cases, the employee may become a victim in the employment relationship and the unlawful situation must be remedied. The act then specifies also the exceptions to employment discrimination, the cases where the employer can exempt itself from the discrimination it applies and of which it is accused. The act stipulates that even in the case of such special grounds, discrimination based on the sex, race, colour, nationality or ethnic origin of the worker is not lawful or which violates the principle of equal pay for equal work. The Equal Treatment Act provides for the possibility for an act, or a government decree or collective agreement based on the authorisation of such an act, to impose a preferential treatment obligation on a specific group of employees in connection with their employment or other types of working relationship. Such differentiation may not, however, be contrary to the prohibition of discrimination laid down in the Fundamental Law and by an act of law, nor may it violate human dignity.

## **2. The Requirement to Comply with Equal Treatment in the Labour Code**

Act I of 2012 on the Labour Code (hereinafter referred to as the Labour Code Act) stipulates the compliance with the principle of equal treatment among the general provisions, as a basic principle. It states that in connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. Remedying the consequences of any breach of this requirement may not result in any violation of, or harm to, the rights

of other employees.<sup>14</sup> Wage shall mean any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship.<sup>15</sup> The equal value of work for the purposes of the principle of equal treatment shall be determined – in particular – based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labour market conditions.<sup>16</sup> It can be noted that the Labour Code specifically prohibits the violation of the principle of equal treatment in the case of wages, but at the same time it provides detailed guidance on the aspects to be taken into account when examining the principle of equal pay for equal work. It lists the circumstances which may justify the possibility of a difference in pay between employees. It is important to underline that the Labour Code contains the rules of private labour law, where, among other things, the agreement of the parties should prevail also as regards wages. A balance needs to be struck so that employees are not discriminated against in terms of wages, while at the same time leaving the possibility for the parties to the employment relationship to freely agree on wages. In this respect, however, it is a fundamental aspect that the Labour Code states that the basic wage must be at least the minimum wage or the guaranteed minimum wage.<sup>17</sup> The Labour Code provides in detail for the criteria to be taken into account by the employer when determining the wage. However, it should also be highlighted that, although the base wage must be agreed between the employer and the employee when the employment contract is concluded, in practice it is common practice that the employer determines the remuneration it considers acceptable for a given job, which the employee then

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14 Section 12 (1) of Act I of 2012 on the Labour Code (hereinafter: Labour Code)

15 Section 12 (2) of the Labour Code

16 Section 12 (3) of the Labour Code

17 Section 136 (1) of the Labour Code

accepts if he or she wishes to conclude the employment contract. Of course, the employer's offer must be made in accordance with the rules of the Labour Code. The Labour Code states that the base wage shall be specified on a time basis.<sup>18</sup> In determining the part of the basic monthly salary payable for a specific period, the amount of the basic monthly salary projected for one hour under the standard work pattern for the month shall be multiplied by the number of hours scheduled for the same period under the standard work pattern.<sup>19</sup> However, employers may also establish wages on a performance basis, or by a combination of time basis and performance basis.<sup>20</sup> Performance-based wage means where wages are paid only on the basis of performance-related requirements specified for each employee separately in advance.<sup>21</sup> Wages in the form of performance-based wages exclusively may be established only if so agreed in the employment contract. This also applies where wages are paid on a time and performance basis combined, if the time rate is lower than the base wage.<sup>22</sup> If wages are paid on the basis of performance, performance requirements shall be determined by the employer on the basis of preliminary and objective surveys and calculations covering the potential to perform one hundred per cent of such requirements during regular working hours.<sup>23</sup> Performance requirements are to be established, and employee groups under the same performance requirements are to be determined in a manner consistent with the employer's operating conditions, such as the requirements relating to the performance of work, work organization and the technology employed.<sup>24</sup> The employees concerned shall be given written notice

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18 Section 136 (2) of the Labour Code

19 Section 136 (3) of the Labour Code

20 Section 137 (1) of the Labour Code

21 Section 137 (2) of the Labour Code

22 Section 137 (3) of the Labour Code

23 Section 138 (1) of the Labour Code

24 Section 138 (2) of the Labour Code

of performance requirements and performance-based wage factors in advance.<sup>25</sup> It can be seen that the employer has the possibility to differentiate the wages of its employees, but at the same time it must be careful not to violate the principle of equal treatment, it must establish a system of conditions which makes it possible to determine ex post the criteria on the basis of which the employer differentiates the wages of the employees.

The Curia established an infringement of the principle of equal treatment in relation to wages in its judgment which was based on the fact that the applicant had worked as a tool warehouse worker for the company between 25 May 2005 and 15 February 2009. His two male colleagues, who had held the same job also one and a half and two years earlier and had been with the employer for 11 and 13 years respectively, but in other positions, were paid 70% and 100% more than him. She claimed that she was paid less because she was a woman, because she had a higher education and more experience than her male colleagues, and their positions were the same, therefore she appealed to the Equal Treatment Authority. In its Decision No. EBH/117/7/2010, the Authority established that the employer's measure constituted direct discrimination on grounds of sex and imposed a fine on the employer. The decision concluded that the fact that the two comparable male employees had been employed by the plaintiff eleven and thirteen years earlier could not be taken into account for the purposes of differentiation, since the same position that the applicant had held had been held only one and a half or two years earlier, so the fact of having held a different position is a circumstance that is not related to the nature of the job. It could be observed that the wages of male workers were consistently higher than those of the applicant by approximately 50-110%. It could also be established that the applicant received a lower salary than the male colleague who started in the same position two years earlier

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25 Section 138 (4) of the Labour Code

than him, by approximately 50-70%, and by 110-115% lower than the male colleague who started one and a half years later. This also implies that the starting date of the job was not a factor in setting the wages. Lastly, the discrimination on grounds of sex was also demonstrated by the fact that a female employee who had worked for the plaintiff for only seven months as a tool warehouse worker – who was not the applicant – also received 45-60% and 100% less pay than the colleagues examined. The Metropolitan Court rejected the plaintiff's claim. The court pointed out, on the basis of the legal provisions cited by the defendant, that the burden of proof was on the plaintiff to prove during the administrative procedure that the circumstances alleged by the aggrieved party did not exist, that it had complied with the principle of equal treatment and that it was not obliged to do so in the context of the legal relationship in question. In its application for review, the plaintiff submitted that its freedom to conclude contracts could not be restricted by the above-mentioned provisions of the Equal Treatment Act. The legal position, on the contrary, is that the plaintiff should have given an account before the defendant authority of the objective and reasonable justification for the difference in wages grading between the two male employees and the applicant. However, the fact that the two male employees had previously worked in different positions for the plaintiff could not be accepted as an objective and reasonable justification. While it is not disputed that there may be some differences in wages depending on wage bargaining, the plaintiff should have proved, in the first place, that the plaintiff company determines the wages of its employees in whole or in part on the basis of the length of service with the plaintiff, irrespective of whether the employee is male or female. The plaintiff could not prove this, the only difference between the applicant and the two other male workers could be the difference in work experience, however, its significance could only be taken into account to a limited extent, as there was no substantive difference

between the applicant and the two male workers in terms of the specific position held. Consequently, although the Curia acknowledges that differences may arise between persons holding the same position depending on their ability to assert their interests in the course of a wage bargaining process, the significant differences of 70-100% in the case at hand could not be reasonably justified.<sup>26</sup>

In another judgment, the Curia, in a case concerning the unlawful termination of an employment relationship, had to take a position, *inter alia*, on the issue of the employee's claim that the employer discriminated against him on the grounds of age, by setting the salary of her colleague, who had been working in the same workplace in the same position since November 2013, at HUF 100,000 per month more than her monthly salary, since the young colleague did not have any specific experience or qualifications that would have justified the discrimination. The fact that the employer paid a much lower wage for the same work also harmed the employee's legitimate interest, and the employer therefore engaged in an improper exercise of its rights as well. The employer did not dispute that the salary of the employee's colleague was higher, the reason for this, as the employer indicated, was wage bargaining with the colleague before the establishment of the employment relationship and her qualifications in administrative management. As a result of the taking of evidence by the Curia, it was established that the employee was performing the same work duties as the colleague who was younger than the employee and who had completed his/her studies at a higher education institution for administrative management, but who had not obtained a degree and therefore had no professional qualification, which duties the colleague "performed differently from the employee", such as "selecting and prioritising requests". In the lawsuit, the employer was unable to prove that the difference in wages was justified by the quality or quantity

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26 See: Decision No. Kfv. 39.148/2011/7 of the Curia. Judicial review of an administrative decision on equal treatment.

of the work done, or by the mental effort or other circumstances. The employer did not dispute the employee's claim that younger age was a factor for female employees, that the newly hired female employees were more than two decades younger than the employee, and that the new manager who hired the female colleague only hired people born after 1985. The circumstances indicated by the employer were not suitable to excuse itself. The mere reference to the fact that the employee's colleague worked in a different, more efficient way was not sufficient to justify the excuse. The Curia established that the employer had determined the employee's wages in violation of Section 12 of the Labour Code, in breach of the principle of equal treatment and equal pay for equal work, it was unable to substantiate the wage difference with objective reasons, and thus failed to meet its burden of proof under Section 19 of the Equal Treatment Act.<sup>27</sup>

It can be concluded that the Labour Code sets out the principle of equal treatment with a framework character, highlighting the remuneration of work within the scope of protection. Thus, the principle of equal pay for equal work is not explicitly enshrined in the Labour Code, nor is it in the Fundamental Law, but the Labour Code regulates the essential elements of this principle. However, if you look carefully at the rules on the setting of wages in the Labour Code, we can see that the employer has leeway to differentiate between employees in terms of wages, and thereby recognise extra performance or more efficient work, but in this case, too, it must be careful not to breach the principle of equal treatment.

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<sup>27</sup> See: Decision No. Mfv. .10.707/2017/7 of the Curia. Unlawful termination of employment

### 3. Examining the Principle of Equal Treatment in the Context of Workplace Harassment

With regard to harassment at work, the Equal Treatment Act defines what constitutes an employment relationship. According to this, occupational relationship means employment relationship, public service relationship, government service relationship, public employment relationship, tax and customs authority service relationship, law enforcement administrative service relationship, defence employment relationship, court service relationship, service relationship of judicial employees, prosecution service relationship, professional and contractual service relationship, foster parent occupational relationship, or a relationship established between a temporary work agency and a temporary agency worker based on labour hire as defined in the Act on the Labour Code.<sup>28</sup> For the purposes of the Equal Treatment Act, employer also means the user undertaking in labour hire.<sup>29</sup> Harassment is a violation of the principle of equal treatment.<sup>30</sup> Pursuant to the Equal Treatment Act, a conduct of sexual or other nature that violates human dignity shall constitute harassment if it is related to a characteristic specified in Section 8 of the Equal Treatment Act, of the person concerned and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person. The statutory definition shows that harassment is a violation of the human dignity of the individual. The protection of human dignity is already enshrined in the Fundamental Law, when in the National Avowal it is stated that “We hold that human existence is based on human dignity.” Later, in Article II of the part entitled Freedom and Responsibilities, it states that “Human dignity shall be inviolable.

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28 Section 3 (1) a) of the Equal Treatment Act

29 Section 3 (2) of the Equal Treatment Act

30 Section 7 (1) of the Equal Treatment Act

Everyone shall have the right to life and human dignity; the life of the fetus shall be protected from the moment of conception.” As for harassment, in addition to human dignity, sexual and other types of conduct are defined, which means that there can be a number of situations that could constitute harassment at work, which should always be examined on a case-by-case basis within the specific occupational area. The issue of harassment often arises in the context of harassment at work. Pursuant to the Equal Treatment Act, the principle of equal treatment shall be observed, with regard to the given legal relationship, by employers with regard to occupational relationships, and persons with instruction power with regard to other employment-related relationships, and both with regard to other directly related legal relationships.<sup>31</sup> At the same time, the scope of the Equal Treatment Act obliges natural persons to observe the principle of equal treatment, where the natural person employer acts with regard to the occupational relationship and the persons with instruction power acts with regard to other employment-related relationships, or with regard to other directly related legal relationships.

The Equal Treatment Advisory Board has addressed the concepts of harassment and sexual harassment in its Resolution No 384/5/2008 (10.4.2008) (hereinafter: Resolution). In this Resolution, it stated that harassment and sexual harassment can take the form of both active and passive conduct, one-off and continuous, recurrent acts, and it can also be committed in the absence of intent. All the circumstances of the case, in particular the statements made and their nature, must be taken into account. The definition of harassment is set out in the Equal Treatment Act.<sup>32</sup> Harassment is a violation of the principle of

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31 Section 5 d) of the Equal Treatment Act

32 Resolution No 384/5/2008 (10.4.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&) (as at 3 May 2023)

equal treatment, as is an instruction to commit harassment.<sup>33</sup>

In Community law, harassment is “*deemed to be discrimination, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States*”.<sup>34</sup> Later, this definition was expanded, according to which “*Harassment shall be deemed to be a form of discrimination, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment*”<sup>35</sup> “Harassment is where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”<sup>36</sup> The concept of sexual harassment in Community law is defined only in Article 2(2) of Directive 2002/73/EC: “*Sexual harassment is where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.*”<sup>37</sup> It can be seen from the above that, in terms of the concept of harassment, it is not only sexual harassment that can affect an employee at work, but any conduct

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33 Section 7 (1) of the Equal Treatment Act

34 2000/43/EC Racial Equality Directive, Article 2 (3)

35 2000/78/EC Employment Framework Directive, Article 2 (3)

36 2002/73/EC Directive, in Article 2 (2)

37 2002/73/EC Directive, Article 2 (2); and see: Resolution No. 384/5/2008 (10.04.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&) (as at 3 May 2023)

that is directed against his or her person and results in some kind of detriment to him or her.

The assessment of harassment requires particular care, because the legislator is assessing the subjective impressions of the person who has suffered harm, when he or she speaks of behaviour that offends dignity on the one hand, and of a hostile and humiliating, degrading, intimidating or even offensive environment on the other. It is important to underline that in most cases the harasser abuses his/her position arising from subordination. A final decision of the Equal Treatment Authority states the following about the nature of the conduct that constitutes harassment: “*Harassment is a form of discrimination, in this case on grounds of sex. The harasser’s behaviour is not specifically sexual, it is not aimed at sexual relations, but it has the effect of intruding on the intimate sphere of the people around him or her, or the people he or she works with. The means and methods of harassment are characterised by ambiguity, double standards, the exploitation of the lack of evidence and the emphasis on sexuality where it has no relevance. The harasser abuses his or her position in the workplace, state of power, hierarchical position. The method of harassment is particularly prevalent when the self-consciousness, identity and personality of the woman in the situation (the person being harassed) is strong and developed enough to allow self-assertion to be expressed in words or actions. Harassment can take the form not only of physical touching, but also of sexual, gender-affirming jokes, remarks or even pictures.*”<sup>38</sup>

Therefore, discussing problems or giving an instruction to correct is not considered harassment if it is related to the work of the person concerned and does not affect the employee personally or the way it is

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38 Resolution No. 384/5/2008 (10.04.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccb9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccb9c?version=1.0&t=1617961002880&) (as at 3 May 2023)

done does not violate his or her human dignity.<sup>39</sup> It can therefore be concluded that in the case of harassment, the issue of the subjective impressions of the harassed person arises, as the behaviours that give rise to the feeling of harassment may vary from one individual to another. Beyond this, however, there are specific circumstances and factors which clearly establish the existence of harassment.

With regard to harassment, Section 7 (2) of the Equal Treatment Act must also be taken into account, according to which a conduct, measure, criterion, omission, instruction, or practice shall not constitute a violation of the principle of equal treatment if it limits a fundamental right of the party suffering the disadvantage in an inevitable situation with the objective of enforcing another fundamental right, provided that the limitation is appropriate for achieving, and proportionate to, that objective, or in a situation not covered by the foregoing, it is justified by a reasonable ground that is directly related to the legal relationship concerned, as confirmed by objective assessment.<sup>40</sup> The prohibition of harassment therefore covers any conduct, measure, condition, omission, instruction or practice, as defined above, which is in breach of the principle of equal treatment.

Harassment and sexual harassment are not necessarily intentional conduct and can therefore be established in the absence of intent. Harassment and sexual harassment can take the form of both active and passive conduct. In particular, passive conduct by omission arises where an employer becomes aware that an employee is harassing a co-worker but fails to take action to prevent it. Since harassment

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39 Resolution No. 384/5/2008 (10.04.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccb9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccb9c?version=1.0&t=1617961002880&) (as at 3 May 2023)

40 Section 7 (1) of the Equal Treatment Act

can be achieved by inaction, the employer can be held liable.<sup>41</sup> With regard to the general standards of conduct, the Labour Code provides that employment contracts shall be executed as it might normally be expected in the given circumstances unless any legal provision exists to the contrary.<sup>42</sup> Work must be organised and managed in such a way as to avoid creating a situation in which an employee may be subject to harassment. Later, in the context of the performance of the employment relationship, it sets out the requirements on the basis of which the employer must organise the work. In this context, care must also be taken to avoid the possibility of harassment at work. Employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment and labour relations.<sup>43</sup> Under this statutory provision, the employer is also obliged to provide a work environment in which harassment does not occur. Of course, it may be that an employer will take all reasonable steps to ensure that this is the case, but harassment does occur, and in such cases the employer is obliged to investigate and take all steps to detect the harassment, and to draw the consequences and take the necessary legal action. The law also states that Employers shall be liable to provide to their employees the necessary conditions for working unless there is an agreement to the contrary.<sup>44</sup> This is primarily about ensuring the conditions necessary for the performance of work tasks, but in a broader sense it must also include the need to take into account the personal circumstances of the employee and to create a working environment in which the employee is not exposed to harassment. The responsibility for the implementation

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41 Resolution No. 384/5/2008 (10.04.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&) (as at 17 June 2023)

42 Section 6 (1) of the Labour Code

43 Section 51 (1) of the Labour Code

44 Section 51 (1) b) of the Labour Code

of occupational safety and occupational health requirements lies with the employers.<sup>45</sup> Harassment can lead to a deterioration in the health of the employee and can also increase stress at work, which can affect their ability to work safely. Employers must also take into account the conditions of employment that are conducive to safe and healthy working conditions, so as to avoid, *inter alia*, the stress caused by the psychosocial risks associated with work.<sup>46</sup> Psychosocial pathogenic factors are persistent social risk situations (e.g. social isolation, conflict with a co-worker or manager) or forced life-changing events and experiences (migration, forced loss of property, etc.) which, if a so-called risk disposition (e.g. type A behaviour pattern) exists, may lead to psychological or psychosomatic illness, accidents or social maladjustment.<sup>47</sup>

The Resolution sets out in specific terms the measures that the employer can take to prevent a violation of the principle of equal treatment. Accordingly, the employer must establish an effective workplace procedure or forum for dealing with harassment that is accessible to all. Where necessary, the employer should provide support and information to employees who complain, are accused of harassment or investigate complaints, and should adopt internal policies to prevent sexual harassment.<sup>48</sup> It can be seen clearly that the Resolution sets out the requirements necessary to ensure that safe and healthy working conditions can be achieved in a workplace, should the issue of harassment arise. Employees should be able to report, if

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45 Section 51 (4) of the Labour Code

46 Section 54 (1) d) of Act XCIII of 1993 on labour safety

47 Section 1 h) of Decree No. 33/1998 of the Minister of Welfare of 24 June 1998 on medical examinations and opinions on fitness for work, professional ability and personal hygienic fitness

48 Resolution No. 384/5/2008 (10.04.2008) of the Equal Treatment Advisory Board. See: [https://www.ajbh.hu/documents/10180/3908613/szexualis\\_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&](https://www.ajbh.hu/documents/10180/3908613/szexualis_zaklatas.pdf/d73f3f47-df3b-a0d2-6b31-4af105ccbd9c?version=1.0&t=1617961002880&) (as at 3 May 2023)

they are being harassed in any way at work, as such a situation can have serious health consequences and can affect the maintenance of employment relationships as well.

