

Katalin Izsák-Somogyi

The System of Hungarian Memory Laws

Theses of the doctoral dissertation

Supervisor: Dr. habil. Miklós Könczöl

Associate professor

Pázmány Péter Catholic University
Faculty of Law and Political Sciences
Doctoral School

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I. Summary of Research Questions

In December 2005, an article by Françoise Chandernagor titled ‘L’enfer des bonnes intentions’ was published in the newspaper *Le Monde*. The title of the French historian’s article can be translated as ‘The Hell of Good Intentions’; its pioneering nature is evident in the analysis of four French laws in terms of their impact on collective memory. The ambivalence manifest in the title has since characterized the field of research on memory laws.

However, the phenomenon did not stop in France. The term originally known as ‘les lois mémorielles’ spread in international academic discourse as ‘memory laws.’ There is now a vast body of literature on the topic, even though (or perhaps precisely because) the exact meaning of the term cannot be precisely defined. This is partly due to the differences among the legal systems of various nations and partly to the differing historical experiences that form the basis of remembrance, making comparative studies almost impossible. However, there are certain fundamental observations that seem generally valid, also in the context of Hungarian memory laws. One of these is that the Holocaust appears as a reference point. According to the second one, Central and Eastern European states share several features of collective memory as compared to the European (Union) historical memory. Finally, the analysis of the value system held by the legislator and of the narrative they seek to convey through memory laws holds at least as much informational value as the text itself.

In my dissertation, I examine the narrower set of Hungarian memory laws. During the research phase, I did not limit myself to textual search but also considered the theoretical frameworks that may best illuminate the research findings. Thus, I considered it my task to highlight discrepancies between memory and history, to focus on the key questions of the intertwining of traumatic memory and the research of collective memory, and to present the results from a semiotically informed perspective. All these elements contributed to laying the foundations for the textual analysis of the individual phenomena, Hungarian memory laws, and from that, to drawing the research conclusion as to what has characterized the country’s legal memory, at the statutory level, from Saint Stephen to the present day? I also considered it my task to identify and describe the terms used for memory laws in international scholarship, as well as their characteristics.

These seemingly divergent research directions ultimately form a unity in the dissertation, suggesting that memory laws are both legal and cultural in nature, and these two cannot be separated from one another.

II. Structure and Methods

The dissertation is structured along the following lines. After a historical overview of the memory laws, it examines the definitional issues, first in the international and then in the Hungarian scholarly discourse. In the latter case, it not only presents definitions used in academic literature but also those employed in legal practice. Having established its own definition, it proceeds with setting some foundations in memory studies and semiotics. In the case of the former, the dissertation relies on the theses of Pierre Nora, Maurice Halbwachs, and Jan Assmann, while for the latter, it does not build upon the general principles of legal semiotics, but rather establishes a methodological foundation based on an investigation into power-political and linguistic games. The chapter on methods explains that the field of memory law research is highly complex, with both theoretical and practical significance in finding the appropriate search methods. The main part of the paper consists of three chapters analysing Hungarian memory laws. A methodological decision has been made regarding the presentation not to follow a chronological order but to organize it according to (functional) types. Compensating for this, the Appendix contains a chronological list of laws. In this way, in these three chapters the presentation begins with commemorative laws, followed by the memory laws, each divided into sub-categories. Its purpose is to facilitate comparison and the clear formulation of findings. The penultimate chapter of the dissertation is dedicated to one of the sub-hypotheses: it aims to summarise the reasons for the structural changes in the period following the regime change, based on the texts discussed in the preceding chapters. The justification for a separate chapter lies in the fact that most memory laws were enacted after the regime change; moreover, the same period saw the change in memory structures, as well as the emergence of theoretical inquiry regarding memory laws. Finally, a summary of sub-hypotheses and some remarks on the relevance of the research conclude the dissertation.