#### **4. The Possibility to Investigate Harassment at Work – The Whistleblowing System**

In the case of harassment at work, it is necessary to take into account and analyse those provisions of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications that are considered relevant for the maintenance of equal treatment, in particular in the context of harassment. Under the Act, employers are required to set up an internal fraud reporting system if they employ more than fifty people.<sup>49</sup> The possibility of reporting and investigating harassment can thus be reported to the Office of the Commissioner for Fundamental Rights, but also to the employer, who is obliged by law to investigate it. The internal fraud reporting system may be operated by an unbiased person or organizational unit designated for this purpose by the employer.<sup>50</sup> In the internal fraud reporting system reports of information related to unlawful or allegedly unlawful acts or omissions, including other cases of fraud may be submitted.<sup>51</sup> It can be seen that there is a very wide range of acts at work that employees can report. However, it should be pointed out that under this reporting system, harassment at work, or specifically sexual harassment at work, can also be reported, and must be investigated by an impartial person or organisation independent of the employer. In the internal fraud reporting system, a report may be made

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49 Section 18 (1) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

50 Section 19 (1) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

51 Section 20 (1) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

by any employee of the employer, by an employee whose employment relationship with the employer has been terminated, and any person wishing to establish an employment relationship with the employer, provided that the procedure for establishing this legal relationship has commenced.<sup>52</sup> In my view, the issue of harassment at work can arise in all three cases. In the case of an existing employment relationship, the employee may be exposed to harassment on a continuous basis in the course of the performance of the continuing employment obligation. In my labour law practice, there have been occasions when a person exercising the employer's rights wanted to take an employee out to dinner, but when the employee refused to accept this, this person acted in a hostile and harassing manner towards the employee. Reporting such a situation always requires that there is an independent reporting mechanism for employees under which the incident will be investigated. After such a situation, an additional consequence is usually that the employer tries to make it impossible for the employee to continue working, looks for a fault in the employee's work, which may result in either the employee terminating the employment relationship with the employer or the employer looking for an opportunity to terminate the employee's employment relationship. However, the reasons for termination are usually based on a circumstance other than harassment. In such a case, it is right that the employee should have the opportunity, even after the termination of employment, to file a report and indicate if he or she considers that harassment or unlawful conduct may have contributed to the termination of employment. This is particularly important because, if the employee later wishes to challenge the termination, he or she can claim that the notice of termination or the notice of termination with immediate effect was not given for a valid reason.<sup>53</sup> It may help the judicial proceedings and

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52 Section 20 (2) a)-c) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

53 see: Resolution No. 95 of the Labour Department of the Supreme Court

the decision-making process if the employee has already made a report. The whistleblower may make his or her report in writing or orally. An oral report can be made by telephone or other voice messaging system, or in person.<sup>54</sup> The operator of the internal fraud reporting system shall investigate the contents of the report within the shortest time possible under the circumstances, not exceeding thirty days from the date of receipt of the report.<sup>55</sup> At the start of the investigation, the person implicated in the report shall be informed in detail about the report, about his or her rights in relation to the protection of his or her personal data, and about the rules for handling his or her data. In accordance with the due process principle, the person implicated in the report shall be given the opportunity to express his or her position regarding the report also through his or her legal representative, and to provide corroborating evidence. In exceptional cases, the person implicated in the report may be informed at a later time if immediate information would preclude the investigation of the report.<sup>56</sup> Another important aspect is the protection of whistleblowers, which is specifically regulated by the Act, and it is specifically stated therein that all measures adversely affecting the reporting person which are taken on account of making the report lawfully, and which are implemented in connection with the occupational relationship, are unlawful, even if they would otherwise be lawful.<sup>57</sup> If the employee is harassed because of the report, this is also considered to be an act of discrimination.<sup>58</sup>

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54 Section 21 (1) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

55 Section 22 (2) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

56 Section 27 (2) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

57 Section 41 (1) a)-b) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

58 Section 41 (2) g) of Act XXV of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

## **5. Analytical Presentation of Labour Law Cases in View of Victimisation**

The issue of victimhood can also be analysed through specific labour law cases that I have encountered in my work as a lawyer. In one of my cases, the employee had been working for a large company for more than ten years when its new premises were built. As a middle manager, he also had to be involved in the construction of the new premises. After the new premises were completed, he was called in and told that the management of the large company no longer wanted to work with him. He did not understand this, he had never received any indication before that there was a problem with his work. The face-to-face conversation took place in the office of the HR manager, and it was mentioned, among other things, that another employee would be willing to take his position for half the salary, and that if he did not sign the mutual agreement, they would find a way to terminate his employment relationship. The employee made an audio recording of the conversation, because in his vulnerable position he did not see that he would be able to prove his case in a possible court case. Over the next three months, he was given tasks which he could not carry out properly, such as the preparation of five policies in a week, he had to pass a continuous series of examinations, among other things, he was supposed to know the legal elements of the offences against property in the Criminal Code verbatim, without having a law degree. In the second month following the non-acceptance of the mutual agreement, his employment relationship was terminated by notice. In the reasoning of the termination notice given to him, several reasons were given which demonstrated his incompetence. This case reveals several aspects of victimisation. It can be concluded that by refusing to accept the termination of his employment by mutual agreement at the first conversation, he had already become a victim, as the employer's intention was clearly that he would no

longer work for the company where he had been relied upon for the past ten years. It should be emphasised that in situations such as this, where there is a one-to-one conversation, it is difficult to prove what has been said. This is why the employee thought to make an audio recording of the conversation. The admissibility of an audio recording in judicial proceedings varies, and also depends on the judge's discretion to consider it as evidence of such weight that it may be decisive for the adjudication of the case. However, it is also important to highlight that if a conversation is not recorded with a consensual intention, it may be disputable between whom, when and where the audio recording was made. This can be particularly problematic in a private conversation. After the employee did not accept the mutual agreement, the employer has given him tasks that he did not have to deal with before (e.g. drafting a large number of policies for a person with technical qualifications), and the ineffectiveness or incompleteness of these tasks was documented by the employer in each case, later indicated in detail in the notice of termination and attached to the notice of termination the documents prepared for each of the reasons. It can be concluded that, in the case of a seemingly lawful termination, there may be an underlying employer's use of dominance, which may make the employee vulnerable and a victim.

In another case, the employee became pregnant, but was not aware of this when she entered into the employment relationship. The parties had agreed to a three-month probationary period in the labour contract, which is allowed by the Labour Code when it states that the parties may agree to a probationary period of up to three months from the beginning of the employment relationship. If the probationary period is shorter than this, the parties may extend the probationary period, no more than once. Even if extended, the probationary period may not exceed three months.<sup>59</sup> It is impor-

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59 Section 45 (5) of the Labour Code

tant to note, however, that a party may terminate the employment relationship during the probationary period by giving immediate notice without giving reasons.<sup>60</sup> The purpose of the probationary period is to make sure that the parties are willing to work together in the long term, so that the employer can make sure that it has chosen the right employee for the job. The employee is entitled to family (tax) allowance from the 91st day after conception and must submit a tax advance declaration to the employer. The employee is not obliged to declare the pregnancy explicitly to the employer, but the employer can find out about the employee's pregnancy by means of the tax advance declaration. In this case, if the employer, having indirectly become aware of the employee's pregnant status, exercises the right to terminate the employment contract with immediate effect, the employee may become a victim. The principle of good faith and fair dealing and the principle of equal treatment must be observed even during the probationary period. In such a situation, if the employer cannot prove that it has complied with the principle of equal treatment and cannot prove that the reason for the termination was not the employee's pregnancy, its termination will be unlawful, however, in practice, it will be difficult to prove that the termination took place because the employee was pregnant, given that the employer does not have to give reasons for immediate termination during the probationary period.

Also victimised was the employee who worked in an office for six hours a day at her place of work, from 8 a.m. to 2 p.m. on weekdays, for six hours a day. The female employee attracted the attention of the person exercising the employer's rights who tried to invite her to dinner on several occasions. In addition, the employer made such signals also at the place of work with which he wanted to attract the employee's interest in him beyond the employment relationship. Given that the employee did not wish to establish a

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60 Section 79 (1) of the Labour Code

closer relationship with the person exercising the employer's rights, the employer terminated her employment relationship by notice, on the grounds that the job she was doing could not be performed in 6 hours a day, but only in 8 hours. The reasons for the notice of termination therefore included something other than what was actually the reason for the termination. However, it should be pointed out that in an employment dispute, it is difficult to prove the approach of the employer towards the employee, and the approach does not necessarily have to be perceived or considered as an approach by the other employees. Therefore, the court did not examine the real reason, but the fact that the job could be performed only in 8 hours had to be and could be proven. It should also be pointed out that for years before, the employer had not had a problem with the employee working 6 hours per day. In my opinion, it can also be established in this case that the employee became a victim and she had to refute and prove before the court a reason for termination that was not the real reason for the termination of her employment relationship.

In another case, the employee was afflicted with a serious medical condition on Monday morning, which she tried to bring to the attention of her employer. She tried to contact the employer by phone, and even sent him a text message informing him that she would not be able to come to work that day. However, the person who exercised the employer's rights claimed that he did not have his phone with him that day, so he did not know why the employee did not show up at work. Given that there was a serious business agreement to be entered into that day, for which the necessary stamp was in the absent employee's key locker, the business agreement was frustrated according to the employer. In view of the absence considered as unjustified by the employer and the frustration of the business agreement, the employer terminated the employee's employment relationship with immediate effect on the same day. Again, it can be seen that the employee became a victim and her

employment was terminated, despite the fact that she fulfilled her obligation to cooperate and inform as required by the Labour Code. There was a suggestion in this case as well that the employee's employment relationship was terminated not because of the real reason, but because she did not accept the approach of the person exercising the employer's rights. In my view, her victimhood can be established even if the court subsequently found that the employment relationship had been unlawfully terminated and applied the legal consequences thereof, or if it held that the employee was not absent from work without justification and that the business agreement was not frustrated because of her absence.

In another case, the employee was also the founder and managing director of an IT company. Later, a conflict of interest developed with his business partners in the company, as a result of which he resigned from the position of managing director and terminated his employment. The partners did not want to let him go, so they claimed that he did not hand over documents, domain accesses and the petty cash, which in this case was a bank account number and the corresponding credit card. They envisaged that if he did not hand over the requested items, he would be prosecuted for embezzlement. Embezzlement means that whoever illegally appropriates a thing not owned by but entrusted to him, or disposes of it as his own, commits embezzlement.<sup>61</sup> The employer, not wishing to directly ensure the conditions of the handover-takeover, sent verbal and written notices to the employee to bring the requested items to the company and hand them in. The employee deposited the documents, domain accesses and bank card that he had with him in the escrow of a lawyer, because he wanted to hand them over in an orderly manner so that he would not be held liable therefore later. The employee appreciably became a victim in this case. He also wanted legal assistance to ensure that the handover-takeover was carried out properly. In my view, from

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61 Section 372 (1) of Act C of 2012 on the Criminal Code

a labour law perspective, in this case, it was not embezzlement, but the process of handing over the duties associated with the position that needed to be investigated. The Labour Code states that the employee, upon termination (cessation) of his or her employment relationship, shall relinquish his or her position as ordered and he or she shall settle accounts with the employer. The employer shall sufficiently provide for the conditions of the handover of the duties associated with the position and of the settlement of accounts.<sup>62</sup> It can be concluded that if the employer does not ensure the conditions for the proper handover of the duties associated with the position, the employee may become a victim, since, as is also evident in the present case, there may be a suspicion of embezzlement against him, despite the fact that his intention was to hand over the duties associated with the position properly and to settle accounts with the employer properly. It should also be seen that in the event that the employee fails to comply with the proper handover of the duties associated with the position, the primary issue should not be embezzlement, but unlawful termination of the employment relationship. Of course, it is possible that during the handover process it is discovered that the employee has embezzled, in which case the necessary legal action should be taken. The conclusion that can be drawn from the present case is that, in the case of the termination of the employment relationship, the proper handover-takeover process should be carried out first, and if the criminal offence of embezzlement could arise in the course of such a process, criminal proceedings could be initiated afterwards. The provisions on wrongful termination of the employment relationship shall apply accordingly if the employee does not hand over his or her duties associated with his or her position in the prescribed order.<sup>63</sup> Upon the vast majority of the terminations of employment relationships, the handover-

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62 Section 80 (1) of the Labour Code

63 Section 84 (4) of the Labour Code

takeover of the duties associated with the position is not usually a problem. In the present situation, the employee's senior status was the asset that the company had lost and refused to accept. This is what made the case complicated, and gave challenges to think it through, in order to establish in the case of an employee who had become a victim in the process that when terminating an employment relationship, it is necessary to examine primarily from a labour law perspective whether the items are handed over in a lawful manner and by proper settlement of accounts. Of course, in the present case it was necessary to refer the matter to the then existing competent administrative and labour court because the representatives of the employer's side did not accept the facts described. The administrative and labour court admitted the action and the process of clarifying the situation, investigating the circumstances of the lawfulness of the handover-takeover and establishing the necessary legal consequences have commenced.

In terms of determining the role of the victim, the decision of principle by the court No. EBD2014.M.22 provides guidance, which stated, among other things, that a personal conflict between an employee and his or her superior must be assessed in the context of the abuse of rights. The burden of proving an abuse of rights lies with the employee alleging it, while the employee alleging a violation of the principle of equal treatment must substantiate that he or she suffered a disadvantage and had a protected characteristic. In this case, the employer has the burden of proving exculpatory evidence.

## **6. Closing Remarks**

The analysis of victimhood in labour law requires a specific approach by the person carrying out the analysis. It can be concluded that, while the victimhood can be more specifically defined in the case of harassment at work, in the case of termination of employment, the

role of the victim is often only implicit. In examining victimhood, it should also be emphasised that legal remedies are available in many cases, however, the often direct and personal nature of the abuse makes it difficult to prove a violation, for example, because there is no formal record of one-to-one meetings, the employer's hidden intentions (e.g. in the case of sexual harassment) may not be perceived by other employees. This makes subsequent proof in court difficult, often impossible. Any secret audio recordings made by the employee to prove his or her own right may raise serious data protection and privacy issues, and may even be the basis for civil or criminal proceedings if the employee made the recordings without the consent of the person concerned. In view of all this, establishing victimhood in labour law is often difficult to prove, and the potential victim may also take steps to prove his or her right which may be disputed from a legal point of view, thereby casting doubt also on his or her subsequent victimhood.

**Andrea Domokos**

## **VICTIMS OF DOMESTIC VIOLENCE**

### **1. Abuse in the family and intimate partner violence**

A special circle of victims is forced to endure abuse committed by their own relatives. The victims of domestic violence usually experience more severe pain both physically and mentally than other victims, as their abusers are people from whom they expect care, love, and support. The assessment of domestic and intimate partner violence has undergone relevant transformation in the last decades in terms of social perception and criminal justice policy approach. For a long time, the internal affairs of a family were way below the sensitivity threshold of society and the state. According to the widespread view, the head of the family had the right to control his relatives, even by violent means.<sup>1</sup> Investigation and examination of and interference with family affairs had been unacceptable both worldwide and in Hungary. Just a few decades ago, law enforcement jargon in Hungary had used a popular acronym of the two initial letters of “family scandals” and refused to interfere, considering even domestic abuse as part of the internal affairs of the household. Assaults of married couples or domestic partners against each other or their children, including offenses where state prosecution would have been required, were considered to fall outside the scope the jurisdiction of state authorities. During that time, social taboos stating that family affairs bear no publicity superseded the obligation set forth by law, despite the fact that victims and perpetrators clearly exist even within such

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1 Leonore E. A. Walker: Psychology and Violence Against Women, in Natarajan, Mangai (ed.): *Domestic Violence*, London, Routledge, 2007, Chapter 14

intimate relationships. Nonetheless, primarily due to the fact-finding missions of civil society organisations, international conventions have been concluded to provide increasing protections for the victims of such violent offenses.

Intimate partner violence was studied in various stages of relationships, such as dating, early marriage, pregnancy, later stages of the marriage, separation, and divorce. As widely known in criminology, acts of domestic violence resulting in the wife's death mostly occur during separation and divorce. The underlying reasons are primarily jealousy and the desire to possess and control, as well as the fact that some men consider their partner their own property. The risk of violence increases also at the time of entering a new marriage, as starting a new family is stressful and those who acted violently in earlier relationships would be likely do the same in a new one.<sup>2</sup>

A deeper, more sophisticated approach to the psychology of domestic violence leads to a better understanding of the issue.<sup>3</sup> A breakthrough in the field of psychology, Walker's now classic work explains the battered woman syndrome and the "cycle of violence".<sup>4</sup> Those who suffer from battered woman syndrome exhibit low self-esteem, self-isolation, and generalized anxiety. Walker was the first to define the cycle of violence, which shows the fact that violence is actually a process. The three cycles of wife abuse are tension-building, acute and honeymoon phase. Such cyclic nature of an abusive relationship may lead to severe psychological problems in the victims, such as sleep and eating disorder, fatigue, head and back pain, high blood pressure, and cardiac symptoms.

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2 Debra Kallmuss – Judith A. Seltzer: Continuity of marital behavior in remarriage: The case of spouse abuse, *Journal of Marriage and the Family*, 1986/48, Febr., 113-120.

3 Andrea Domokos: Esélyegyenlőség a partnerkapcsolatban – Új kutatások a partner-bántalmazással kapcsolatosan, *Belügyi Szemle*, 52, 2004/2–3, 167-176.

4 Lenore E. A. Walker: *The Battered Women*. New York, Harper & Row, 1979.

Douglas (1991)<sup>5</sup> also emphasised the process-like nature of domestic violence. At the beginning of the marriage or other intimate relationship, good and bad phases alternate, while later the good phases shorten or disappear. Conflicts between the partners become more and more frequent. The abusive party starts criticising their partner – mostly the wife – and more and more often exhibits extreme scenes of jealousy. The abusive party's desire to possess and control increases as they try to eliminate all other relationships to isolate their partner and make them vulnerable. The abusive party strives to control the relationship, which is characterized by the partners' inability to communicate. Disputes are dominated by temper, while reason and common sense are put aside.

International action became the driving force of a paradigm shift in national legislations, and in certain countries the legislature included related statutory provisions in the Criminal Code to provide protection for the victims of domestic violence.

The perpetrators of cases of domestic violence were convicted, inter alia, for the following offenses: homicide, voluntary manslaughter, battery, slander by physical assault, violation of personal freedom, duress, failure to provide care, sexual exploitation, sexual violence, sexual abuse, incest, abuse of a minor.

The statutory definition of harassment has been included in the Criminal Code of Hungary since 2008. The criminalisation of harassment is aimed at the protection of the right to privacy. The perpetrator of the aggravated form of the criminal offense is a person who commits the act of harassment against their spouse or former spouse, domestic or registered partner or former domestic or registered partner, or against a person under their care, custody, supervision or medical treatment. The statutory regulation reveals that the legislature recognises the fact that harassment is a process,

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5 Harriet Douglas: Assessing violent couples. *Families in Society*, 1991, 72(9), 525–535.

and that mental abuse is followed by violence against objects, pets, and eventually persons. Domestic violence is a typical process, where psychological abuse precedes the later physical, financial, and sexual abuse.

Act LXXII of 2009 defines violence in close relationships: an act that severely and directly jeopardises dignity, life, the right to sexual self-determination, physical and mental health, or a forbearance that severely and directly jeopardises dignity, life, physical and mental health, committed by the abuser against the abused.

The same act defines the abuser as a relative with the capacity to act who engages in an act of violence in close relationships or with respect to whom the act of violence in close relationships is committed by another person provided that the abuser agrees with the act of that person. The abused party is a relative against whom an act of violence in close relationships is committed.

Effective since 2013, the statutory definition of intimate partner violence aims at facilitating more effective action against domestic violence. The criminalisation of such conducts is based on the equality of family members and the dignity of all human beings.

According to the definition of methodological letter No. 1 issued by the National Institute for Children's Health, domestic violence is committed if "a person jeopardizes or damages the safety, physical and psychical integrity, or constraints the self-determination or sexual self-determination of a relative, abuses a relative physically or threatens them with physical abuse, or intentionally destroys the property of a relative, thereby making the coexistence unbearable for the victim."<sup>6</sup>

Part 2 of professional guideline No. 14 issued by the Ministry of Human Capacities adapted the definition of methodological letter

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6 Mária Herczog – Zsuzsanna Kovács: *A gyermekbántalmazás és elhanyagolás megelőzése, felismerése és kezelése*, Országos Gyermekegészségügyi Intézet, Budapest, 2004, 6.

No. 1 in terms of domestic violence. Moreover, the professional guideline notes that 50 – 70% of parents who abuse their partner, also abuse their child or the child witnesses the abuse against the partner. In Hungary, 80% of child abuse is committed within the family, where the perpetrator is the father in 41%, and the biological mother in 39% of all cases. Often, the abuser is a person living in the same household as the child, but not a biological parent (stepmother, stepfather). Child abuse occurs in every segment of society, and several family and individual risk factors contribute to its occurrence.<sup>7</sup> The guideline has added a more recent circumstance to those that may trigger child abuse, namely the COVID-19 pandemic as a social crisis.

The European Union strives to contribute to addressing domestic violence by means of criminal law. A study published in 2017 provides a detailed overview of the relevant EU legal instruments,<sup>8</sup> including the judgement handed down by the European Court of Human Rights in the *Opuz v. Turkey* case.<sup>9</sup> *“The key conclusion to be drawn from the case is that it cannot be considered an internal family affair if one member of the family abuses another. The delay and inaction of the authorities and the failure to provide protection for vulnerable victims amounted to a violation of the Convention.”* In *Opuz v. Turkey*, the ECHR stressed that the circle of victims of domestic violence is not limited to women: *“It is a general problem which concerns all member states and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledges that men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly.”*

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7 2020. EüK. vol.14, part 2, professional guideline of the healthcare industry issued by the Ministry of Human Capacity on the duties of healthcare services in the case of suspected child abuse or neglect.

8 Andrea Domokos: *A családon belüli erőszak büntetőjogi és társadalmi megítélése*. Budapest, Patrocinium Kiadó, 2017, 63.

9 *Opuz v. Turkey* - 33401/02 Judgment 9.6.2009.

## 2. Health Crisis, economic vulnerability and domestic violence

The COVID-19 pandemic has exacerbated the problem of domestic violence, resulting in more intense and/or more severe violence in many cases that occurred during the crisis.<sup>10</sup>

Conflicts caused by mental and economic stress have been covered by numerous papers and research. The issue of the extent to which the COVID-19 pandemic has affected various members of society, who therefore often became the victims of multiple offenses, has also been addressed by the European Parliament. The pandemic has aggravated the existing structural gender gaps, particularly in terms of girls and women belonging to disadvantaged groups. Neither the EU nor the member states had been prepared to a global crisis and the subsequent social destabilisation. In its related resolution, the European Parliament found that member states' responses have been insufficient in addressing the violence against girls and women, and no adequate account has been taken of the need to prevent violence against women in emergency response plans or plans for future emergencies. Therefore, the European Parliament urges the member states to establish safe and flexible emergency warning systems and ensure that the support services take coordinated approach. Moreover, the resolution invites the member states to share national innovations and best practices in addressing gender-based violence. The resolution asks the member states to take measures within the Next Generation EU Recovery Plan aiming at economic and gender equality to address the specific needs of women in precarious situations after the

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10 C. M. Hoeboer – W. M. Kitselaar – J. F. Henrich – E. J. Miedzobrodzka – B. Wohlstetter – E. Giebels – G. Meynen – E. W. Kruisbergen – M. Kempes – M. Olf – C. H. de Kogel: The Impact of COVID-19 on Crime: a Systematic Review, *American Journal of Criminal Justice*, 2023. 15 Nov.

crisis caused by the pandemic. Such measures are of key importance in the labour market and in relation to gender-based violence.<sup>11</sup>

In the field of economics and sociology, several papers have examined the link between the COVID-19 pandemic and the conflicts that followed. The studies strove to find a solution to address similar future risks. From December 2019 until July 2023, the virus infected 692 million people globally, causing the death of 6.9 million people. The studies clearly show that more and more people had to endure increasing mental and economic issues during the pandemic, while social gaps widened, and the health and social systems were exposed to significant disruption. The papers stress that such challenges resulted in various conflicts at both the individual and the societal level.<sup>12</sup>

Also, the online form of gender-based violence and intimate partner violence has become more and more frequent in the wake of the COVID-19 pandemic.<sup>13</sup> According to the 2021 data of the World Health Organization (WHO), every third woman in the world has at least once in her life become a victim of physical or sexual violence committed by her partner or another person.<sup>14</sup>

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11 P9\_TA(2021)0024. The gender perspective in the COVID-19 crisis and post-crisis period. European Parliament resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period (2020/2121(INI)) (2021/C 456/18)

12 Subhasish M. Chowdhury – Senjuti Karmakar: The interrelationship between the COVID-19 pandemic and conflict behavior: A survey. *Journal of Economic Surveys*. First published: 26 September 2023

13 European Parliament resolution of 15 February 2023 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016)0109 – 2016/0062R(NLE)).

14 Ijeoma C. Uzoho – Kesha Baptiste-Roberts – Adeola Animasahun – Yvonne Bronner: The Impact of COVID-19 Pandemic on Intimate Partner Violence (IPV) Against Women, *International Journal of Social Determinants of Health and Health Services*, 2023, Volume 53, Issue 4, 494-507

Developing a global strategy to prevent violence against women and children, the World Health Organisation (WHO) gave a fast response to the violence increased by the COVID-19 pandemic. The WHO stressed that more vulnerable groups of women, such as women with disabilities, have additional needs as they are even more exposed to the risk of domestic violence. The members of such groups experienced even more difficulties in accessing home care and other services during the pandemic. More vulnerable due to their poor social and health status, women who are displaced, refugees, or living in a conflict-affected area similarly need special attention. The WHO's proposal to health institutions is to make information on local services (such as hotlines, crisis centres, shelters) widely accessible. Humanitarian response organizations need to include services for women subjected to violence and their children in their COVID-19 response plans and gather data on reported cases of violence against women.<sup>15</sup>

According to the WHO, COVID-19 increased several negative phenomena worldwide, such as anxiety, depression, alcohol consumption, and domestic violence.<sup>16</sup>

As pointed out by UN Women, the Ebola pandemic demonstrated that multiple forms of violence are exacerbated within crisis contexts, including trafficking, child marriage, as well as sexual exploitation and abuse.<sup>17</sup>

The so-called “shadow pandemic”, that is, domestic violence appearing in the shadow of COVID-19, was not limited to economically underdeveloped states but appeared also in wealthy countries. In addition to domestic violence, the research showed that suicidal tendencies and depression also increased during the

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15 Levels of domestic violence increase as COVID-19 pandemic escalates, WHO EMRO

16 The rise and rise of interpersonal violence – an unintended impact of the COVID-19 response on families. WHO 2020

17 COVID-19 and ending violence against women. UN Women

pandemic. Anxiety for personal safety typically appeared both in women and men.<sup>18</sup>

Reviewing the often-varying findings and experiences of certain countries is also of key importance.

In Portugal, both sexes and all age groups were affected by domestic violence during the pandemic. Based on the responses to the online questionnaire, the perpetrator was the victim's partner or former partner in 47.3% of the cases, a parent or stepparent in 17.8%, a child or stepchild in 8.9%, a sibling in 1.4%, and a person currently living in the same household as the victim in 2.7% of the cases. 13.0% of the abuse was verbal, while 1.0% was sexual, and 0.9% was physical. As pointed out by the study, the majority of those who experienced verbal abuse were men, thus the authors urged further research on the vulnerability of male victims. They also stressed that many elderly victims' responses showed that they endured sexual abuse.<sup>19</sup>

An Australian study showed that the victims of domestic violence during the COVID-19 pandemic experienced a higher level of economic, and often financial uncertainty than their abusive partners. Those with economic difficulties during COVID-19 were more likely to become victims of physical, sexual, and economic abuse. As the COVID-19 pandemic caused acute economic stress in society, the perpetrators of domestic abuse that occurred during this period

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18 Anastasia Kourti – Androniki Stavridou – Eleni Panagouli – Theodora Psaltopoulou – Chara Spiliopoulou – Maria Tsolia – Theodoros N. Sergentanis – Artemis Tsitsika: Domestic Violence During the COVID-19 Pandemic: A Systematic Review, *TRAUMA, VIOLENCE, & ABUSE*, 2023, Vol. 24(2), 719–745

19 Ana Gamaa – Ana Rita Pedro – Maria João Leote de Carvalhoc – Ana Esteves Guerreiore – Vera Duarte – Jorge Quintas – Andreia Mattias – Ines Keygnaert – Sónia Dias: Domestic Violence during the COVID-19 Pandemic in Portugal, *Portuguese Journal of Public Health*, 2021, 38(Suppl.1),32–40

included many who had never acted violently with family members before.<sup>20</sup>

Another collection of studies examines a specific field: the circumstances of women who are migrants or refugees. Not familiar with the language of the given country, isolated, with no access to any support, these women are more vulnerable than the average. According to data collected in Ireland, the number of migrant female victims of domestic violence increased by 12% between 2020 and 2021. In Australia, many people with temporary visa lost their jobs during the pandemic. As migrants received no support, economic and financial distress increased domestic violence among their number. Researchers drew similar consequences in the USA: the insecurity of female migrants increased even more, and they became more dependent on their spouses or domestic partners during the pandemic.<sup>21</sup>

Sri Lankan researchers pointed out that domestic violence may affect anyone, irrespective of their age, sex, social status, sexual orientation, religion, education, or economic background. Domestic violence can occur in various relationships, including couples living together, spouses, and separated partners. The 2019 data on violence against girls and women in Sri Lanka were collected by the Statistical Office. These data show that Sri Lankan women become victims to violence committed by their partners (17%) twice as often as to violence committed by other perpetrators (7.2%). Similarly, sexual violence is also committed more often by the victims' partners (6.2%) than others (4.1%).<sup>22</sup>

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20 Anthony Morgan – Hayley Boxall: *Economic insecurity and intimate partner violence in Australia during the COVID-19 pandemic*, Australia's National Research Organisation for Women's Safety, Research Report, Issue 2, January 2022

21 Naomi Pfitzner – Kate Fitz-Gibbon – Sandra Walklate – Silke Meyer – Marie Segrave: *Violence Against Women During Coronavirus. When Staying Home Isn't Safe*. Palgrave Macmillan, Cham, 2023, 17-29

22 Kalpani Gunathilaka: Escalation of Domestic Violence against Girls and Women in SL, *Ceylon Today*, 08th September 2023

In Argentina, too, data reveal that domestic violence increased during the pandemic when women were quarantined with their partners. In comparison with the period preceding 2020, lockdowns increased verbal abuse by 12%, sexual violence by 35%, and physical abuse by 23%. Researchers found three main underlying reasons. First, the lack of means of escape from the abuser; second, social isolation which may lead to mental health issues and increased alcohol consumption; and third, pauperization.<sup>23</sup>

Many countries lack uniform regulation of domestic violence and gender-based violence even during peaceful times, while crises only increase the cases of domestic violence, as various forms of violence interconnect and reinforce each other. Regulation must be improved during times of peace to prepare for even more serious problems occurring in crises.

Violent conflicts lead to new forms of behaviour, due to which sexual violence becomes even more brutal. This phenomenon is caused by stress, trauma, insecurity, and the fact that sexual violence is a widely accepted form of conduct among soldiers.

Another group of cases is hardly mentioned, even though it severely diminishes the sexual freedom of women during conflicts or emergencies. These are not cases of sex forced with physical violence, but those of abuse of power by, committed, inter alia, by employees of peace keeping forces or humanitarian aid workers who exploit women in exchange for the distribution of food or medicine.<sup>24</sup>

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23 Debra de Souza Santos – Eloisa Auler Bittencourt – Andréa Cristina de Moraes Malinverni - Juliany Barreto Kisberi - Sabrina de França Vilaça – Edna Sadayo Miazato Iwamura: Domestic violence against women during the Covid-19 pandemic: A scoping review, *Forensic Science International Reports*, Volume 5, July 2022, 100276

24 Inessa Adilkhanyan – Tatevik Aghabekyan – Marta Chumalo – Halyna Fedkovych – Ekaterine Gamakharia – Gorica Ivić: Preventing and responding to gender-based violence during the war and in post-war settings Experiences and recommendations of women’s NGOs, *WAVE – Women against Violence Europe*, Vienna, Austria, 2022

Researchers have formulated a key finding in relation to armed conflicts in Columbia, stressing that micro-level and macro-level violence are inseparable. Oppressed members of society, such as women, are more exposed to violence during wartime. According to studies, it is a fact that gender-based violence against women is inherent in wars and armed conflicts, which thus reflect women's general status in society. Had domestic violence and intimate partner abuse received closer attention, women would not be so vulnerable against gender-based violence during wartime. Researchers urge the proper addressing of domestic violence, which would also change public opinion so that a broader set of instruments would be available during armed conflicts and to prevent gender-based violence against women.<sup>25</sup>

In Ukraine, the cases of domestic violence increased by 160,000 between the first half of 2003 and the same period in 2021. This is an increase of 54%, while the unreported and unregistered cases may reach the same percentage. Constant fighting, pauperization, and housing problems increase the general stress level of the population and, thus, violence in Ukrainian families. The Ukrainian civil society has taken the necessary steps almost immediately to support the victims, but achieving significant results is impossible due to financial and other restraints.<sup>26</sup>

In its related draft report (2020/XXXX(INI)), the Committee on Women's Rights and Gender Equality of the European Parliament addressed the issue of increased domestic violence during the COVID-19 pandemic. The draft report urges the member states to specifically address the issue at responding to COVID-19; pay particular attention to exemptions to confinement rules, the preservation to safe access to shelters or alternative accommodation

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25 Signe Svallfors: Hidden Casualties: The Links between Armed Conflict and Intimate Partner Violence in Colombia, *Politics & Gender*, 2023;19(1):133-165.

26 Anastasiia Frizner – SaraJane Rzegocki: Ukraine's Battle Against Domestic Violence, *Center for European Policy Analysis – CEPA*, September 15, 2023

with sufficient capacity; and support non-governmental and civil society organisations in emergencies. The draft report also calls on the Commission to promote awareness-raising, information, and advocacy campaigns tackling domestic and gender-based violence, particularly in relation to newly created prevention measures and flexible emergency warning systems. Moreover, the draft report calls on the member states to ensure the provision of effective, affordable, and quality medical and psychological support for victims of gender-based violence, especially in times of crisis when such support should be deemed essential.<sup>27</sup>

The Organisation for Economic Co-operation and Development (OECD) has also drawn up various proposals to promote the support of the victims of domestic violence during the COVID-19 pandemic.<sup>28</sup> According to the OECD, it is particularly important to collect and accurately record data on domestic violence, and exchange them between the OECD member states. Governments of the member states should take more decisive and effective action against domestic violence, develop national strategies, ensure financial support, allocate tasks at the state level, and designate the persons responsible for implementation. Member states should facilitate the victims' access to the justice system and use their best endeavours to reduce the acceptance of domestic violence in society.

### **3. EU strategies for effective protection**

The first EU strategy on victims' rights was issued in 2020 (New Victims' Rights Strategy 2020-2025). Submitted by the European Commission on 24 June 2020, the first EU strategy on victims' rights

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<sup>27</sup> Frances Fitzgerald: DRAFT REPORT on the gender perspective in the COVID-19 crisis and post-crisis period (2020/2121(INI)), *Committee on Women's Rights and Gender Equality*

<sup>28</sup> Women at the core of the fight against COVID-19 crisis. *OECD*, Version 1 April 2020

sought to ensure that all victims of all crimes, no matter where in the EU, can fully rely on their rights.

Already the Victims' Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 25 October 2012) established minimum standards on the rights of the victims of criminal offenses, and significantly reinforced the victims' and their relatives' right to information and protection. A key finding of the strategy on victims' rights is that the COVID-19 pandemic affected the proliferation of domestic violence and sexual abuse against children. Several studies addressed the fact that the pandemic increased the number of cases of domestic violence.<sup>29 30 31 32 33</sup>

The strategy on victims' rights seeks to ensure that all victims of all crimes, no matter where in the EU, can fully rely on their rights. Therefore, the strategy set two key goals: the first is to achieve that all victims report the crime committed against them, and the second is to achieve the cooperation of all concerned actors in the field of

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29 Seyedeh Zeynab Hoseinnezhad – Forouzan Elyasi – Zohreh Shahhosseini: A Rapid Review on Domestic Violence as a Silent Consequence in Corona Time: A Double Pandemic. *European Journal of Environment and Public Health*, 2021, Volume 5, Issue 1, Article No: em0062.

30 Andrea Domokos: A pandémia hatása a családon belüli erőszakra. In: Andrea Domokos (ed.): *A családon belüli erőszak aktuális kérdései*, Budapest, KRE-ÁJK, 2021, 13-28.

31 Andrea Domokos: Az erőszak megnövekedése pandémia idején, *Glossa Iuridica*. 8th special edition, *Vírus és etika*, 75-85.

32 Andrea Domokos: Áldozatsegítés pandémia idején, In: Péter Furkó – Éva Szathmári (ed.), *Tudomány, küldetés, társadalmi szerepvállalás, STUDIA CAROLIENSIA – A Károli Gáspár Református Egyetem 2020-as évkönyve*, Budapest, L'Harmattan Kiadó, 2021, 111-125.

33 Andrea Domokos: "Szerelem"-félélt járvány idején. In: Sándor Udvary (ed.): *Studia in honorem Imre Szabó 70*, Budapest, KRE-ÁJK, 79-90.

victims' rights. The same issues arise in Hungary: latency, and the competent bodies' failure to communicate and assist each other's work despite their obligation to report and cooperate, which leads to secondary victimization rather than the resolution of the victim's financial, social, mental, and psychological situation. In a paper published in 2018, Mazzucato pointed out that whenever the victim is a child, that is, a person who requires special treatment, particular attention should be paid to that the victims of sexual violence or trafficking can rely on their rights in the criminal procedure and receive proper support.<sup>34</sup>

The EU strategy on the rights of the child was issued in 2021.<sup>35</sup>

The strategy stresses the high level of latency in terms of crimes committed against children. It also points out that children are the most vulnerable members of our society, who are not in a position to tackle the risk of social exclusion on their own.

The strategy summarizes the characteristics of violence against children. Children can be victims, witnesses, and perpetrators of violence, whether at home or at school, during recreational activities, and even in the justice system, both offline and online. The advancement of integrated child protection systems is intrinsically linked to the prevention of and protection against violence. Bearing child-focused approach in mind, all authorities and services must cooperate with each other to protect and support the children in accordance with their best interest. The Commission will keep supporting the establishment of children's homes in the EU.

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34 Claudia Mazzucato: Victims of Corporate Violence in the European Union: Challenges for Criminal Justice and Potentials for European Policy, In: Gabrio Forti. (ed.): *Victims and Corporations: Legal Challenges and Empirical Findings*, Milano, Padova, Wolters Kluwer – CEDAM, 2018, 21-68.

35 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — EU strategy on the rights of the child, COM/2021/142 final.

The strategy points out the high level of latency of criminal offences committed against children. Such cases are often not reported due to the age of the child, the lack of children's access to information on their rights or to age-appropriate and gender-appropriate reporting and support services. In addition, the strategy stresses that online presence increases children's exposure to content depicting the sexual abuse or exploitation of children, sexting, and online hate speech. The member states are called on to include media literacy in the curriculum so that children can assess media content critically, and to assist the Safer Internet Centres co-financed by the EU.

Reinforcing each other, the strategy on victims' rights and the strategy on the right of the child point out the special needs of children. These strategies strive to propose measures that ensure further protection and guarantee to address the vulnerability of children, monitor the implementation of the existing EU regulation, and develop more and more proposals to forward cooperation.

#### **4. Proposal for a directive on combating violence against women and domestic violence**

Anyone can become a victim in their family, irrespective of their age, sex, origin, and social status. Nonetheless, global and local criminal statistics clarify that higher percentage of victims are women and children, while the majority of abusers are men.

On 8 March 2022, the European Commission proposed a new directive on combatting violence against women and domestic violence. The proposal aims to ensure a minimum level of protection across the EU against such violence.<sup>36</sup> On 9 June 2023, the European Council agreed on its position on the proposed directive. The goal is to adopt a uniform EU regulation, as transparency of the existing

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<sup>36</sup> EU measures to end violence against women. *Council of the European Union*.

rules is key to serving the interests of the victims.<sup>37</sup> For the first time, a targeted and coordinated EU approach has been developed to address violence against women and domestic violence. The objective was to find a solution that includes specific solutions, similar to those applied to help the victims of human trafficking, sexual abuse against children, and terrorism. The European Commission pointed out that, as forms of violating human rights and discrimination, violence against women and domestic violence are to be considered criminal law issues. The combat against these phenomena is part of the action aiming to ensure fundamental EU values and respect for the Charter of Fundamental Rights of the European Union.

The specific rules aim at supporting and protecting the victims of violence against women and domestic violence in general, before, during, and after the criminal procedure, and at establishing minimum standards to define and criminalise the relevant conducts.

In line with the principle of proportionality and necessity of EU action, the proposal establishes minimum rules enhancing the actions taken by Member States in the areas of prevention, victim protection and support, access to justice, and coordination.

The proposal includes key definitions:

“violence against women” means gender-based violence that is directed against a woman or a girl because she is a woman or a girl, or that affects women or girls disproportionately, including all acts of such violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

“domestic violence” means all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering that occur within the family or domestic unit,

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<sup>37</sup> Rosamund Shreeves: Combating violence against women and domestic violence [EU Legislation in Progress]

irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim;

“victim” means any person, regardless of sex or gender, unless specified otherwise, who has suffered harm which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence.

The proposal urges member states to ensure that reported offences of violence against women or domestic violence are processed and transferred effectively and without delay to the competent authorities for prosecution and investigation, and that the persons, units, or services concerned have sufficient expertise.

Member states should also issue guidelines for the competent law enforcement authorities and other authorities acting in criminal proceedings to ensure the proper treatment of victims, and that cases of violence against women or domestic violence are handled properly throughout the procedure.

In terms of services supporting victims of violence against women and female victims of domestic violence, the proposal defines the specific services, rules, and the special resources. Victims should have access to special shelters or other interim accommodations without discrimination to ensure their support after falling victim to violence so that they can return to independent living.

Providing proper protection and support for child victims with a view to the best interest of the child must be a primary consideration.

The European Union acceded to the convention on preventing and combating violence against women and domestic violence on 1 October 2023 (Council of Europe Convention on preventing

and combating violence against women and domestic violence; also referred to as Istanbul Convention<sup>38)</sup><sup>39)</sup>

The goal of the convention is the prevention and tackling of violence against women, the protection of the victims, and the prevention of domestic violence. The possibility of accession to the convention was opened on 11 May 2011 in Istanbul.

## 5. Summary

At the level of legislation and criminal policy, there is a clear intent in Hungary to protect the victims of domestic violence. Yet, practice reveals a completely different picture: not all cases reach the stage of initiating criminal procedure, and the perpetrator's criminal liability is not established in numerous cases even though a relative was abused physically, psychically, or financially. The underlying cause is that the criminal policy of the 21st century and the novel laws passed by the legislature aim at overriding a practice entrenched in society and tradition for centuries, and in the case-law of courts for decades. And while legislation conforms international requirements more and more, the application of our modern rules is indeed problematic.

*“The underlying reason of the fact that criminal procedure is not initiated, and the criminal liability of the perpetrator is not established in all cases where a person falls victim to physical, psychical, or economic abuse committed by a relative is that the newly adopted legislation has*

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38 Istanbul Convention. Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).

39 Council decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement.

*to override centuries-old social traditions and decades-old case-law.*<sup>40</sup> In several papers I have pointed out that awareness-raising is required in the education, healthcare, and social system for those who work with children, families, or in other related areas, in order to stress that the abuse of relatives is prohibited.<sup>41</sup>

No professional will have the capability to handle the related cases properly in the lack of information on the process-like nature and cycle of domestic violence, the motive for resorting to mental and economic abuse, and the special characteristics of victims. In the course of the criminal procedure, victims will receive proper protection only from professionals who recognise the special relationship between the abuser and the victim, as well as the vulnerability and dependence of victims. In addition, latency can only be reduced by proper awareness-raising in society, in order to stress that perpetrators intend to overpower and control their victims due to their entitlement.

Certain forms of violence interconnect during crises, posing an even greater threat. Macro-level violence – such as war or pandemic – has a spillover effect and reaches family homes, making the female, male and child victims of domestic violence even more vulnerable. Valuable lessons can be drawn from the COVID-19 pandemic in terms of addressing and preventing the economic impacts of future natural disasters and the increased domestic violence occurring in relation thereto. In addition to providing current responses to old/new crises, there is an ever-present task ahead of the states and international organizations: ensuring equal rights within the family and intimate partner relationships. Alongside legal and institutional safeguards, widespread education and awareness-raising is also inevitable in

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40 Andrea Domokos: *A családon belüli erőszak büntetőjogi és társadalmi megítélése*. Budapest, Patrocinium Kiadó, 2017, 63. ISSN 2063-4757; 61.

41 Andrea Domokos: Gyermekáldozatok védelme az online világban In: Homicskó Árpád Olivér (ed.): *A technológia fejlődés társadalmi kihívásai és hatása a jogi szabályozásra*. Budapest, KRE-ÁJK, 2022, (Acta Caroliensia Conventorum Scientiarum Iuridico-Politicarum 2063-4757; XXXIX), 71-88.

achieving that goal. In the European Union, it is a requirement that all professionals and members of the law-enforcement who deal with the victims of gender-based violence have sufficient expertise, thus ensuring the sound administration of justice.<sup>42</sup>

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<sup>42</sup> Proposal for a COUNCIL DECISION on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, 15 February 2023 (COM(2016)0109 – 2016/0062R(NLE))

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## WHEN THE VICTIM IS AN ANIMAL

### The beginnings of animal protection

Activities related animal protection are closely linked to the development of human-animal relationships. “Animal protection [...] is an activity stemming from the of responsibility human beings towards the animals entrusted to them. It is aimed not only at sparing animals from pain or suffering by protection from ambient factors causing those, but also at ensuring the welfare of animals [...] by improving their environment.”<sup>1</sup>

The first bill against the maltreatment of animals was tabled by the Irish Richard Martin in 1821. The bill targeted the cruelty against horses and other animals, but the Parliament of the United Kingdom had then been adamant that this issue is inadmissible for legal regulation. Tabled once again by Martin in 1822, the bill was eventually voted in by the Parliament and became the first legal act ever enacted on animal welfare, namely the Cruel Treatment of Cattle Act 1822.<sup>2</sup>

As for the related international law context, the most significant legal instrument of the 20th century was perhaps the declaration proclaimed in the UNESCO headquarters in Paris, 1987. Adopted by the International League of Animal Rights and other organisations, the Universal Declaration of Animal Rights was a milestone stressing

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1 Edit Mikó Józsefné Jónás: Az állatvédelem tárgya. *SZTE Elektronikus Tananyag Archívum*, 2018, 1.

2 Judit Embersics: Az állatvédelem kialakulása és történeti áttekintése. *Iustum Aequum Salutare*, vol. XII, 2016/4, 220.

the respect for animal life, the prohibition of ill-treatment and cruelty, and the requirement of instantaneous and distress-free death whenever killing an animal is inevitable.<sup>3</sup>

### **Animal protection in Hungary**

The first notable written rules on animal welfare date back to the 18th century in Hungary. The first provision to be highlighted is article 22 of King Charles III's decree of 1729, titled "Regulation of fishing and fowling", restraining primarily the killing of animals during their breeding season.<sup>4</sup> The naturalist Otto Herman, who was perhaps the most prominent figure of animal rights in Hungary, established the National Association for Animal Protection alongside Pál Királyi, Albin Warther, and Ferenc Fenyvessy in 1883, soon after the promulgation of the first legislative act against the unnecessary abuse of animals which however, only qualified as a criminal offense if committed before the public at large and in a scandalous manner: "Any person who tortures or severely abuses an animal, or who violates the decree or ordinance issued against the torture of animals, is punishable by custodial arrest not exceeding eight days and a fine not exceeding one hundred forints."<sup>5</sup> After the adoption of that decree, even though greater and lesser related attempts were made by the national legislature, no significant results were accomplished during the two world wars and the postwar period. Hungary lacked an organised animal welfare system until 1976, when the National Association for Animal Protection was reorganised under the direction of Mrs. Mihályné Károlyi. In 1984, the association was renamed

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3 István Ambrus: Az állatkínzás bűncselekményének jogi tárgyai, egyes dogmatikai kérdései, valamint de lege ferenda szabályozása. *Magyar Jog*, vol. 68, 2021/7–8, 455.

4 Anita Paulovics: Állatvédelem az EU jogharmonizáció tükrében, Budapest, Virtuóz Kiadó, 2002, 23.

5 Section 86 of Act XL of 1879 on petty offenses.

the Herman Ottó National Association for Animal Protection and Nature Conservation. This can be considered as the beginning of the codification (accelerated by the fall of communism in Hungary), resulting in a detailed regulation of animal welfare, and, eventually, in the adoption of Act XXVIII of 1998 on animal protection and welfare (Animal Protection Act).

### **1. Current legislation on animal protection**

The development of animal welfare mindset and the related research led to a more modern approach, recognising animals as sentient beings – not objects – with rights enshrined in international recommendations and national legal acts on animal welfare. The Hungarian Animal Protection Act declares that animals are sentient beings capable of feeling agony and joy, and it is the moral duty of all human beings to respect them and ensure their well-being. According to the general part of the explanatory memorandum of the act, the core concept of the legislation is that the species at the higher levels of the animal kingdom consist of beings capable of expressing joy, satisfaction, agony, and fear of death. Therefore, the relationship between human beings and animals must be focused, *inter alia*, on humane treatment and the universal values of morality and culture.

Conscious of the fact that animals are sentient beings capable of feeling agony and joy and that it is the moral duty of man to respect them and ensure their well-being, and recognising that the animal kingdom as a whole and each individual specimen represent significant value for humanity, this act has been adopted by the National Assembly to ensure the reasonable protection and welfare of animals, declaring Hungary's intent to actively contribute to the international efforts aiming at the protection and welfare of animals.<sup>6</sup>

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<sup>6</sup> Preamble of Act XXVIII of 1998 on the protection and welfare of animals.

The protection of animal species is mentioned in the Fundamental Law of Hungary in general. Article P)<sup>7</sup> declares that natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, and it shall be the obligation of the state and everyone to protect and maintain them, and to preserve them for future generations. In essence, this provision stands for and sets up an obligation of a sort for all residents of Hungary.

Act LIII of 1996 on nature conservation is another key legal instrument, as its provisions enacted under the title “General protection of wildlife” enhance animal protection in Hungary. The act provides that wild organisms, their populations and communities are to be preserved, along with the protection of their habitats, and that it is prohibited to disturb, damage, torture, or kill the specimens of the protected fauna species, to jeopardise their breeding and living activities, and to destroy or damage their habitats, feeding, nesting, resting, or hiding places.<sup>8</sup> These provision basically function as a supplement to the Animal Protection Act.

Beyond the above, it should be noted that due to the advancement of various factors, animal protection in the modern sense could not function without responsible fish and wildlife management. As declared by the preamble of Act LV of 1996 on the protection and management of wildlife and on hunting, all wild species are irreplaceable parts of the Earth’s renewable natural resources and biomass, and wildlife represents aesthetical, scientific, cultural, and genetic values, therefore, it must be preserved for future generations in its natural state as a treasure of humanity and the Hungarian nation. Those entitled to hunting must not jeopardize the survival of game

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7 Enacted by: article 1 of the Third Amendment of the Fundamental Law of Hungary. Effective date: 22 December 2012.

8 Paragraph (1) of section 8, paragraph (1) of section 43.

species and non-game species, or other living organisations, and, in principle, it is prohibited to hunt with banned devices (snares, hooks, pits, semi-automatic and automatic weapons, mutilated live baits, electrocuting devices, etc.) and methods (at times when the escape routes of the animals are significantly reduced due to any natural cause, etc.), during periods when hunting is prohibited, and in designated zones (areas of breeding, rearing, or wintering).<sup>9</sup>

Moreover, separate legislation concerning the aquatic vertebrates living in Hungary also proved necessary, hence Act CII of 2013 on fisheries and the protection of fish has also been adopted. In the frameworks of the protection of fish and their habitats, the legislation declares that in areas falling under the scope of fisheries management all activities shall be carried out to allow, or not to hinder the survival, natural renewal, and increase of the fish population.<sup>10</sup>

### 1.1. *The objective, definitions, and scope of the Animal Protection Act*

The goal of the act is to ensure the protection of animals, provide safeguards against risks threatening the fauna, enhance the sense of responsibility in human beings, and set out the rules that form a sound basis for animal protection.

Act XXVIII of 1998 sets forth, inter alia, the following definitions:

- *damage to animals*: permanent adverse change in the physical integrity, body, psychological state, or behaviour of an animal;
- *cruelty to animals*: abuse or treatment of or intervention in an animal resulting in unnecessary pain or the limitation of the animal's needs to an extent that causes permanent fear or damage to health, and the breeding or reproduction (for non-experimental purposes) of animal specimens suffering from a hereditary disease;

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9 Paragraph (1) of section 28, paragraph (1) of section 37.

10 Section 7.

- *duty of care*: human activity aimed at providing the animal with the living conditions in accordance with the physical, physiological, breeding, and ethological characteristics stemming from the animal's species, variety or breed, sex, and age, as well as with the health status, feed and maintenance requirements of the animal (accommodation, nutrition, medical treatment, hygiene, rest, care, training, rearing, supervision);
- *killing animals in a permitted manner*: the killing of animals in an expert and expedite manner that causes as little agony as possible with regard to the characteristics of the species.<sup>11</sup>

### 1.2. *Cruelty to animals in the Animal Protection Act*

The provisions on animal welfare and the prohibition of cruelty to animals are included in chapter II of the Animal Protection Act. It is important to note that, as opposed to criminal law, the Animal Protection Act prohibits cruelty to animals in general, while only the most serious abusive acts are criminalised by Act C of 2012 (Criminal Code).

The Animal Protection Act nonetheless defines the concept of cruelty to animals rather vaguely, as “unnecessary abuse” of an animal. It is not easy to assess whether the abuse of an animal is necessary or not, as it may depend on various factors and circumstances. Also, the administrative bodies and courts usually lack the expertise necessary for a clear position in such issues. Perhaps that is why, beyond the definition, the Animal Protection Act provides an indicative list based on the most common cases of cruelty to animals. It is prohibited to cause the animal unjustified or avoidable pain, suffering, or injury, and to cause damage to the animal, which includes, in particular, the following:

- torture
- ordering the animal to attack humans or other animals

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<sup>11</sup> Items 2, 4, 8, and 10 of section 3 of Animal Protection Act.

- training for animal fights
- force-feeding, with the exception of medically justified cases
- moving, transportation, and placement without taking the welfare of the animal into account
- forcing a performance that clearly exceeds the animal's capabilities
- training the animal to engage in unnatural or self-destructive behaviour.<sup>12</sup>

The referenced provision intends to provide legal grounds for the morally embedded responsibilities of all animal keepers, as animals accustomed to being kept in a human environment are unable to sustain themselves, therefore, their keepers are liable for their sustenance and supervision.<sup>13</sup>

Due to economic reasons, the legislature allowed exceptions from the statutory prohibitions, namely home-harvest of mature goose quill or its harvest with any other permitted method, and the force-feeding of geese and ducks for foie gras products. It should be noted, however, that both force-feeding and quill-plucking are subject to certain rules serving the welfare of farm animals, enshrined in Decree 32/1999 (III.31.) FVM of the Minister of Agriculture and Rural Development on animal protection rules related to farms animals.

## **2. Criminal law legislation on animal protection**

Twenty years ago, cruelty to animals had been regulated by section 2 of Government Decree 218/1999 (XII.28.) on certain petty offenses, effective until 3 September 2004, among petty offenses against public order. However, the legal object protected by the penalisation of such conduct had not yet been the animal itself, but rather society,

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12 Paragraph (1) of section 6 of the Animal Protection Act.

13 National Food Chain Safety Office: *Kutyakötelesség. Útmutatón a felelős kutyatartás jogszabályi előírásaihoz*, 2nd revised edition, Budapest, Nemzeti Élelmiszerlánc-biztonsági Hivatal, 2018, 12.

as well as public order and morals. That is, the abuse of vertebrates, causing physical pain to animals or forcing them to act contrary to their nature, or the unnecessary intervention in vertebrates had been punishable only if such conduct was suitable for inciting indignation or alarm in others.

That approach to cruelty to animals completely contradicts the principles of modern animal welfare. While in Hungary cruelty to animals had been a petty offense prior to 2004, punishable by a fine not exceeding fifty thousand forints, in other member states of the EU, where abuse of animals had already been penalised as a criminal offense, the penalty of such conducts could even be years of imprisonment. The case of the dog brutally tortured by security guards at Fadd-Dombori Beach, Hungary, on 16 June 2003<sup>14</sup> triggered public outrage and condemnation. After the incident, animal protection organisations started to collect signatures for a citizens' initiative to achieve the criminalisation of cruelty to animals. In total, 379,611 (330,000 valid) signatures were collected – far exceeding the necessary 50,000 –, and after the National Election Commission authenticated the signatures, the National Assembly placed the discussion of the statutory amendment on the agenda.

After the discussion, on 8 March 2004, the National Assembly passed the amendment of Act IV of 1978 (Old Criminal Code) criminalising cruelty to animals in section 266/B, effective as of 8

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14 A dog, which had been offered shelter at a firm's establishment, was shot at several times with a gas gun by security guards employed by the firm. The perpetrators continued the shooting even after the terrified animal fled under a container (where notably human beings also took shelter at the time). The security guards dragged the dog out, tied it to the back of a car with a plastic rope and dragged it across the concrete floor. They left the dog on the street, who staggered back to the establishment after a few days, but as he was left with bone-deep injuries after the assault, his fatally wounded body eventually gave in. (Judit Károlyi: *Az állatkínzás fejlődésének szabályozása Magyarországon. Acta Juridica Et Politica*, vol. LXVIII, 2006/13, 14.; Magyar Állatvédelem: A kutya, aki miatt törvényt hoztak az állatkínzás ellen.)

March 2004. The simple form of the criminal offense was enshrined in paragraphs (1) and (2), while aggravated cruelty to animals was defined in paragraph (3), enacted by Act LXXXIV of 2008, effective as of 19 December 2008.

While the currently effective Criminal Code basically adopted the same regulation, a further amendment followed a case where more than 400 dogs were found in chicken coops, kept for reproduction at a homestead near Kecskemét in 2019. According to the explanatory memorandum of Act CXXVIII of 2021, the legislature passed stricter criminal law rules on the protection of animals based on recent experiences: new forms of conduct have become typical and widespread, and cases that cause public outrage are more likely to occur.

As a result of all the above, the following provisions came into effect on 1 January 2022:

Pursuant to paragraph (1) of section 244 of the Criminal Code:

Any person

*a)* who is engaged in the unjustified abuse or unjustified mistreatment of vertebrate animals that is suitable for causing permanent damage to the animal's health or the animal's destruction,

*b)* who abandons, dispossess, or expels their vertebrate animal or dangerous animal,

is guilty of a misdemeanour punishable by imprisonment not exceeding two years.

(2) The penalty for a felony shall be imprisonment not exceeding three years if the criminal offense

*a)* is carried out in a manner that causes undue suffering to the animal,

*b)* results in permanent damage to several animals or in the destruction of more than one animal,

*c)* is committed before the public at large,

*d)* is committed against an animal covered by a prohibition under the act on the protection and welfare of animals to keep as

a pet, or against an animal that is a specimen of a species covered by a prohibition to keep, during the period of the prohibition, or

*e*) is committed within two years of the perpetrator's conviction for cruelty to animals or the organization of illegal animal fights.

(3) The penalty shall be imprisonment between one year to five years, if the criminal offense

*a*) is committed by poison or baits suitable for killing animals and results in the destruction of more than one animal, or

*b*) if the perpetrator is a habitual recidivist.

(4) Any person who commits the criminal offense specified under item *a*) of paragraph (1) for profit-making purposes related to the reproduction of animals or against more than ten animals kept as pets by failing to exercise the duty of care shall be punishable in accordance with paragraph (3).

(5) Any person who engages in preparations for the criminal offense specified under item *a*) of paragraph (3) shall be punishable for misdemeanour by imprisonment not exceeding two years.

(6) In the application of item *b*) of paragraph (3), the following shall be construed as crimes of similar nature within the meaning of habitual recidivism: damaging the natural environment resulting in the destruction of an animal, cruelty to animals, and organization of illegal animal fights.

### *2.1. Interpretation of the effective criminal provisions*

Cruelty to animals is regulated among the criminal offenses against the environment and nature in chapter XXIII of the Criminal Code. The statutory definition of this criminal offense is not one of the so-called framework provisions, as instead of referring to the provisions of the Animal Protection Act to give substance to them based on another legal act, the criminal provision itself defines the conducts that constitute as a criminal offense by applying the concepts of criminal law.

The title of the relevant chapter and the fact that such separate chapter exists is more telling in terms of the legal interests protected by the relevant definitions and their significance than the provisions of the Old Criminal Code. Based on the identity of the protected legal interests, the Old Criminal Code regulated cruelty to animals among crimes against public peace, under the title “Crimes against Public Safety”. That was so because the criminal offenses concerned typically have detrimental effects on society as a whole instead of violating or jeopardizing the rights of a specific person or persons.

The object of the criminal offense stipulated in item a) of paragraph (1) is a vertebrate: an animal with vertebral column, at the highest level of animal development. Item b) of paragraph (1) includes a supplement, adding dangerous animals to the objects of the criminal offense. Dangerous animals and their keeping are defined and regulated in Decree 85/2015 (XII.17.) FM of the Minister of Agriculture. Nonetheless, the criminal offense of cruelty to animals cannot be committed against vertebrates or dangerous animals qualifying as strictly protected living organisms pursuant to the laws on nature conservation, as such an offense would primarily constitute damaging the natural environment.

The criminal conduct specified by item a) of paragraph (1) is the unjustified abuse or unjustified mistreatment of vertebrate animals, suitable for resulting in permanent damage to the animal’s health or in the animal’s destruction – that is, both action and inaction can qualify as cruelty to animals. An example of the latter is the failure to provide the animal’s proper living conditions, which also qualifies as an omission described in the statutory definition. (EBD 2014.B.8.).

Even in the absence of a bodily injury, all violent (both physical and psychical) impacts are to be considered abuse, as it is sufficient if the manner of the abuse has a realistic potential to cause an injury (EBH 2006.1391). On the other hand, it should be highlighted that the legislature used the term “abuse” instead of “causing physical

pain” because the intention was to criminalise the conduct of the perpetrator, not the result defined as the animal’s perception. Yet, not all forms of physical and psychical harm can be considered cruelty to animals, as, for example, physical impacts aimed at training may be justified, as well as repelling the animal’s attack.<sup>15</sup> Mistreatment is thus a concept broader than abuse, and includes all physical impacts and other actions, as well as failures to fulfil the duty of care as inactions, which do not qualify as abuse but nonetheless cause suffering to the animal (a typical example is permanent starvation).<sup>16</sup> Whether the abuse or mistreatment was “unjustified” is for the court to decide, taking all circumstances of the case at hand, as well as the established morals of society into account.

All in all, the criminal conduct defined in item a) of paragraph (1) of section 244 of the Criminal Code is to be objectively suitable for resulting in permanent damage to the animal’s health or in the animal’s destruction. Therefore, actual permanent damage or destruction is not necessary for a completed criminal act, it is sufficient if the given conduct is objectively suitable for triggering such consequences. Also – as opposed to bodily harm or permanent disability – the statutory definition uses the term “permanent damage to health”, meaning permanent or incurable, chronic illness or a defect causing the loss of function as a result of abuse or mistreatment.<sup>17</sup> The destruction of an animal is, therefore, not a separate criminal act in the statutory definition but can be assessed as an aggravating circumstance in the course of sentencing.

The criminal conduct specified in item b) of paragraph (1) is committed by a person who abandons, dispossess, or expels their

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15 Katalin Tilki: *Az állatkínzás miatt indult büntetőeljárások tapasztalatai I. Ügyészségi Szemle* vol. III, 2018/01. 60.

16 Office of the Prosecution General: *Elvi állásfoglalások a környezetvédelmi jogterületen. 5.* Quoted by: Katalin Tilki: *Az állatkínzás miatt indult büntetőeljárások tapasztalatai I. Ügyészségi Szemle* vol. III, 2018/01. 73.

17 Belovics–Molnár–Sinku: *Büntetőjog*, 375–376.

vertebrate animal. In accordance with the safeguards enshrined in section 8 of the Animal Protection Act, it is prohibited for the owner or keeper to expel, abandon, or dispossess their animal kept in human environment or their dangerous animal. In the Criminal Code – namely in item b) of paragraph (1) of section 244 – this ban is defined as one of the conducts specified as cruelty to animals. The expulsion, abandonment, or dispossession of vertebrate or dangerous animals include all conducts that result in the termination of earlier possession, keeping, care, and supervision of the animal. The underlying reason of criminalising such conducts is not only the vulnerability of animals, but also the intent to prevent possible emergencies caused by abandoned animals. In this case, the scope of animals is not limited to vertebrates, so this form of the offense can be committed against other dangerous animals as well, such as arthropods (scorpions, venomous ants or spiders), but the perpetrator can be no one but the keeper of the animal.<sup>18</sup> As regards the criminal conducts, it should also be noted that pursuant to the Animal Protection Act, the animal keeper is obliged to fulfil the duty of care and provide the animal with life conditions in accordance with its species, variety or breed, and physiological needs.

Cruelty to animals is the abuse or treatment of or intervention in an animal resulting in unnecessary pain or the limitation of the animal's needs to an extent that causes permanent fear or damage to health, and the breeding or reproduction (for non-experimental purposes) of animal specimens suffering from a hereditary disease.

Pursuant to item 2 of section 3 of the Animal Protection Act, damage to animals mean the permanent adverse change in the physical integrity, body, psychological state, or behaviour of an animal. The destruction of an animal means ending the animal's life.

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18 Balázs Elek: *Vadászok, halászok a büntetőjog hálójában*, Budapest, HVG-ORAC, 2015, 161.

A person who shoots a dog that is threatening the bodily integrity or health of people with direct attack does not commit cruelty to animals, as his action qualifies as means of last resort. An attack is a harmful or jeopardising effort of a living being against someone else, against which defence is lawful. The right of defence against an attack of an animal is not in any way narrower than that against the attack of a person (EBH 2018.B.14).

The perpetrator of the criminal offense specified under item a) of paragraph (1) can be anybody, such as a person who performs unauthorised experiment on an animal or performs it in a manner that is not in accordance with the authorisation, or who is unduly engaged in an activity requiring a veterinary degree. Having regard to the fact of the possession, the perpetrator of the criminal offense specified under item b) of paragraph (1) may be the keeper of the animal. Pursuant to item 1 of section 3 of the Animal Protection Act, the keeper of the animal is the owner, or a person who tends to or supervises an animal or livestock. The criminal offense can only be committed with intent (but either with *dolus directus* or *dolus eventualis*). The perpetrator must be conscious of the fact that the animal is a vertebrate, and that the given conduct is suitable for causing permanent damage to the animal's health or its destruction [item a) of paragraph (1) of section 244] or that the animal is left to its fate by the perpetrator [item b) of paragraph (1) of section 244].

The criminal offense has two aggravated forms, and each include a result. Undue suffering means that the offense causes the animal physical or psychical torment far above average in relation to its bodily integrity, body, or behaviour.

The aggravated forms of the offense specified in paragraph (2) of section 244 include a result as an element of the statutory definition. Item a) of paragraph (2) defines the aggravated form of the offense where the perpetrator causes the animal undue suffering, which means that the criminal act is committed with extreme brutality and causes

the animal physical or psychical suffering above average in relation to its bodily integrity, systems, or behaviour. For example, that is the case if the abuse is sustained or prolonged, or if the animal's suffering is apparently extreme. The aggravated forms of the offense are for the courts to assess, based on, for example, the concepts of tormenting and particular cruelty developed by the existing case-law.

The statutory definition in item b) of paragraph (2) stipulates the "permanent damage to the health of several animals or the destruction of more than one animal" as aggravating circumstances. This aggravated form of the criminal offense is deemed completed if the result occurs in terms of more than one animal.

Taking section 9 of the Criminal Code into account, negligence is sufficient on the perpetrator's side in terms of the results defined as aggravating circumstances. Therefore, it is possible but not necessary that the perpetrator's intent covers the result.

Specifying that an animal's life can be ended in a permitted manner, item 3 of section 10 of the Animal Protection Act gives rise to the lack of unlawfulness in terms of the destruction of animals. The permitted manner of killing animals requires an expert and expedited manner that causes as little suffering as possible with regard to the characteristics of the species.

Pursuant to paragraph (1) of section 11 of the Animal Protection Act no animal can be killed without an acceptable reason or circumstance. Inter alia, such reasons or circumstances may be human consumption in the case of slaughter animals, pelt production, animal stock or livestock management, elimination of and combat against incurable and infectious diseases or injuries, pest extermination, prevention of attacks that cannot be repelled otherwise, scientific research, or prevention of public health hazards. Human consumption and pelt production do not qualify as acceptable reasons or circumstances in the case of dogs and cats, as it is prohibited to use these species as food or pelt. In accordance with the aforesaid, the typical ways

of slaughtering farm poultry do not constitute as cruelty to animals (EBD 2015.B.11).

The legislature included two further aggravated forms of cruelty to animals in the statutory definition. One of them is the destruction of several animals by using poison or a bait suitable for killing animals, due the fact that such an offense is particularly harmful to society. The other is the stricter liability of habitual recidivists who committed similar offenses several times. The offenses to be construed as crimes of similar nature within the meaning of habitual recidivism are specified by paragraph (6). Alongside cruelty to animals, these include an aggravated form of damaging the natural environment, and the organisation of illegal animal fights.

To prevent the spread of, and dismantle the existing animal reproduction establishments, the legislature defined a new aggravated form of cruelty to animals. This is committed if the perpetrator is engaged in the reproduction of animals for profit-making purposes or commits cruelty to more than ten animals kept as pets by failing to exercise the duty of care. Although not widely known, the regulation of this issue (the number of pets allowed to be kept by one person) used to fall under the jurisdiction of local governments. However, that led to the lack of a nationwide uniform regulation. Some local governments specified the maximum number of pets – mostly that of dogs and cats –, which number varied from two each to seven, or even ten. Unfortunately, Hungary is widely known as the mecca for dog reproduction establishments, thus stricter criminal rules were indeed necessary in that regard. The legislation is aimed at preventing cases where dogs and cats are kept in smaller or larger chicken coops by the dozen, in enormous quantities of their own faeces, without food or water, enduring their bitter fate and suffering under inhumane circumstances.

## 2.2. Results of a file assessment

In 2017, the National Institute of Criminology<sup>19</sup> conducted an empirical study of criminal cases that occurred between 2012–2016 and ended with a final court sentence (n=197).

### Filed reports

The cases that ended with a final conviction show that the reports of the offenses were filed by citizens (43.1%), police officers (21.8%), and animal protection and rescue organisations (10.6%) for improper keeping and neglect (20.3%) or destruction (12.7%) of animals. Further types of conduct causing harm to animals also occurred, such as intentional abuse of dogs (11.2%), animal theft (6.1%); shooting or injuring animals with air guns (4.5%); starvation, abandonment (3.6%); and dispossession of dogs (21%). There were few additional cases where a dog was tied to a car driven by the perpetrator, and where animals were slaughtered or poisoned.

### Object of the criminal offense

In the majority of the cases under examination, the offense was committed against dogs (102), fish (25), game (elks, deer, hares, boars) (18), cats (17), and horses (11). The object of the offense was a stray or tortured animal in a small number of cases.

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19 Katalin Tilki: *Az állatkínzás miatt indult büntetőeljárások tapasztalatai 2012 és 2016 között*, Research report (III/A/19.) Budapest, National Institute of Criminology, 2017.; Dávid Petrétei – Katalin Schreiter – Katalin Tilki: *Támpontok az állatkínzás nyomozásához*, Budapest, Ludovika Egyetemi Kiadó, 2021.

## Location

Most of the criminal offenses were committed on a real estate (41.6%), on the waterfront (12.7%), on the street (7.6%), at homesteads or public areas (5.6%).

## Criminal conducts and aggravating circumstances

The criminal conducts that constitute cruelty to animals are defined in paragraph (1) of section 244 of the Criminal Code, while the aggravating circumstances are listed in paragraph (2). The most typical criminal conducts in the cases under examination were “unjustified abuse” (52 cases) and “unjustified mistreatment” (34 cases). “Expulsion, abandonment, or dispossession” occurred in a smaller number of cases (11).

Among the cases of aggravated offenses, most of the perpetrators were convicted of cruelty to animals resulting in extreme suffering of the animal (40 cases). Permanent damage to the animal’s health and the destruction of the animals only occurred in a few cases (10).

*The perpetrators convicted by a final judgement in the examined cases had engaged in the following criminal conducts at committing the criminal offense.*

Cases of unjustified abuse:

- dogs, elks, pigs were beaten with various tools (such as wooden staves, iron rods, hoes, axes, hammers) (19 cases);
- cats were shot by an air gun (10 cases);
- dogs and cats were thrown from a height or out of a building, hit against a wall, knocked to the ground, or trampled on (9 cases);
- dogs, sheep, and cats were mutilated or slaughtered (4 cases);
- dogs and turkeys were beaten (3 cases);
- hedgehogs were set on fire or kicked around like a ball (3 cases);
- further conducts that appeared in the examined files: an elk’s neck

and chest was ran over by a motocross bike; a dog was strangled with a wire; a cat was thrown in a bag and exposed to forces of unknown number and magnitude; a hen's head was slammed into a table several times; a great tit was thrown in the air and then kicked; a dog was dragged across the concrete floor by a chain tied to its neck; a hen's neck was wrung.

Cases of unjustified mistreatment:

- dogs were tied up tightly without food, water, and shelter from the weather (13 cases);
- farm animals were kept in a way that did not meet the requirements of animal husbandry, and the keeper failed to provide them with food, water, and a clean environment (9 cases);
- dogs were tied up with a chain that injured their neck and left an open wound (5 cases);
- dogs and farm animals were neglectfully kept, for example, they were not vaccinated, groomed, or treated when they were sick (4 cases);
- dogs were tied to the car driven by the perpetrator (2 cases);
- in one case animals (pigs) were packed tightly in a vehicle at transportation, without food and water.

Cases of expulsion, abandonment, and dispossession:

- dogs and cats were abandoned after their owner moved or after run-over accidents (6 cases);
- dogs were abandoned on the street or shore (4 case);
- a dog was expelled from the owner's house (1 case).

Cases that caused undue suffering to the animal:

- animals (dogs, pigs, boars, horses, hedgehogs) were slammed several times (11 cases);
- animals (dogs, pigs) were hit in the head by various tools, such as stones, pickaxes, axes, or hammers (7 cases);

- dogs were tied up with chains that grew into the flesh of their neck (3 cases);
- dogs were kept neglectfully (3 cases);
- dogs were slammed into the floor or wall (2 cases);
- dogs and buzzards were poisoned (2 cases);
- a cat's body part was mutilated, an ewe's throat was cut (2 cases);
- animals (sheep, day-old chicks) were transported or kept under improper circumstances (2 cases);
- other cases: snares were set up for the purpose of hunting, dogs were abandoned for several months, a hedgehog was held captive without food and water, a dog was tied to a car while driving, a dog was used for hunting, a cat was thrown into the stove, a dog was strangled, stones were thrown at a cat.

Cases of cruelty to animals causing damage to the health of several animals or the destruction of more than one animal:

- dogs and horses were provided with insufficient quantity of food and water leading to starvation and thirst; the animals were kept locked up and without the required veterinary care (6 cases);
- dogs were slammed into the floor or wall (2 cases);
- puppies were drowned (1 case);
- snares were set up for the purpose of killing wild animals (1 case).

### Confiscation

Animals (dogs and horses) were confiscated in 8 cases out of the 197 cases under examination. The animals were handed over to rescue organisations or breed rescue associations. The court ordered the confiscation in its final decision for the following reasons: abuse of the dog, throwing the dog through the attic window, mistreatment of horses or dogs. The court established mistreatment for various reasons: horses were deprived of sufficient quality and quantity of

food and water, their skin was infected by parasites and their hooves were ungroomed, while dogs were kept in places contaminated by their own faeces, locked up for longer periods of time, neither vaccinated nor treated against parasites.

Key evidence assessed by the court

In the examined criminal procedures initiated for cruelty to animals, the courts assessed the following key evidence:

- eyewitnesses' accounts (in the case of 140 perpetrators);
- police reports of observations at the scene, collected data and taken measures (in the case of 113 perpetrators);
- attached photos (in the case of 95 perpetrators);
- minutes taken of the report of the offense, the on-site investigation or the confiscation (in the case of 81, 77, and 48 perpetrators each);
- confession of the perpetrator (in the case of 65 perpetrators);
- list of exhibits (in the case of 44 perpetrators);
- the causal link between the criminal conduct and the status of the animal based on the opinion of the forensic veterinary expert (in the case of 39 perpetrators), and the minutes taken by the veterinarian who treated the animal (in the case of 35 perpetrators)

Mitigating and aggravating circumstances taken into account at sentencing

At sentencing, the court has taken the following mitigating circumstances into account: confession of the perpetrator (44); clean criminal record (43); minor dependents (26); lapse of time (24); alleviation of the damage in whole or in part (10); the proximity of the value of the object of the criminal offense and the minimum value

of the aggravated form of the offense (8); repentance (6). In one of the examined cases, the court considered the fact that no previous administrative procedure had been initiated against the perpetrator in relation to the keeping of animals a mitigating circumstance.

At sentencing, the court has taken the following aggravating circumstances into account: the local-level and national-level proliferation of similar offenses (this was the most frequent aggravating circumstance, in the case of 29 persons); criminal record (22); the fact that the perpetrators were co-actors (20); *concursum delictorum* (15); the fact that perpetrators committed the offense while they were subject to criminal proceedings or under a suspended sentence of imprisonment (11 and 10 persons); and the fact that the criminal act was not only suitable for causing the animal's death but actually resulted in the destruction of the animal (9). The following list includes further aggravating circumstances considered by the court in the examined cases:

- prolonged and ferocious abuse;
- brutality of the criminal act;
- vulnerability of the animal, with particular regard to its variety or breed, age, and weight;
- keeping the animals under extremely poor conditions for a longer period of time;
- the fact that the perpetrator did nothing to improve the living conditions of the animals after the initiation of the criminal proceedings;
- improper keeping and treatment of several horses (insufficient quantity of food, lack of medical treatment);
- abandonment of several dogs;
- destruction of several animals;
- brutal criminal act causing public nuisance, that left no chance for the dog's survival;
- gross negligence of the keeper;

- deprivation of several animals for a longer period of time;
- injuring an animal by shooting at it twice;
- causing and injury so severe that prolongs healing time.

## Perpetrators

In total, the criminal offense of cruelty to animals was committed by 260 persons in the examined cases, of whom 63.1% was considered a principal perpetrator, 31.9% a co-actor, and 31% an aider by the court. The vast majority of the persons who committed cruelty to animals were men (88,5%) living in a village (142) or in a town or city (66), which means that the offenses are mostly committed in the rural areas, where some people are still accustomed to behaviours (such as beating dogs) unacceptable in general. 22 out of all perpetrators were minors, while 40 of them were young adults. The majority of the minor perpetrators (20) abused the animal without any specific reason or committed the offense by causing extreme suffering to the animal. Most of the perpetrators who committed the offenses under examination belonged to the age groups between 31 and 40 or 41 and 50. The youngest offender was 18, while the oldest was 78 years old. The perpetrators' highest completed level of education was elementary school (114) or vocational secondary school (52). 186 out of 260 perpetrators were in employment, while no data were available in that regard in the case of 42 offenders.

The majority of the perpetrators were contract workers (34), employees (27), unemployed persons (24), or persons receiving retirement (17) or incapacity pension (16). Noteworthy, three animal caretakers were also among the perpetrators. 4 of the offenders were Romanian citizens and 1 was an Austrian citizen. Only 11 offenders were held on remand. 63.5% of the perpetrators (165 persons) were first-time offenders. 95 persons had criminal records, most of whom had been convicted for misdemeanour (19) or felony (15) of

theft and other criminal offenses (11), while 11 persons had been convicted for driving under the influence of alcohol. Only three of the offenders had committed cruelty to animals before. The final judgement was rendered at first instance in the case of 187, and at second instance in the case of 70 perpetrators.

In the final judgements, the courts most often (in the case of 134 persons) handed down sentences of suspended imprisonment as principal penalty, while the imprisonment was partially suspended in the case of 1 perpetrator. A fine was also imposed in the case two perpetrators. 29 offenders (2 of whom were minors) were sentenced to non-suspended term of imprisonment. Community service work was imposed against 39, and a fine was imposed against 18 persons as a principal penalty. As additional penalty, the court mostly imposed deprivation of civil rights (25) and confiscation of property (11). As a measure, the court imposed conditional sentence in the case of 34, and probation with supervision in the case of 26 persons. A few perpetrators (4) were given a warning. In total, work performed in amends, confiscation, and confiscation of property were imposed against 6 persons. In the case of minors, the court typically handed down sentences imposing community service work in addition to suspended imprisonment, while probation with supervision and conditional sentence were applied as measures in most cases.

### **3. Summary**

The way people treat the animals living in their environment in a given society is telling of the community's level of morals and cultural development. Hungary is often criticised for the fact that the country's animal protection lacks professionalism and effective cooperation (and often engages in tokenism), and most importantly lacks actual coordination between the actions of the bodies and authorities concerned. The development of a proper animal protection

mindset should be stressed, including ethical treatment and a culture of quality farming and animal keeping. However, to achieve all that, it is inevitable to ensure a widespread provision of information and awareness raising, education and continuing education on animal protection, as well as to fill the legal gaps and clarify “vague” rules that exist despite a more effective legislation.

Clearly, criminal law must remain the ultima ratio, not just because safeguards are to be guaranteed through principles, but also because the actual occurrence<sup>20</sup> or repetition of cruelty to animals might be prevented in time with measures outside criminal law.

The author of this paper also believes in the importance of education in all areas of life, including animal protection. “We can move way further ahead by striving to improve the level of morals in society and raise the awareness of citizens for all to see that animals are sentient beings capable of feeling joy and agony, whose well-being would also improve the quality of life of humans.”<sup>21</sup>

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Ágnes Czine<sup>1</sup>

## A FEW THOUGHTS ON THE DEVELOPMENT OF VICTIM PROTECTION

### 1. Introduction

Helping and protecting victims is as old as humanity. Of course, this does not mean that at the early times of history the science of victimology already existed, or analyses had been carried out concerning types and living conditions of those groups in society that were victims of crimes, wars, environmental disasters, or were disadvantaged in society due to their financial, health, or mental condition. Obviously in the early centuries of the known history scarce resources did not provide the opportunity to rescue people or even help them when they became victims and therefore, they had to face much worse conditions. Not only due to the lack of social cohesion or financial means, but more due to the lack of expertise, cooperation and institutional systems; nevertheless, there have always been people helping those in need and despair. As for the reason, it was their affection towards their fellow human beings, including those who needed help, protection, and comfort.

A beautiful example of this is the life of Saint Elizabeth of Hungary – daughter of King Andrew II of Hungary – her life and her deeds.<sup>2</sup> Living as the wife, and later the widow of the landgrave

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2 Saint Elizabeth of Hungary (1207-1231) was a younger contemporary of Saint Francis.

of Thuringia and as a mother, she took care of the poor and suffering people beyond her strength.

She has been considered as a person chosen by God even during her life, for her devotion to the helping of the poor and sick. She lived an extremely humble life despite her royal origin. In 1235, just four years after her death, she was canonized by the Catholic Church.

Many centuries later, the life of Henry Dunant also provides an excellent example of how endeavours of one man can give relief in the destitute and how such activity could become a worldwide phenomenon. Dunant was born into a wealthy Geneva family, but his parents used their wealth for charity reasons to help the poor. As a result of his activity, the organisation known worldwide as the Red Cross – Red Crescent has been founded, and subsequently the international humanitarian law came to existence through the adoption of the Four Geneva Conventions together with their Additional Protocols.

Like the most important things for life and the human soul, for which there is no one to care for and no place to provide for them shelter, these were taken over by the professional practitioners of religion, priests, monks, and ultimately churches. As a result of this, in today's charitable activities the work of churches can be seen almost everywhere within the institutions of any country. Needless to say, the modern concept of victim protection and the benevolent, philanthropic protection of charity are quite distinct. However, depending on the interpretation of the word victim (in Hungarian: „áldozat”), it covers different sets of the downtrodden in our society and our fellow people in needs. Difference has to be made in the approach of the legislator in cases of victims of crimes, in cases of disasters, or victims of political systems such as communism.

Initially, the same concept applied to everyone in need or desperate situation.

It is no coincidence that at first the religious meaning of the word sacrifice (in Hungarian: “áldozat”) dominated and the terminology has only gradually changed as the differentiated approaches of our times have evolved, and which have still been evolving and expanding. The regulation based on the international treaties can ensure a more uniform approach to victim aid, especially in the European Union. The extensive institutional system and social network is aimed at ensuring for everyone, regardless of their circumstances, to live their life with dignity and to remain active member of the society. There is a separate approach for victims of crime, for human rights violations, and for victims of abuse of state power.

This study examines the gradual development of victim protection, and provides an overview of the main tendencies contributing to the development of the more and more expanding and detailed regulation of protecting the vulnerable in our society and in jurisprudence in particular.

## **2. On the historical role of the church in victim protection**

At first explore the subject of our studies. Who is the victim? What scope do we talk about? Wars and disasters claim victims, the aggrieved parties of crime are victims, but so are the losers in society, the poor, the sick, and even their relatives and acquaintances. Victimhood is accompanied by some serious disadvantages. What are these disadvantages? Is it merely material loss, or physical injury caused by nature or society, or disability caused by birth, by hereditary genes? We did not even mention mental harms, traumas connected to the former ones. Examining the concept of victimhood in its broadest sense, it can be established that almost everyone can be considered a victim or, using a trending phrase from films, a “loser”, in some respect.

We try to approach the concept in a more scientific way. The word victim itself has multiple meanings and used with different

connotations in criminology, law enforcement, and other fields of social science depending on the personal scope included in this category. Very often, with regard to the connotation of the word victim (in Hungarian: “áldozat”) law enforcement aspects are associated automatically, although not only criminal acts, punishment related cases, concepts may be used as a reference point, but also the context of the workplace, family, emotional-psychological life, religion and other issues. It is beyond dispute that the term sacrifice (in Hungarian: “áldozat”) has its roots in religious traditions; however, its concept of sacrifice is not exclusive to the realm of theology. Indeed, it can also be found in the vocabulary of social sciences, where it is defined in a way that is specific to that field. The most elaborate content of the concept and developed approach criteria, also appearing in international law and regulation are present most notably in criminology, and victimology which is gradually becoming separate from criminology and has acquired the status of a discipline in its own right. In the context of jurisprudence, the term “victim” (in Hungarian: “áldozat”) is sometimes conflated with the concept of the “aggrieved party” (in Hungarian: “sértett”). However, despite this overlap, the two terms have increasingly distinct definitions<sup>3</sup>.

Rather than originating from the Latin term “victima”, the Hungarian term for victim has its own history that can be traced back the prehistory of Hungary, the Finno-Ugric era. In the pagan prehistoric age, the verb “bless” (in Hungarian: “áld”, in Latin: “benedicere”) was related to ritual sacrifice. It was related to a ritual, a begging, atoning sacrifice offered to the deity to gain their favour. A further content layer was also attached to the word, as reflected by the word “áldomás”. Alongside the evolution of content, the word “áldomás” gained also legal significance, as the feast denoted by the

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3 CZINE, Ágnes: Az áldozat fogalmának változása és jelentéstartalmának sokszínűsége, *Magyar Nyelvőr* 147. 2023: 154–163. DOI : 10.38143/Nyr.2023.2.154, 155.

word was a form of concluding a contract, surviving in a toast to seal the deal in the Christian era. The concept was most likely also related to the concept of earnest money, as a sacrificial proof of the conclusion of the contract and the earnestness of the declaration of intent. This interpretation already highlights the meaning of the term, as the person making the sacrifice renounces something important and dear to achieve a goal.<sup>4</sup>

According to the Encyclopaedia Britannica Hungarica, the primary meaning of the Hungarian word is the act of sacrificing animate or inanimate offerings to a deity or other supernatural being, which renders the subjects of the sacrifice the property of the deity and, therefore, sacred. This implies that, in a certain form, life itself was offered with each sacrifice. The ritual is a celebration of life, the recognition of its divine and indestructible nature. A holy force establishing a bond between the offeror and the sphere of the sacred, the life of the offering is set free by act of the sacrifice. Life is thus returned to its divine source by the sacrifice: life nourishes life, reinforcing the power of the source. Accordingly, the following sentence was spoken by those who offered sacrifice to the deity in ancient Rome: “May you prosper with this sacrifice.” Often leading to the death of the animate offering, sacrifice releases life and offers it to the deity. In the case of burnt offerings, the sacrifice reached the sphere of the deity through the scent of food burnt at the altar, so that God would accept and embrace the sacrifice by savouring the fragrance.<sup>5</sup>

The concept of sacrifice, in part by virtue of its religious roots, can be approached from two basic aspects. One approach to the concept of sacrifice (in Hungarian: “áldozat”) emphasizes the active nature of the action, denoting the act of renouncement, regardless of whether any – direct or indirect – effect is expected in consequence.

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4 CZINE: *Az áldozat* 154, 155.

5 Britannica Hungarica, Világenciklopédia, 15th ed, Chicago et al., 1994, Vol I., 270.

This original meaning is expressed with a separate term in most languages other than Hungarian, such as the English word “sacrifice” originating from Latin, reflecting the religious nature of the action and the content of sacrificing. Another approach highlights the passive aspect of victimhood (in Hungarian: “áldozat”), implying helplessness and innocence at the same time. In this sense, the English language uses the term “victim”, originating, too, in Latin. Although this basic conceptual separation is expressly present both in English and French, there is no trace of it either in German or Hungarian where a single word encapsulates both the active and the passive aspect of the concept. But instead of revealing the two sides of the same phenomenon, this duality is a conceptual identification of two distinct phenomena, revealing a modern period shift in meaning from the object of sacrifice to the victim as a subject.<sup>6</sup>

From the earliest historical records, the responsibility for the protection and provision for victims has been assumed primarily by religious and church organisations. Obviously, several factors played a role in this. The priests and the monks were the people having the education and expertise who based on their religious beliefs were sensitive to suffering, approached human suffering with empathy, were advocates of brotherly love and also possessed the intellectual and material resources necessary to assist victims of society and to practise compassion. They have been at the forefront of both medical and social assistance, and the asylum institution has essentially provided a refuge, approaching the standards of human rights, for those fleeing aggressors and combat. In several cases the church walls provided the necessary protection to physical survival. No wonder, then, that victim protection was initially closely linked to religion and church-related organisations throughout history.

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6 BALOGH, László Levente: *A magyar nemzeti áldozatnarratíva változásai*, [https://epa.oszk.hu/00400/00414/00050/pdf/EPA00414\\_korall\\_59\\_036-053.pdf](https://epa.oszk.hu/00400/00414/00050/pdf/EPA00414_korall_59_036-053.pdf) 37.

Churches and religions gave multifaceted forms of assistance to victims since in the social sphere part of catering, providing for the elderly, raising the orphans was conducted within the framework of the church. Another sector of assistance was healthcare, medicine and caring for the sick. Further significant role was played by the church in maintaining spiritual wellbeing: just think of the activities from spiritual support for those engaged in combat to confession in times of peace, by the means of which the priest also engaged in activities that were akin to those of a psychologist, which did not use to be considered a separate profession in those days. For example, researchers trace the development of social care, which plays a pivotal role in caring for the victims of society and nature, back to prehistoric times. The evolutionary process in primitive societies can be divided into four stages: at first, the expression of compassion, then reservation and sharing, followed by the stage of cooperation, and finally the extension of compassion.<sup>7</sup> Like all classifications, this one is somewhat arbitrary, but it is a good way of showing that the role of religion in victim protection has over time become specialised and has developed into separate areas of expertise, and that the institutional system has also become specialised as its scientific background has developed. As proved by an extremely high number of historical examples, providing for the destitute in societies initially appeared as a religious expectation, and it was later that it was implemented through state regulation.

One such example is the religious obligation of charity (tzedakah), which has its origins in the second millennium BC. Based on the teaching of Tora: “There always be poor people in the land. Therefore I command you to be openhanded toward your fellow Israelites who are poor and needy in your land.” (5 Moses 15, 11) Along these

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7 SPIKINS, Penny – RUTHERFORD, Holly E. – NEEDHAM, Andy: *From Homininity to Humanity: Compassion from the Earliest Archaics to Modern Humans*, Time and Mind. III/(2010)3, 303-325.

lines, the late ancient rabbis established public and private funds, linked to the institution of tzedakah, to maintain and support the people in needs in society. Food banks, and even the equivalent of today's soup kitchens, were set up that time.<sup>8</sup> The concept of social responsibility and care in Iran (asha) and in India (dharma), and similarly caring about the elderly in ancient Greece (gereoboskia) and in Rome (alimentatia) was equally prevalent. In the Roman Empire, Emperor Trajan was responsible for the expansion of social welfare, and further developed the institution of alimenta, a state foundation established for the education and schooling of the children of poor Roman citizens. In order to accommodate orphans, orphanages were set up, and placing the orphans with families was also supported. Providing for veterans who received land- and financial rewards on demobilisation was also essential; similarly, it was vital to provide for the invalids.<sup>9</sup> It can be observed that at the beginning of history, the moral system and institutions of religion dealt with victims, and then, with the development of state institutions, see the Roman example, the state also assumed responsibility for the protection of victims. This was in accordance with the interests of the ruling class, as the hungry and marginalised masses of people took what they needed from the scarce resources to sustain their own existence. This might have led to crime, anarchy, and the dissolution of the legal order of society, which resulted in the undermining of the existing power structure. In every era, it was not solely the principle of mercy, empathy and brotherly love, therefore, an incentive, but also the well-conceived interest of the power to provide access for the poor and destitute to the minimal means and opportunities of existence, and thus prevent the hunger riots, or revolutions.

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8 NAGY, Milán: *Egyház és állam, az egyházak társadalmi szerepvállalása a rendszerváltoztatástól napjainkig*, Szent István Intézet, 2022, szentistvanintezet.hu, 5.

9 NOVOSZÁTH, Péter: *A társadalombiztosítás pénzügyei*, Nemzeti Közsolgálati és Tankönyvkiadó, Budapest, 2014, 17-50

In the Middle Ages, the Roman Catholic Church already had a comprehensive social system for the poor. The care of the poor became the responsibility of parish priests and monasteries, and the monks who lived in voluntary poverty were held in high regard by the bourgeoisie, who were eager to donate to help the poor. However, more and more noble youths chose to enter priesthood who strove to maintain the glamour and costly lifestyle of the nobility, with the result that the secularised priests and archpriests were no longer as intensively involved in the care of the poor as before. As a consequence of the deficiencies of caring for the poor there was an increase in the number of beggars. As cities developed, every beggar sought opportunities in cities in order to secure more lucrative sources of income than those available in villages. Due to severe economic circumstances and the indifference of the wealthy, the Church could no longer provide for the poor on its own. The question of organising aid at the expense of the communities was therefore increasingly raised in the cities.<sup>10</sup>

Poverty is a breeding ground for crime, since the beggar must somehow get his daily bread if he/she does not want to perish. This put the state in a quandary, as on the one hand it had to curb the increase in crime if the rich wanted to maintain their lifestyle and not be constantly afraid of robbers and thieves. On the other hand, it was recognised that it was best to address the root cause of the problem rather than the consequence, i.e. to alleviate the misery and suffering, and it was then that the state institutions were forced to step in to protect the poor and the downtrodden of society.

For reasons of space, let us now take a long leap forward in history to the period when victim protection began to develop not only on the basis of instinctive human compassion and religious morality, but also as a field of science, and at the same time we can observe the strengthening of state institutions and expertise, which gradually assumed the role previously held by the Church.

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10 NAGY: *Egyház* 7.

### 3. A few words on the work of the hungarian reformed church in the field of supporting victims

After considering the universal history, now focus our attention on the Hungarian ecclesiastical work and, within it, especially to some of the outstanding achievements of the Reformed Church.

Domestic churches played an instrumental role in providing assistance to those in need, including the downtrodden, children, the disabled, and the sick. Monastic orders and nuns provided social and health services and educational assistance not only during wars but also in peacetime.

The end of the 19th century brought many changes in the life of Hungarian society. From 1867, the acceleration of civil development led to an increased role for the state: the emergence of state social policy, diversification of forms of care and a widening of the pool of care recipients appeared. This period can be considered the era of the “Christian society” until the restructuring after the end of the Second World War, when the intertwined religious and secular culture was shared by all as a national tradition – that is, “religion as the most important culture bearer revived historical continuity, represented national identity, contributed to the integration of society.”<sup>11</sup>

A specific example of the Reformed Church’s activities during this period was the operation of charitable homes, orphanages and hospitals within the framework of the Filadelfia Diaconal Institute, which included, for instance, the renowned Bethesda Hospital.<sup>12</sup> However, the great fraternal cooperation in the field of helping the victims and the fallen was really brought about by the National Reformed Charity Association, which was founded on 7 May 1931 on the initiative of Ferenc Kiss, pastor in Debrecen. Ferenc

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11 NAGY: *Egyház* 9

12 MOLNÁR, Ambrus: Szeretetszolgálat, in: *Tanulmányok a Magyarországi Református Egyház történetéből 1867-1978*, Budapest, 1983., 467.

Kiss has made an unparalleled contribution to the administration of the Association. After one year, in 1932, the Association had 22 thousand members and assets of 150 thousand “pengő” (the currency of Hungary between 1 January 1927 and 31 July 1946). In 1938, it ran 34 institutions with 1,054 inmates, which then grew to 56 institutions (orphanages, old people’s homes, homes for the disabled and homes for the elderly). By 1935, the charitable association had also helped 350 farming families with many children from the Plainland region to settle in Baranya county. The Association’s fate was sealed by war and communist autocracy. World War II severely damaged its institutional system, but some 22 institutes remained.<sup>13</sup> Finally, on 22 November 1949, the General Assembly decided to dissolve the association and, in accordance with its statutes, transferred all its movable and immovable property to the Reformed Church. Their functioning institutions, along with other properties not assumed by the dioceses, were taken over by the Reformed Charity Service, which was founded on 7 October 1949, now in the ideological framework of socialism less supportive of religion.<sup>14</sup>

Thus the next turning point in the charitable, caring and helping activities of the churches was 1945, which marked the beginning of the establishment of the communist dictatorship in Hungary. The one-party dictatorship aimed to make it impossible for the Church to function and ultimately to destroy it. As a first step, the land reform in 1945 expropriated the church’s property and real estate without compensation. Then they nationalised church schools, libraries, printing houses, dismantled church-based organisations, associations and societies, and declared social and health care tasks to be state tasks. During the years of state socialism – especially during the Rákosi dictatorship – the clergy were perceived as a threat to the new

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13 MOLNÁR: *Szeretetszolgálat* 470-471.

14 GÉRA, Eleonóra Erzsébet: *Református karitatív intézmények a magyar fővárosban 1850-1952*, Doktori disszertáció, Budapest, 2006. <https://doktori.btk.elte.hu/hist/gera/diss.pdf>, 262

political order.<sup>15</sup> This process lasted until 1989, when the change of regime revived the Church's efforts to provide assistance to victims.

#### **4. Developments in the international approach to victim protection**

However, the second half of the 20th century also saw other fundamental changes in the academic approach and institutional framework for victim protection. The horrors of the World War II had an impact on the emergence of victimology and the shift in focus towards victims, replacing/supplementing the Church's victim support with a number of secular solutions and institutions.

For our purposes, I would like to highlight two elements from this period that have influenced the development of the tools and institutions of victim protection as we know it today.

We must once more return to the concept of victim (in Hungarian: "áldozat"). The general, religious and social notion of victim in a narrower and more concrete sense was appropriated by victimology, which no longer looked at all victims, but only considered crimes as a reference point for the interpretation of the concept of victim. Among the international conventions that are related to victim assistance (e.g. victims of disasters, nationalisations, etc.), let us now focus on conventions dealing with victims of crime. While these international legal instruments focused on crime, they broadened their scope of protection to include victims of power, human rights violations, humanitarian crimes, which formed a basis for interpretation and investigation relative to the state.

It is first necessary to discuss the role of victimology in this relationship. Let us now return to the topic of religion for a moment. In the Latin language, the word "sacrificium" refers to a religious sacrifice or offering made by believers to gain the favour of the gods. And "victima" essentially means the passive thing that is sacrificed

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15 NAGY: *Egyház* 9.

as a result of this. Victimology has taken the latter, the passive victim, as the basis for its name, and has made the comparison, the examination in relation to, and in terms of the crimes.

Victimology is the scientific study of victims of crime, a sub-discipline of criminology. The aim is to study the relationship between victims and offenders; the placement of those particularly susceptible to crime and the victim in the criminal justice system. At first (going back to the beginnings of criminology in the 1880s), anything resembling victimology was primarily concerned with the study of crime from the perspective of the victim. The scientific study of victimology dates back to the 1940s and 1950s. By creating “typologies”, two criminologists, Mendelsohn and Von Hentig, began to explore the field of victimology. They are considered the “fathers of victimology”. These scientists, the new “victimologists”, began to study the behaviour and vulnerability of victims. Mendelsohn created a typology of six types of victims, in which only the first type is innocent, the other five types contributed in some way to their own injury, contributed to their victimization. Von Hentig (1948) studied homicide victims and said that the most likely type of victim is the “type prone to depression”, who is an easy target, careless and unsuspecting. The latter theory followed by Wolfgang’s (1958) research was that homicide victimisation was in fact caused by the victim’s unconscious suicidal urge<sup>16</sup>. All these statements and typologies point to the recognition that victims are involved in the fact of being victims of crime. Victimologists have attributed this to a variety of factors, such as the external characteristics of the victims, their behaviour, their social status and other causes. It should be added that the assessment of victimisation is an approach mainly based on probabilities, but there is no doubt that anyone, even the

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16 TIWARI, Pramod: *Victimology: a Sub-Discipline of Criminology*, file:///Z:/%C3%81ldozat%20cikkek/5-Victimology-A-sub-discipline-of-criminology.pdf 88-89.

person with the best chances, can become a victim of crime. It is evident that there are certain factors that incite criminal behaviour, providing potential perpetrators with the opportunity to engage in criminal activities when certain personal characteristics, behaviours, situations, locations or human motives are present.

The most important change in approach among international legal instruments was the declaration known as the Magna Carta to Rights of Victims, which also had a major impact on academic research. In 1985, the United Nations issued a “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (hereinafter: the 1985 UN Declaration), which for the first time defined the concept of victim at an international level and in a universal way. According to the definition of the declaration, “victims” are persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. The term “victim” also includes the close family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.<sup>17</sup>

Among the key elements of the definition, the term “persons” is worth highlighting, as this document does not yet clarify whether the concept of victim encompasses both natural and legal persons. Later documents, such as the recommendation<sup>18</sup> of the Council of Europe or the EU Directive (see below) provide clearer definitions, referring expressly to natural persons.<sup>19</sup>

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17 1985 UN Declaration, approved by A/RES/34, 29 November 1985, points 1-3.

18 Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe.

19 GÖRGÉNYI, Ilona: Az áldozat fogalmának és jogainak újraszabályozása az Európai Unióban, In: Borbíró Andrea (szerk.) *A büntető hatalom korlátainak megtartása: a büntetés mint végső eszköz: tanulmányok Gönczöl Katalin tiszteletére*. Budapest, ELTE Eötvös K., 2014., 175.

Another key element of the definition is that in addition to individual victims, a group of natural persons can be considered a collective victim, for example, because they belong to a community. Thus, not only individuals but also groups or collectives of member state citizens can qualify as victims based on the harms suffered collectively.

A third special feature is that beyond victims of crimes, the concept of victim defined by the declaration includes also those who sustained abuse of power or human rights violation, regardless of whether the act at hand is criminalized by the given member state. The declaration refers to national criminal laws, too, the scope of victims thus may be affected by the scope of acts criminalized in a member state; in Hungary, for example, criminalized acts include also petty offences. In addition, by reference to human rights, the concept of victim encompasses those victimized by acts or omissions that do not constitute violations of national criminal laws but of internationally recognised norms relating to human rights.

A fourth noteworthy feature is that in addition to the direct victim of a criminal act, the definition covers also those who suffered indirect harm due to the given act, such as the victim's close family, the witnesses affected by the offense, or perhaps those intervening to assist the victims. The distinction in the literature between direct and indirect categories of victims was developed on that basis.<sup>20</sup> Let us note that neither the UN declaration nor the Council of Europe document considers the direct concept of victim exclusive, resulting in a broader definition and concept of victim. By contrast, the definition provided by the EU Directive only includes those who suffered the direct consequences of the criminal act.

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20 GÖRGÉNYI, Ilona: A viktimológia. In: Gönczöl Katalin – Kerecsi Klára – Korinek László – Lévay Miklós *Kriminológia-Szakkriminológia*. Complex Kiadó, Budapest, 2006. 283.

The fifth special feature is the definition of harm, which includes physical or mental injury, emotional suffering, and economic loss. The latter typically occurs in the case of legal persons becoming victims. The treatment of each type of harm obviously requires different methods.<sup>21</sup>

Here I must point out that the UN, like other international organisations, not only deals with the concept of victim in general, but UN conventions concerning special victim categories were also adopted. For example, in resolution A/RES/47/133 the General Assembly of the UN adopted the Declaration on the Protection of All Persons from Enforced Disappearance on 18 December 1992. On that basis, the International Convention for the Protection of All Persons from Enforced Disappearance was adopted by General Assembly resolution A/RES/61/177 on 20 December 2006. Article 2 of the convention provides the definition of enforced disappearance, thus clearly delineating the scope of victims covered by the document. For the purposes of the convention, “enforced disappearance” is the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Thus, the convention applies a special concept of victims, covering those who were made to “disappear” by the state power.

Obviously, in addition to the UN, various regional organizations also strove to develop their own viewpoints on victim protection and the definition of the concept of victim. For example, the Organisation of American States adopted the Inter-American Convention on Forced Disappearance of Person, which came into effect on 28 March 1996.<sup>22</sup>

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21 GÖRGÉNYI: *Az áldozat* 175.

22 ROMANI, Carlos Fernandez de Casadevante: International Law of Victims. In: A. von Bogdanfy and R. Wolfrum (eds.) *Max Planck Yearbook of United Nations Law*, Volume 14. Koninklijke Brill N.V., 2010, 228.

There is no doubt, however, that the European regional international organisations are the most advanced in the development of regional regulation. Without listing all the recommendations or decisions, I must highlight Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to victims of crime. According to the definition of the recommendation, “victim” is a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term victim also includes, where appropriate, the close family or dependants of the direct victim. The document extended the categories of victims by introducing the concept of repeat victimisation: a situation where the same person suffers from more than one criminal incident over a specific period of time.

The European Union has not been slow either to adopt the necessary legislation to protect victims and, in this context, to define the concept of victim. The Council of the European Union adopted its own Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (hereinafter: Framework Decision). Arising from the differences between English and Hungarian terminology, an anomaly can be observed in the Hungarian translation. In the official Hungarian translation of the document the title of the framework decision is “the legal status of the victim in criminal proceedings” (in Hungarian: “sértett”, as aggrieved person), while in Directive 2012/29/EU of the European Parliament and of the Council (hereinafter: Directive) that later replaced the former document, refers to it as the Framework Decision on the standing of victims in criminal proceedings (in Hungarian: “áldozat”). That difference is of particular importance in terms of the relationship between the definition included in the Framework Decision (defining the procedural law term of victim, in Hungarian: “sértett”) and that included in the Directive (defining victim in the sense of a person who fell victim to

a crime, in Hungarian: “áldozat”), and in terms of which Hungarian concept categories the English definitions correspond with.

In that regard, our primary consideration should be the fact that the above terminological difference exists only in the Hungarian translation. Nevertheless, the meanings are closely related, and the definition provided by the framework decision was replaced by that in the Directive.

According to the content analysis of Article 1(a) of the Framework Decision, the “victim” (in Hungarian: “sértett”) is a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a member state. Covering natural persons only, the definition of the framework decision is narrower than that of the UN declaration: neither all persons nor victims with legal personality are included in the concept of victim. According to the Framework Decision: “The provisions of the Framework Decision, therefore, are not limited to protection of the victim’s interest during legal proceedings. They contain certain measures serving victim support before and after the proceedings, which can mitigate the consequences of the crime.”

Replacing the framework decision, Directive 2001/2020/JHA clarified the concept of victim [Article 2(1)(a)], omitting the condition that only acts qualifying as criminal offenses under national law can give rise to the status of victim. Thus, on the one hand, the definition broadened the concept of victim, which now covered not only acts that qualify as criminal offenses according to national law, but also those that classify as criminal offenses under international law if they were not implemented by national law. On the other hand, the Directive narrowed the concept, as it only covered victims of crimes, while excluding, for example, the victims of natural disasters.<sup>23</sup>

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23 CZINE, Ágnes: Néhány gondolat az áldozat, a sértett és a passzív alany fogalmi összefüggéseiről. *Magyar Jog*, 2023/3., 145.

The EU Directive sets out several requirements. The first group includes communication-related assistance. Member states shall guarantee that communication with victims is carried out in simple and plain language, while taking into account the personal characteristics of the victims.

Victims' right to information is one of the pillars of the support system. The Union expects, upon the first encounter, victims to be properly informed on the kind of support available, who to request it from, the procedure regarding the criminal report, furthermore how and under what conditions they can receive protection.

As a minimum requirement, the Directive expects from member states in terms of victim support to organise certain services. For example, it is essential to guarantee the provision of emotional and psychological help to victims. The scope of services also include advice on financial and practical matters emerged due to the criminal act, and advice on the danger of becoming secondary or repeat victim, and retaliation, or prevention of these. Thus, in accordance with the Directive, mandatory services to be provided are mostly related to giving information or advice.

In accordance with the Directive, member states are obliged to provide, in addition to, or as an integral part of the general victim assistance services, special services providing asylum or other proper temporary accommodation for victims.

In accordance with the Directive, all victims are entitled to access victim support services free of charge.

In accordance with the Directive, victim support services are to be operated by state or private organisations, or can be organised on a professional or voluntary basis.<sup>24</sup>

The Directive therefore sets minimum standards with regard to the rights, support and protection of crime victims, and guarantees

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24 ZSÉGER, Barbara: Milyen további kötelezettségeket ró a magyar államra az Európai Unió áldozatok támogatását szabályozó új irányelve? *Jogtudományi Közlöny*, 2015/5., 270-271.

that persons becoming victims of crime are acknowledged and treated with respect. Furthermore, it guarantees that victims receive proper protection, assistance and access to justice. The victims' rights Directive has had a positive impact where it has been implemented. However, the Commission's 2020 assessment recognises that there are deficiencies in the practical implementation of the Directive by Member States. These deficiencies can be attributed, for instance, to the lack of clarity of that some provisions of the Directive. Examples include a lack of expertise to meet the specific needs of victims and a lack of access to information on their rights. The revision of the Directive is part of the EU 2020-2025 strategy on victims' rights. The aim of the evaluation is the re-enforcement of crime victims' rights throughout the European Union. The scope of evaluation extends to improving victims' access to information and assistance, ensuring that victims are treated with dignity and respect throughout the proceedings, and strengthening victims' participation rights. The evaluation also aims to better protect victims of gender-based violence, including sexual violence and domestic violence, and to address the needs of vulnerable victims, such as children and persons with disabilities.<sup>25</sup>

In developing victim protection, the Union does not stop at this Directive, but continues monitoring member states' activity and the implementation of the Directive, and to develop programmes as it sees necessary.

As a result of this work, on 24 June 2020, the Commission adopted its first EU strategy on victims' rights (2020–2025). Primarily, the strategy sought to ensure that all victims of all crimes, no matter where in the EU or under what circumstances the criminal offence took place, can fully rely on their rights. To that end, the strategy provides for actions for the European Commission, member states and civil society.

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25 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747432/EPRS\\_BRI\(2023\)747432\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747432/EPRS_BRI(2023)747432_EN.pdf).

The strategy presents five key priorities:

- effective communication with victims and a safe environment for victims to report crime;
- improving support and protection to the most vulnerable victims;
- facilitating victims' access to compensation;
- strengthening cooperation and coordination among all relevant actors; and
- strengthening the international dimension of victims' rights.<sup>26</sup>

On 23 June 2022, the European Commission adopted its evaluation of the Victims' Rights Directive. Following extended consultation and the assessment of the Directive, the evaluation is accompanied by an impact assessment. The amendments will be discussed in the European Parliament and the Council before any assessment is accepted by the EU co-legislators.<sup>27</sup>

## **5. A few thoughts on hungarian victim protection legislation**

In the field of victim protection, an important milestone in Hungarian legislation is the entry into force on 1 January 2006 of Act CXXXV of 2005 on Crime Victim Support and State Compensation, which, together with its amendments over the last decade and a half, also serves to comply with several EU Directives, including Directive 2012/29/EU of the European Parliament and of the Council, discussed earlier.

With the introduction of the Hungarian victim support system on 1 January 2006, a state-based, effective victim support organisation system was established. The system of services provided by the state,

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26 [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025_en)

27 <https://www.brusselstimes.com/sponsored/840815/what-is-next-for-the-eu-rules-on-victims-rights>

still in force today, was developed together with the transposition of the Victims Protection Directive.

The current structure of the Victim Support Service is regulated by Government Decree 362/2016. (XI.29.) Korm. on the duties and competence related to justice services. Acting as a victim support service, the Victim Support Line and victim support centres have been operated by the Minister of Justice, while metropolitan and county government offices were designated by the government as regional victim support services in matters of judicial administration and in cases of administrative authority. In the latter case the government decree contains specific rules with regard to the form of compensation support: applications can be submitted at any county government office (the Pest County Government Office has the territorial jurisdiction in Budapest and Pest County), while the Budapest Metropolitan Government Office acts as the competent decision-making authority.<sup>28</sup>

Victims of crime and misdemeanours against property can choose from several services of different nature (financial, practical) to meet their needs. With the establishment of the victim support centres, professional practical assistance and mental counselling now operates within an institutional framework.

According to experts, national access to services offered by the centres can be achieved by developing the centres into a national network, which task is currently in the implementation phase. Beyond the victim support system based on reaching victims directly, the next step in further developing victim assistance can be establishing a uniform victim management system, and the more effective involvement of NGOs and volunteers in public victim support. There may also be a need to introduce new, more personalised services for specific victim groups, to develop state-of-the-art IT platforms, and

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28 Government Decree 362/2016. (XI. 29.) on certain duties and powers in connection with justice services Section 10 (3).

to continuously develop the legislative environment to ensure that the harm suffered by victims is addressed as quickly as possible and as effectively as possible, avoiding secondary victimisation. If an efficient and well-functioning system can be established, the Hungarian victim support system to be rebuilt in line with the Government's objectives could become an outstanding example in the region.<sup>29</sup>

## 6. Summary

The change of the concept the victim (in Hungarian: "áldozat") is telling and revealing. It is a concept which, has expanded enormously over the centuries, and has gained its own regulation and content in the field of individual social and human life situations and branches of law. In everyday life, the concept of victimhood has been regulated in the Hungarian legal system not only in criminal proceedings, but also in social, healthcare, public administration and labour law there is extended regulation. Also, international documents are adding to the obligations of EU Member States to implement the ever-expanding legislation.

The enormous role played by the churches and the Reformed Church in this area has been a great bastion of victim support for centuries, and continues to be so today; their contribution is invaluable in many areas of life. Sustaining and continuing this process is the duty of us all.

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# THE VICTIM IN THE CRIMINAL PROCEDURE

## 1. Introduction

My research on the victim in the criminal procedure has been centred around two goals: to provide an overview of the victim's role in the criminal procedure, addressing both domestic and international perspectives, and examine the impacts of domestic attempts to simplify the criminal procedure on the rights of victims.

Before presenting the analysis itself, it is important to begin with a conceptual overview of the term victim.

The term “victim” refers to an individual who has suffered harm as a result of a criminal offence.<sup>1</sup> According to Framework Decision 2001/220/JHA of the Council of the European Union, the victim is “a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law (...)”. Pursuant to Act XIX of 1998 on criminal procedure (hereinafter: Old Code of Criminal Procedure), the victim is a person whose right or legitimate interest has been violated or jeopardized by the criminal offense, while the current Code of Criminal Procedure (Act XC of 2017 on criminal procedure, hereinafter: Code of Criminal Procedure) defines the victim as a natural or non-natural person

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1 Criminologists believe that we should distinguish between the procedural law concept of the victim (in Hungarian: *sértett*) and the concept of a person who fell victim to a crime (in Hungarian: *áldozat*) [Gönczöl-Korinek-Lévai: *Kriminológiai ismeretek, bűnözés, bűnözéskontroll*. Corvina. Budapest, 1999. 97.]. In this paper, the term “victim” is used in both senses.

whose right or legitimate interest has been violated or jeopardized by the criminal offense. Nevertheless, there remains a common denominator: the victim is an individual who has been harmed by a criminal offense, and to whom the endured offense has caused damage, physical injury, or psychical harm.<sup>2</sup>

Two problems arise in relation to the wording of the abovementioned Framework Agreement. One is that the original document uses the English term “victim”, which in Hungarian can either mean the victim in the sense of procedural law (in Hungarian: *sértett*), or a person who fell victim to a crime (in Hungarian: *áldozat*), consequently, selecting the appropriate term in the Hungarian translation is a critical issue. Indeed, the latter is a broader category of criminology, while the former concept, used as a specific term of procedural law, forms part of the latter category. The personal scope of the rights<sup>3</sup> and duties to protect enshrined in the Framework Decision is of pivotal concern. Related to the actual content of the Framework Decision, the other problem is that the meaning of term “victim” is narrowed down to natural persons, instead of being used as a general concept. This is instrumental in the assertion of the victims’ rights, particularly from the aspect of mediation, and primarily in connection with the participation of legal person victims in the mediation procedure. Indeed, overlooking legal persons, the document specifically prescribes an obligation for the member states to resolve the criminal offenses

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2 According to László Sömjéni, in the English text of the framework resolution the term “victim” is used to define a person who fell victim to a crime (in Hungarian: *áldozat*), not victim in the sense of procedural law (in Hungarian: *sértett*). Although the Hungarian text uses the latter term, Sömjéni argues that it is a result of mistranslation, as the “victim” concept of the framework resolution is used in a broader sense than the concept of “victim” in the Code of Criminal Procedure of Hungary. Cf. László Sömjéni: *Áldozatok jogai*. In: Ferenc Kondorosi and Katalin Ligeti (eds.) *Az európai büntetőjog kézikönyve*. Budapest, 2008. 688-697., 689.

3 Andrea Domokos: *Európai normák a magyar áldozatvédelemben*. Magyar Jog 2023/3. 150.

against natural persons through mediation. In October 2010, the Court of Justice of the European Union rendered a decision related to Hungary<sup>4</sup> in that regard. Although the CJEU found that the EU regulation is to be interpreted strictly, the definition of the victim in the Code of Criminal Procedure of Hungary is not narrowed down to natural persons. The definition laid down in paragraph (1) of section 51 of the then effective Code of Criminal Procedure applied no restrictions and made no distinctions between certain groups of victims. The definition of the victim in Hungarian legislation allowed also for legal persons to participate in mediation.<sup>5</sup>

Participation in the mediation procedure is just one of the options for victims to assert their rights. In the criminal procedure, the victim is primarily the person who suffered harm due to the criminal offense and who can advocate their own interests by asserting the rights assigned to the position of victim in the procedure. The additional positions a victim can take in the criminal procedure – private accuser, substitute private accuser – serve as further layers for the assertion of the victims’ rights, thus providing additional procedural rights to the victim “in disguise”. Moreover, the most recent system of rules related to the victim and other actors of the procedure, namely the provisions on the protection of persons who need special protection, concerns and protects the victims of crimes in an additional area. In my opinion, all these positions exist parallelly, reinforcing, not contradicting each other, as only then can such rules serve the goal of asserting and protecting the victims’ rights to the fullest extent possible.<sup>6</sup>

In the following section, I shall provide an overview of the international and domestic changes of the criminal law policy approach to the victim.

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4 Case C-205/09, the decision of the CJEU was rendered on 21 October 2010.

5 In the legal practice, mediation often takes place also in case where the victim is a legal person. A collection of various cases can be found on the website of the Office of Administration and Justice (<http://www.kih.gov.hu/>).

6 See, e.g., uniformity decision No. 5/2009. BJE of the Supreme Court of Hungary.

## 2. Changes in the victim's role in the criminal procedure – General findings

In each historical era, criminal procedure and the system of punishments were adopted to social conditions and development, the number of offenders, and the current approach to the purpose of punishment. The extent and manner of the victims' participation in the criminal procedure differed from era to era.

In early societies, relying on the rules of the law of tribes and kindreds that had existed before the organisation of the state, the violation of the norms governing the lives of the members of society were mostly not sanctioned by exclusion or various punishments, but the goal was to resolve the conflicts through compensation and reparation. Until organised states came into being, the victim had played a central role in the procedure aimed at holding the offender responsible and received compensation for the harm suffered.

In Roman law, formalized procedures and authorities acting on behalf of the state were introduced, but the victim's role remained crucial in the enforcement of claims. Basically, the majority of conflicts – except for few grave offenses against the state or religion – were treated as civil law disputes in Roman law, and, thus, the persons affected by the criminal offense were instrumental in the procedure. Private wrongs (*delicti*) adjudicated in litigation initiated with civil (property) actions, and public wrongs (*crimina*) prosecuted by the state authorities were two distinct categories with different legal consequences. The power to prosecute *crimina* was vested in the widening circle of those who exercised judicial power (the *rex* in the Etruscan era, later the *magistrati*, mostly the *questores*), thus withdrawing the victim's right to assert their claim. After a certain time, the boundaries of distinction blurred, and in the case of *delicti*, the victim could choose between the different procedure types,

although the state procedure could affect their compensation rights more adversely.<sup>7</sup>

No significant changes occurred in the medieval punishment theories. While the place of the Roman Empire was taken by newly formed feudal states, the nature of criminal law and punishments hardly changed.<sup>8</sup> As regards the victim's standing, although certain signs of a centralized criminal procedure appeared in the Middle Ages with the strengthening of the state, the victim could still claim compensation alongside the – mostly cruel or corporal – punishment imposed on the offender. Some believe that the more and more emphasized state control facilitated the withdrawal of private revenge and promoted the development of certain civilizational processes. Although monetary compensation was present in criminal procedural law up until the 19th century, the offender-victim conflict had been largely supplanted by the offender-state conflict in the Middle Ages, while the victim was gradually removed from the procedure.<sup>9</sup>

Nonetheless, the real change in standing of the victim was brought about in the 18th century, with the establishment and voicing of human freedoms. Focusing on equality before the law and the related rules, victims were more and more deprived of the options to act individually against offenders. Harming an individual also meant harming the community<sup>10</sup>, which entailed a state action taken within organised frameworks. Thus, the state basically “snatched the conflicts and their resolution from the hands of its citizens”.<sup>11</sup>

7 Földi-Hamza: *A római jog története és intézményei*. Budapest, Nemzeti Tankönyvkiadó, 2006.

8 Tibor Horváth: *A büntetési elméletek fejlődésének vázlatja*. Akadémiai Kiadó. Budapest, 1981 34.

9 A. Tünde Barabás: *Börtön helyett egyezség? Mediáció és más alternatív szankciók Európában*. KJK-Kerszöv. Budapest, 2006 21.

10 Walgrave, L.: *Restorative Justice, Self-interest and Responsible Citizenship*. Devon, Willan Publishing, 2008

11 Christie, Nils: *Conflicts as Property*, British Journal of Criminology, 1997, 17 (1), 1-17.

The punishment imposed against the offender was meant to represent the disapproval of the state, while the victim's interests were mostly overlooked, and they were seldom compensated for the damage suffered. The gravity of the criminal offense was determined by the level of the related punishment. As the victim was not involved in the procedure, the only remedy they could hope for was the punishment of the offender. Accordingly, the punishment served no other purposes (such as prevention). This procedural system determined the functioning of the criminal procedure on the European continent for a long time and became a key element of traditional / classical criminal procedure in today's sense.

By the mid-19th century, it became clear that the purpose of enforcing criminal claims is not served sufficiently by the traditional justice and punishment systems. The classical criminal principles and justice system was unable to cope successfully with the increase and phenomena of crime. The number of offenses and the criminality rate grew, as well as the number of recidivist offenders and "professional" or "habitual" criminals. On the other hand, the perpetrators' age decreased, showing that younger and younger generations joined the world of crime. The emerging discipline of criminology searched for new methods, and, thus, another trend formulated in the justice system, focusing on prevention. The followers of the new trend believed that the court's sentencing should not only consider the gravity of the offense, but also the offender's psychological and personal circumstances. They argued that instead of imposing a generalised punishment commensurate with the criminal offense, the legal consequences should be tailored to and suitable for the offender. This era was marked by the spread of the "treatment ideology" (a method serving the treatment, education, and reparation of the offender), and the theories of special and general prevention.<sup>12</sup>

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12 József Vigh: *A kárhelyreállító igazságszolgáltatás eszközei a hazai büntető igazságszolgáltatás rendszerében.* <http://jesz.ajk.elte.hu/vigh14.html> (12 January 2023)

By the mid-20th century, however, it became clear that the parallelly functioning systems were still not suitable for properly addressing crime, and the victim was completely overlooked in the criminal procedure. Emphasising the need to reinstate the instrumental role of the victim, criminologist began to seek for new ways. New theories were developed with an emphasis on restorative justice, focusing on the victim and the compensation (damages) they should receive.<sup>13</sup> The new theories argued that compensation is the primary task of the justice system, and the education and rehabilitation of the perpetrator only comes second. In this way, the state basically loses the monopoly of criminal justice, while the victim gains the right to actively participate in the procedural steps and receive proper compensation.

By the 1950s, many called for the strengthening of the victim's role and advocated a more just and effective criminal procedure. By the 1980s, to enhance the effectiveness of the criminal procedure, several rule-of-law states drew a distinction between tools to address high, medium, and low criminality, and differentiated the legal consequences in accordance with the gravity of the crime. Giving effect to safeguards and ensuring the expedience of procedures were key requirements, and the aspects of offense-proportionate punishments were interlinked with social integration.<sup>14</sup>

### **3. Changes in the victim's role in the criminal procedure – an overview of Hungarian history until 1896**

After the Conquest period in Hungary, during the Arpadian era, the statutes allowed for reparation or monetary compensation in lieu of punishment, whose certain part was received by the victim. In King St Stephen's age, the criminal procedure had yet been "formally

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13 Idem.

14 Gönczöl-Korinek-Lévai: *Kriminológiai ismeretek* 373.

accusatorial”.<sup>15</sup> Although capital offenses were prosecuted *ex officio* by the state, “the prosecution and punishment of [typical] crimes against private individuals were mostly contingent upon the victim’s complaint. That was brought about the existing compositional system, allowing for the perpetrator to avoid statutory punishment by settling with the person entitled to compensation, or by paying the prescribed fee for that person.”<sup>16</sup> Even though there were attempts to reduce private justice, the sources reveal that negotiation, compensation, and conciliation were allowed for up until the reign of King Mathias (Corvinus) I. If those procedures failed, the judge proceeded with the case pursuant to the general rules of criminal law. A distinction between public wrongs and private wrongs was first drawn during the reign of King Mathias I. While the former, treachery in particular, entailed severe punishment with the exclusion of negotiations, the old procedural rules were still applicable in the case of private wrongs. After King Mathias I’s death, in the last decades of the Middle Ages, in the late 1400s public safety began to deteriorate. As anarchy spread in the country, cruel, retaliatory punishments and biased adjudication proliferated. Besides, overshadowing the accusatorial system, the influence of Roman law and canon law increased in criminal procedure during the reign of Mathias Corvinus, facilitating the emergence of inquisitorial procedure. In some cases, the publicity of the procedure was replaced by proceedings conducted in writing but the sources show the predominance of orality.

In the collection of laws penned by István Werbőczy under the title *Tripartitum*, criminal offenses were divided into two groups: treachery, major acts of might, and minor acts of might. In the case of the latter two, compensation was still instrumental, as the only way to make reparation for the damages suffered by the victim.

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15 See the explanatory memorandum of Act XXXIII of 1896 on the Code of Criminal Procedure [hereinafter: explanatory memorandum of the Code of 1896], general part, section II.

16 *Idem*.

In the 16th–18th centuries, criminal procedural rules changed frequently, in several layers, therefore, the coherent development of the justice system was yet to be seen. From the 16th century onwards, arbitrariness, cruelty, and the lack of legal certainty was replaced by the emphasis of the public law nature of criminal law. Significant changes took place in terms of the punishments during the reign of the Habsburgs. Imprisonment was first prescribed by King Charles III of Hungary in 1723, which, becoming more and more common, eventually replaced capital and corporal punishments as the most typical legal consequences of crime. On the other hand, the payment of damages was still featured among punishments. Community service was introduced as an additional type of compensation, although instead of benefitting the victim, it served the interests of society harmed indirectly by the offense. The criminal procedure commenced *ex officio* in the case of publicly prosecuted offenses, except for adultery where the victim's motion was required for the proceedings. Victims could assert their compensation claim with a civil action.

A series of draft codes followed in the 1800s, striving to collect the rules of criminal law and criminal procedural law in a consolidated form. As regards the rules of criminal procedure, the Austrian Code of Criminal Procedure of 1853, effective from 1854, contradicted the theoretical development of the era. The code was characterized by the predominance of authorities and the enforcement of the principles of inquisitorial procedure. The proceedings commenced *ex officio* in each case, without a motion, thus, the earlier options granted to victims in that regard vanished. The oppressive procedural rules were loosened by the 1860s. The Temporary Legislative Rules of 1861 was adopted by the Conference of the Lord Chief Justice. While several excesses of the Austrian Code of 1853 were successfully mitigated by the Temporary Rules, it was still far from consolidating the various types of proceedings. The real breakthrough occurred in 1872, when Act XXXIII of

1871 on the royal prosecution system came into effect and the draft code of criminal procedure of 1872 was drawn up. Even though the latter never took effect, it served as a guideline for courts on many occasions. The draft code strove to prioritize the accusatorial system, but, according to peer jurists, had several shortcomings. *Inter alia*, it made no distinction between the positions of the victim and the private accuser(s), and, thus, failed to define their rights. As the Code of 1878 came into effect, this shortcoming became striking in everyday legal practice: although the scope of offenses to be prosecuted upon a private motion was broadened by the new Criminal Code, no related procedural rules were prescribed.

Pursuant to the draft code of, the victim was a person “without whose motion no criminal procedure may be commenced in respect of a certain offense”.<sup>17</sup> That wording resembles modern-day private motion rather than a general definition of the victim. “On the other hand, the standing of the private accuser has not yet been clarified. All we can learn from the established case-law is that the victim may uphold the charges dropped by the royal prosecutor, the victim is obliged to attend to the final trial as otherwise they shall be considered to have withdrawn from the accusation, and the victim acting individually in lieu of the prosecuting counsel has the powers vested in the royal prosecutor.”<sup>18</sup> All the above show that although the (informal) rules that had determined the practice of criminal procedure of the latter half of the 19th century addressed the procedural role of the victim, they provided neither a clear definition nor clear distinctions. In the lack of those and a list of the relevant rights and obligations, the positions of the victim, the private accuser, and the substitute private accuser existed parallelly with each other. Nonetheless, the draft code provided a solid basis for further codifications.

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17 See the explanatory memorandum of Act XXXIII of 1896 on the Code of Criminal Procedure, general part, section II.

18 *Idem*.

The Code of Criminal Procedure of 1896 (hereinafter: Code of 1896) used a mixed system but strove to enforce the specificities of the accusatorial system as much as possible. The approach taken by the codifiers in terms of the victim affected also the rules that applied to the victim. According to the definition of the Code of 1896, the victim “is a person whose any right was violated or jeopardized by the criminal offense committed or attempted.”<sup>19</sup> One of the limits of the monopoly of public prosecution was that in certain cases – not to cause further harm to the victim – the code banned the royal prosecutor’s office from initiating the criminal procedure *ex officio*, without the victim’s expressed request (private motion) in that regard, for the “*ex officio* commencement of the proceedings not to aggravate the misfortune caused by the criminal offense” Private motion was also required in the case of less significant offenses. In addition, there were cases where the prosecutor could not necessarily assess whether a crime was committed, and if yes, against whom, therefore, the victim had the option to act as a primary private accuser or private accuser. On the other hand, the Code of 1896 excluded the then rather popular institution of concurrent private accusation (where the victim acts as accuser alongside the prosecutor), that is, the victim’s action as “secondary private accuser”. The codifiers did not find it justified to allow the victim to act parallelly with the prosecutor, since the victim, too, had the right to offer to adduce evidence, which the court could accept based on the original indictment, without the need for a motion filed by the victim as an additional accuser. It is therefore clear that the codifiers of the Code of 1896 placed strong emphasis on defining the standing of the victim and providing options for the assertion of the victim’s rights. As regulated in the Code of 1896 in detail, the victim, alongside the positions taken as an accuser, could also act as a private party to assert private claims.

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19 Section 13 of the Code of 1896.

#### **4. Changes in the victim's role in the criminal procedure – Efforts of international organisations**

In the past 40 years, international organisations have advocated the development of a justice system that considers the victim's interests. Formalising such positions, several recommendations and model rules have been adopted since the 1990s. Today, most of the developed countries have adopted (more) victim-centred criminal procedural rules, identified – in an excessively broad sense – with restorative justice.

Internationally, numerous organisations espoused the cause of victims of crimes, and from the early 1980s, the United Nations, the Council of Europe, and later the European Union adopted resolutions, declarations and recommendations to advocate the promotion of the situation of victims in the criminal procedure, and to ensure the broadening of their rights and their protection where necessary. Overlooking the practices of European countries we find that the clear trend in Europe is a shift towards the rehabilitation of the victim, attempting to reform the criminal procedure by applying certain tools of restorative justice.<sup>20</sup>

The first international document with an express focus on the victims of criminal offenses and calling for the improvement of their situation was the United Nations' 1985 Declaration of Basic Principles of Justice for Victims. The Beijing Rules of 1985<sup>21</sup> and the Tokyo Rules of 1990<sup>22</sup> covered the administration of justice in

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20 See, *inter alia*, the 1985 Declaration of Basic Principles of Justice for Victims of the United Nations, Recommendation No. R (85) 11. of the Council of Europe, Recommendation No. R(2006) 8. of the Council of Europe, Framework Decision 2001/220/JHA of the Council of the European Union on the standing of victims in criminal proceedings, etc.

21 <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf> (10 May 2024)

22 <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf> (10 May 2024)

the case of juvenile offenders, the compensation for victims, and the possible alternative procedures. The United Nations issued a resolution in 2002 to summarize its position of the basic principles of restorative justice,<sup>23</sup> and published a handbook on restorative justice programmes four years later.

Recommendation No. R (85) 11 of the Council of Europe<sup>24</sup> formulated the key requirements in connection with the standing of victims in criminal law and criminal procedure as early as in 1985. According to the preamble of the Recommendation, the objectives of the criminal justice system have traditionally focused on the relationship between the state and the offender, and the operation of this system has sometimes tended to add to rather than diminish the problems of the victim. The Recommendation points out that it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim, and, accordingly, the victim must be encouraged to co-operate in the procedure, and their active presence and actions are to be facilitated throughout the stages of the criminal justice process. The Recommendation emphasizes that it is necessary to have more regard in the criminal justice system to the physical, psychological, material, and social harm suffered by the victim, and measures to this end need not necessarily conflict with other objectives of the criminal procedure (such as the reinforcement of social norms, the rehabilitation of offenders, etc.). Therefore, the Recommendation defines guidelines to be followed throughout the stages of the criminal procedure. Expected to be respected by the member states at developing their national regulations, these guidelines focus on to the victims' rights to presence and information, the proper treatment by authorities, and the protection granted to victims. One of the last sentences of

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23 <https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf> (10 May 2024)

24 <https://rm.coe.int/16804dccaec> (10 May 2024)

the Recommendation calls for the examination of the possibility to introduce mediation.

The Council of Europe issued further recommendations in connection with the protection of victims. Recommendation No. R(87) 18<sup>25</sup> on the simplification of criminal justice promotes out-of-court settlements conducted by authorities competent in criminal matters and other intervening authorities as a possible alternative procedure. Following the recommendations adopted in the late 1980s concerning juveniles, Recommendation No. R (99) 19 of the Council of Europe concerning mediation in criminal matters lays down more detailed provisions and imposes stricter obligations than any earlier document. Namely, it defines the system of rules concerning mediation, as well as the preconditions and methods of the mediation procedure, and the standing, rights, and obligations of the victim in that procedure.

Following the aforesaid documents, the Council of Europe adopted detailed provisions concerning the protection of victims, such as Recommendation No. R(2006) 8<sup>26</sup> on assistance to crime victims, where a separate section covers mediation. The Council of Europe points out that due consideration should be given not only to the potential benefits but also to the potential risks for the victim, and that states should adopt clear standards to protect the interest of victims and ensure the exercise of their rights to the fullest extent possible in the mediation procedure.

In international context, a crucial breakthrough has been brought about by a document of another important European organ, namely Framework Decision 2001/220/JHA of the Council of the European Union on the standing of victims in criminal proceedings. Although the Framework Decision prescribed no specific legal norms and

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25 <https://rm.coe.int/16804e19f8> (10 May 2024)

26 <https://wcd.coe.int/ViewDoc.jsp?id=1011109&Site=CM> (15 December 2023)

measures, its provisions gave rise to obligations for the member states in connection with the protection of victims. The definition of victim included in the Framework Decision was discussed in the introductory part of this paper. The document clearly sets the objective of protecting the victims of crime, preventing secondary victimization, and mitigating the consequences of the criminal offense before, during, and after the criminal procedure. The Framework Decision emphasizes the groups of victims requiring special protection and defines the fundamental rights of victims that all member states are obliged to ensure. Moreover, the document prescribes that member states should facilitate mediation in criminal matters and ensure that decisions rendered in the framework of mediation conducted in another member state is taken into account in their own system. According to the Framework Decision, it is for the national legislatures to develop the detailed rules of the mediation procedure and designate the criminal offenses admissible for mediation. The member states were obliged to adopt a regulation harmonizing with their domestic legislation until 22 March 2006, which obligation was fulfilled by Hungary.

Certain provisions of the Framework Decision go beyond the traditional rights that are to be guaranteed for victims in general, defined by the legislation in Hungary in the early 2000s. Therefore, implementing such provisions brought new challenges to the Hungarian legislature, too, requiring the adoption of several new legal provisions.

Although the provisions of the Framework Decision has led to several crucial changes in relation to the standing of victims, a new, complex regulation was adopted in the framework of the

implementation of the “Budapest roadmap”<sup>27</sup> developed during the Hungarian EU Presidency, namely Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.<sup>28</sup> Again, the Hungarian translation makes no distinction between persons who fell victim to a crime (in Hungarian: *áldozat*) and the victim in the criminal procedure (in Hungarian *sértett*), but provides the former a definition that derogates from the earlier approach: “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”; and “family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death”<sup>29</sup>. The wording, too, shows that the personal scope of the Directive was intended to exceed the frameworks of criminal proceedings, covering not only victims in the sense of criminal procedural law, but also the rights, treatment, and standing of victims in a criminological sense. In this way, the Directive extends the member states’ responsibility and duty of action towards victims beyond the regulation of criminal procedure, prescribing the development of a complex criminal law, social, and societal environment where the protection of the victims can be properly implemented. The Directive uses the concept of victim in a broader sense, and the Hungarian translation consistently

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27 Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings [https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=uriserv%3AOJ.C\\_.2011.187.01.0001.01.HUN&toc=O-J%3AC%3A2011%3A187%3ATOC](https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=uriserv%3AOJ.C_.2011.187.01.0001.01.HUN&toc=O-J%3AC%3A2011%3A187%3ATOC) (20 December 2022)

28 The provisions of the Directive were transposed with 116 legislative amendments in Hungary. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029> (31 December 2022)

29 Section 2(1) of the Directive.

applies the term “*áldozat*”, thus preventing any ambiguity as regards the distinction and meaning of the two concepts. However, the concept of the Directive still excludes non-natural persons, defining the victim as a natural person directly affected by a criminal offense, which approach is narrower than those of the documents issued by the United Nations or the Council of Europe.<sup>30</sup>

The transposition of the provisions of the Directive and the fulfilment of the legislative duties related to it was also a focal point in the codification of Act XC of 1997 on criminal procedure.

THE VICTIM IN THE HUNGARIAN CRIMINAL PROCEDURE FROM 1896

In recent decades, clear changes have occurred in Hungarian legislation in connection with the role of the victim. Victims were granted rights inherent in their position as a simple victim, regardless of any further position available to them, and various new provisions have been enshrined in the Code of Criminal Procedure and other laws with the victim in the legislature’s mind. Some new institutions expressively promote the advocacy of the victim’s interests, while some aim at the same goal implicitly.

It is worth overviewing the changes that have occurred in relation to the victims’ options to participate in the criminal procedure in the past 120 years, and the extent to which victims can exercise their statutory rights in the light of the need for simplification and acceleration formulated in the current legislation.

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30 Ágnes Czine: *Néhány gondolat az áldozat, a sértett és a passzív alany fogalmi összefüggéseiről*. Magyar Jog 2023/3. 145.

	Private accuser	Substitute private ac- cuser	Private party	Information	Speaking, ad- ducing evi- dence, and pres- ence at trials	Remedies	Protection	Statements	Obligations
Code of 1896	X	X	X		X	X			
Code of 1952	X		X						
Code of 1962	X		X		X				
Code of 1973	X		X		X				
III. Be. (1998)	X	X	X	X	X	X			
IV. Be. (2017)	X	X	X	X	X	X	X	X	X

The Code of 1896 allowed for the victim's participation in the proceedings but provided no actual rights unless the victim sought to assert a (civil or criminal) claim. The victim, nonetheless, had certain rights: to be present at the procedural steps, offer to adduce evidence, and file for redress against the decisions rendered in the proceedings.

Act III of 1952 (hereinafter: Code of 1952) and Law decree 8 of 1962 (hereinafter: Code of 1962) on the code of criminal procedure both enshrined rather restrictive provisions as regards victims' rights. "Ordinary" victims were not considered esteemed participants of the procedure, and their rights were linked specifically to the assertion of their criminal or compensation claims.

No significant changes brought about by Act I of 1973 (Code of 1973), the only novelty was the victim's right to speak at the trial. Over the ten years preceding the effective date of that code and during the period following it, Hungary acceded to several human rights conventions, which put – first less, later more – emphasis on ensuring victims' rights. This process can be considered as a preparation for the enactment of a new code of criminal procedure after the fall of communism in Hungary. In the new code, protecting the victims and promoting the enforcement of victims' rights were specific objectives pursued by the legislature.

The explanatory memorandum of Act XIX of 1998 (hereinafter: Code of 1998) specified the following as a core objective the new code: "The victim's procedural rights and opportunities for asserting their claims are to be increased. Within certain constraints, the victim should have the right to act as a substitute private accuser".<sup>31</sup> That right was indeed enshrined in the Code of 1998. That code was amended more than 80 times while in force, and several amendments affected the victim and the opportunities to exercise victims' rights. Mediation in the criminal procedure was introduced in 2006. Regulation on

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31 See the explanatory memorandum of Act XIX of 1998.

restraining orders was also enacted, and the legislature updated the provisions on victim assistance and damage mitigation.<sup>32</sup>

The explanatory memorandum of the effective code of criminal procedure (Act XC of 2017, hereinafter: Code of Criminal Procedure) elevates the legislature's endeavours to an even higher level. According to the memorandum, the goal of the code is to provide full protection to victims and assist the assertion of their interests. Nonetheless, the other focal point of the new code is the acceleration and simplification of the procedure.

The effective Code of Criminal Procedure applies a complex approach in terms of the victims and their positions in the proceedings. This change was mostly welcome and, *inter alia*, indicated by a remark in the explanatory memorandum: the Code of Criminal Procedure "introduces a change of perspective as regards victims; furthermore, the new provisions are dogmatically more refined and more manageable for practical application. Seeking to protect the victims' interests more effectively, the code maintains and furthers the developments achieved in terms of the protection of victims, enhancing victims' rights and the procedural safeguards enshrined in their favour."<sup>33</sup> The wording of the code reflects the same. The Code of Criminal Procedure introduces a new concept of victim. Although the new code still defines victim as "the party whose right or legitimate interest has been violated or jeopardized by the criminal offense,"<sup>34</sup> it adds, for the sake of clarity, that such party may either be a natural or a legal person. At defining the victim's position in the criminal procedure, the new code clarifies that the positions of private accuser, substitute private accuser, and private party are narrower groups within the category of victims. Therefore, all the provisions prescribed for victims are to be applied also if the victim at issue

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32 Act CXXXV of 2005 on crime victim support and state compensation.

33 See the remark on Part Four in the substantial part of the explanatory memorandum.

34 Section 59 of the Code of Criminal Procedure. §

seeks so assert their claim (also) in another position. In comparison with the earlier regulation, this is a huge step forward, as victims are under no circumstances obliged to “choose” from among the above available positions that would provide them various rights. The private accuser, substitute private accuser, and private party are entitled to the full variety of the victim’s rights, in addition to those arising from their specific positions. The regulation regarding the victim and the further positions available to victims is enshrined in the Code of Criminal Procedure in its entirety. In addition, a special procedure has been introduced in relation to the substitute private accuser, which is a novelty rather in terms of structure, as it summarises the fragmented provisions included in the previous code.

Furthermore, the Code of Criminal Procedure covers the institutions of procedural law that promote the victim’s active participation, allow them to have a voice as an active participant of the procedure, and gain compensation.

### **5. Victim’s rights in the modern criminal procedure aimed at simplification and acceleration**

The development of Hungarian criminal procedure has been accompanied by a demand for acceleration and simplification all along. Overlooking the changes in the regulation of the criminal procedure in Hungary, we find that the legislature has clearly been aiming at accelerating and simplifying the procedures since the enactment of the first code of criminal procedure, that is, Act XXXIII of 1896. Acceleration and simplification go hand in hand in Hungarian legislation. Updating the procedures was a top priority for the legislature also at drafting the current Code of Criminal Procedure.

The acceleration and simplification of criminal proceedings may significantly affect the victim as well. The explanatory memorandum of the Code of Criminal Procedure mentions the victim, too, stating

that “the code seeks to create the conditions for a special treatment for victims in the criminal procedure, upon their request, based on their individual characteristics. Victims are firmly supported by the code in the criminal procedure, and they are given aid to present – and, thus, process – the harm they suffered and to enforce their claim for compensation. Nonetheless, these opportunities cannot be perceived as obligations, therefore, instead of forcing the assertion of rights, the code focuses on forbearance, trusting the victims’ judgement.”<sup>35</sup> The acceleration of the criminal procedure, as well as the simplification linked to the perpetrator’s confession can nonetheless, despite all safeguards, lead to a restriction in terms of the assertion of the victim’s rights.

In certain cases, the victim may be unable to assert the rights granted to them in the procedure precisely because a faster, more accelerated criminal procedure conducted in line with the relevant regulation – and with the participation of the perpetrator – deprives the victim of the that opportunity.

Hence, our examination is revolved around the question *whether the victim’s rights can be fully asserted in the faster and simpler criminal procedure.*

Victims may exercise their rights after the commencement of the investigation.<sup>36</sup> The investigating authority plays a role in the assertion of the victim’s claims only in exceptional cases. At the commencement of the investigation, the investigating authority

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35 See the explanatory memorandum of the Code of Criminal Procedure.

36 As we explained before, a victim of a crime (*in Hungarian: áldozat*) and the victim in the criminal procedure (*in Hungarian: sértett*) are two different categories. The victim in the criminal procedure is a concept defined within the framework of criminal procedural law and is to be understood as a position in the criminal procedure, therefore, in that sense, there is no victim and no assertion of the victim’s rights in the absence of a criminal procedure. The victim of a crime becomes a victim in the criminal procedure upon the commencement of the criminal procedure concerning the criminal offense committed against the given victim.

informs the victim of the rights attached to their position and asks for the victim's statements on the various issues listed in the Code of Criminal Procedure.<sup>37</sup> The investigating authority informs the victim of the opportunity to contact a victim support service,<sup>38</sup> at the commencement of the investigation and ensures the protection of the victim and their data. The latter can primarily be achieved through the special treatment enshrined in the code and the observation of the specific rules related thereto.<sup>39</sup>

Victims have various rights in the criminal procedure. Victims may participate in the criminal procedure concerning the criminal offense committed against them and make statements in that regard. They may request the authorities to provide details and information on their rights and obligations in the criminal procedure, and they may inspect the documents related to the offense committed against them. The victim is the primary witness in the given case and may exercise the rights attached to that position. Furthermore, as part of the opportunities to assert the victims' rights, they may file a motion for restraining order with the court. Victims may participate in mediation, assert a civil claim as a private party, or act as a private accuser or substitute private accuser. As key rights, the victim may offer to adduce evidence, file motions, make observations in the proceedings, be present at certain steps of the procedure and at the court proceedings – where they also have the right to speak in the phase of the closing arguments –, and file for redress.<sup>40</sup>

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37 Paragraph (2) of section 51 of the Code of Criminal Procedure.

38 Currently operating under the Government Offices, the Centres for the Assistance of Victims were created by the act referenced in footnote 45. Upon request, the centres provide assistance – inter alia, information, legal aid, immediate financial aid and state compensation – to any natural person who fell victim to a criminal offense or a petty offense against property committed in the territory of Hungary.

39 Sections 81-83 of the Code of Criminal Procedure.

40 Paragraph (2) of section 51 of the Code of Criminal Procedure.

Nonetheless, it is to be noted that the victim has the right to waive the special treatment and the exercise of their rights. In other words, beyond fulfilling the related statutory obligations, the victim's participation in the proceedings is always a possibility, never an obligation. It also follows that the restrictions related to the exercise of the victim's rights bear no actual relevance unless the victim is effectively unable to actively participate in the procedure despite their intent to do so.

Asserting the victim's rights may become cumbersome or hampered by serious obstacles in a special, accelerated and simplified procedure. In particular, the rights related to the victim's presence at the trial are significantly curtailed where no trial is held by the court in the criminal case.

The assertion of civil claims is essentially not affected by the simplification of the proceedings, since the civil claim is included in the indictment by the prosecutor. Therefore, the court does decide on the civil claim, even if in an accelerated procedure. Considering the cases where the victim is necessarily affected by the acceleration of the procedure, the proportion of those that end with a plea agreement is negligible (91 cases in 2019, 77 cases in 2021, and 85 cases in 2022, 0.2% in total). The number of cases ending with arraignment has decreased since the effective date of the Code of Criminal Procedure (6020 cases in 2019, 1183 cases in 2021, and 1246 cases in 2022, 2.5% in total), while the number of cases ending with a court order shows a significant increase by the year (27633 cases in 2019, 3490 cases in 2021, and 33960 cases in 2022, 70.3% in total).<sup>41</sup> The figures show that the prosecution put forward a motion for procedure for criminal court order in two thirds of the prosecuted cases<sup>42</sup>, and approximately 80% percent of such procedures ended with a final

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41 Paragraph (1) of section 411 and paragraph (4) of section 736 of the Code of Criminal Procedure.

42 <https://ugyeszseg.hu/wp-content/uploads/2023/11/buntetojogi-szakag-2022.-ev.pdf>

criminal court order.<sup>43</sup> The application of that procedure necessarily affects the rights of the victim participating in the proceedings.

In the procedure for a court order, the court hands down its order based on the case files, taking a decision also on the civil claim included in the indictment,<sup>44</sup> thus the victim's rights related to the civil claim will not be curtailed. Let us note, however, that in this procedure the victim has no opportunity to make an oral statement related to their claim. The victim may request a trial if they believe to have been wronged by the court order; nonetheless, the court will refer the enforcement of the civil claim to other legal means if a request for a trial was only received in connection with the civil claim.<sup>45</sup>

During an arraignment, the private party may also appear before the court<sup>46</sup> and make an oral statement, thus the victim has the opportunity to assert their rights in relation to the civil claim.

The plea agreement concluded between the prosecutor and the defendant before the indictment, which serves as the basis of the related special procedure, may include further obligations undertaken by the perpetrator, such as the payment of the victim's civil claim. If the perpetrator undertakes to satisfy the victim's civil claim, the court may only approve the plea agreement if the perpetrator has fulfilled their payment obligation. And if the court approves the plea agreement, it cannot dismiss the civil claim included therein.<sup>47</sup>

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43 <https://ugyeszseg.hu/wp-content/uploads/2023/11/buntetobirosag-elotti-ugyesz-tevekenyseg-fobb-adatai-i.-2022.-ev.pdf>

44 Anikó Gál: *A polgári jogi igény megjelenése a büntetőeljárásban*. <https://ujbtk.hu/gal-aniko-a-polgari-jogi-igeny-megjelenese-a-buntetoeljarasban/> (10 May 2024)

45 Paragraph (2) of section 742 and paragraph (3) of section 747 of the Code of Criminal Procedure.

46 Pursuant to paragraph (5) of section 727 of the Code of Criminal Procedure, the prosecutor is responsible for notifying the victim.

47 Krisztina Farkas: *A sértett helyzete az eljárás hatékonyságának tükrében*. <https://jog.tk.hu/uploads/files/FarkasKrisztina.pdf> 72. (2 May 2024)

In terms of mediation, accelerated court proceedings may be problematic, as there may simply be no opportunity for conducting mediation procedure due to the lack of time.<sup>48</sup> In some cases the perpetrator and the victim are not even informed of the possibility of mediation.<sup>49</sup> There is a conflict between the goals of arraignment – fast investigation and indictment as soon as possible – and the regulation of mediation: in the accelerated procedure, there is no room for suspending the investigation, referring the procedure to mediation, or for the authority to consider the needs of the victim as well. Therefore, there are cases where there is no room for mediation even though all conditions are fulfilled and the victim, who would be willing to participate, could conclude a profitable compensation agreement with the perpetrator as a result of the mediation. Mediation is excluded by definition also in the procedure for a criminal court order.<sup>50</sup>

The alternative legal institutions that interrupt the criminal procedure – and, in certain cases, serve the avoidance of indictment – can also hinder the full assertion of victims' rights. When applying conditional prosecutorial suspension, as a rule of conduct, the prosecutor may prescribe reparation to be paid to the victim, compensation for the damage or financial loss caused with the criminal offense, or the restoration of the original state, provided that the perpetrator is able to fulfil the given obligation and the victim is willing to accept their performance. The prosecutor may only dispense with prescribing such obligation for a valid reason.<sup>51</sup>

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48 See section 1b) of part XIX of Opinion No. 3. of the Criminal Division of the Curia of Hungary.

49 Zsuzsa Sümegei: *A büntetőjogi mediáció a jogalkalmazásban*. [https://www.kriminologia.hu/files/kiadvany/2019/kk\\_79\\_sum\\_zsuzsa.pdf](https://www.kriminologia.hu/files/kiadvany/2019/kk_79_sum_zsuzsa.pdf) 74. (2 May 2024)

50 See section 1c) of part XIX of Opinion No. 3. of the Criminal Division of the Curia of Hungary.

51 Paragraphs (2), (5), and (6) of section 419 of the Code of Criminal Procedure.

However, the regulation clearly avoids making the payment of the civil claim or compensation for the victim obligatory, thus the victim may be left without any compensation. Also, in such procedures the victim is deprived of the most crucial pieces of their procedural toolkit – namely the rights related to being present at the trial and filing motions –, while the perpetrator is not even indicted for the offense committed against them.

## 6. Summary

*The victim is an essential actor of the criminal procedure. Historically, criminal regulation provided the victim first with more, then with less rights in the criminal proceedings. Today, the victim's position has been increasingly strengthened, and their participation in the proceedings is guaranteed by a system of interrelated rights mutually reinforcing each other.*

*To conclude the research, it can be found that the acceleration and simplification of criminal proceedings do not necessarily hinder the assertion of the victims' rights. Victim assistance requires a more conscious and focused approach from the authorities, and the provision of information to the victim in the initial stage of the procedure is of particular importance. On the other hand, victims should also embrace a more conscious and focused approach to contribute to the protection and assertion of their rights, as if they fail to actively participate in the proceedings, they might miss the opportunity to exercise certain rights, as – due to the accelerated and simplified nature of the procedure – certain procedural acts or even whole phases where the victim could have participated may be omitted, since they become superfluous after the perpetrator's confession. At regulating the accelerated and simplified procedures, the legislature did not overlook the victim, but victims are mostly given the opportunity to assert civil claims, which, however, is by no means a sufficient remedy for the loss of the right to file motions and rights related to the trial.*

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