The research proceeded using the following methodology. Before collecting the material, a theoretical decision had to be made as to which types of legislative acts would constitute the textual basis. The decision to include acts of parliament (*törvény*) and decree-laws (*törvényerejű rendelet*) was partly based on terminology and partly on the limits of research. Additionally, this decision allows for a clear demonstration of the discrepancy between the principle of popular representation and the collective memory. When using legal databases, I aimed for continuous control of the data collected. In memory laws scholarship, the method of international comparison tends to present more of a danger than a promise, so I narrowed the international perspective to theoretical issues. While carrying out the research, it was observed that an adequate analysis of individual laws, in line with the purpose of this dissertation, requires a look into various fields of law, at least to the extent issues of legal memory emerge

in these. Finally, one of the fundamental problems was periodization: which memory laws, and between what boundaries, exhibit such similarities that their impact on memory structure justifies distinguishing a separate period?

III. Summary of Findings

The dissertation formulated and substantiated the following sub-hypotheses.

Regarding my own definition, I operated with the sub-hypothesis that within Hungarian legal memory, commemorative laws (*emléktörvény*) and memory laws (*emlékezettörvény*) can be distinguished. This categorization can be based on the similar features of laws pertaining to different periods. According to the dissertation, memory laws always elevate the memory of a specific individual, event, or place to a symbolic level: through the choice of legislator, a significant part of Hungarian history is included in the national memory. In the case of memory laws, a sort of forward-looking orientation can be identified: the legislator sets these entities as aspirational goals for law-abiding citizens. At the level of words, there appears to be an emotional layer of meaning built around pride, gratitude, and reverence. In commemorative laws, actual normative content is typically found in smaller proportions. According to their subcategories, these statutes can pertain to commemorative coinage, merit laws, designation of holidays, monument laws; however, the same text can be usually classified in several subgroups. In contrast, the definition of Hungarian memory laws in the dissertation is much more complex. (This work is not the first to use such differentiation: Marina Bán, one of the pioneers of Hungarian memory law research, has also made this distinction.) Textual analyses have shown that memory laws, or laws containing elements relevant from a memory-law perspective, reflect on the past and include reinterpretations of it. Thus, in the case of these laws, the dominant feeling is not one of positive outcome or pride, but rather of shame and/or guilt. The dissertation also refers to memory laws as instruments for inducing salutary shame. Naturally, there are also memory laws that are emotionally neutral. Additionally, I consider components of constitutional memory and memory-related provisions in criminal laws to fall into this category. They are much more diverse, with a significantly larger proportion of normative content as compared to commemorative laws. They are more heterogeneous, so categorizing them beyond the above does not seem feasible.

According to the semiotic sub-hypothesis of the dissertation, memorial laws can be read as signs of political power. By that, I also assume that the values professed by the legislator at the time of enactment, together with the current situation, historical background, and political structure are just as relevant as the text itself. I substantiated this by conducting broader

examinations extending beyond textual analysis to encompass the aforementioned questions. The methodological consequence of the sub-hypothesis was that research had to be extended to written motivations and parliamentary proceedings. At this point, it needs to be mentioned that the institutional framework created by the legal regulation of memory is not the subject of the dissertation – where it is mentioned, its relevance lies solely in its contribution to the legal, textual analysis.

The methodological sub-hypothesis of the dissertation posits that the examination of memory laws departs from the narrative view of history. This postmodern notion, as a new type of non-narrative approach to history, is closely related to semiotic principles because in the study of memory laws, it becomes a significant research motive to understand how the legislator perceived the individuals, events, or locations deemed symbolic. The basis of the process leading to the sub-hypothesis is the question of how to search for memory laws effectively, credibly, and comprehensively. Accordingly, the methodological part of the dissertation also reflects on searching in legal databases, solely for the purpose of achieving authentic results. My assumption is that if I search for the memory of a significant, symbolic entity from the perspective of collective memory in Hungarian legal texts, the search results will not be narrative-centred but, referring back to semiotic principles, they will reflect the value judgments and sometimes apparently arbitrary choices of the legislators of the time. Consequently, although these two aspects have very different starting points, they are closely related. The non-narrative view of history is one of the consequences of the postmodern turn, closely related to the trans-medial turn in memory studies as well.

The dissertation's textual analysis divides the Hungarian collective (legal) memory into three major periods. It is noteworthy that the units of Hungarian memory laws are not divided along centuries. The reason for this lies in the diverse interpretations of the 20th century, as the dissertation also discusses. The periodization itself was based on sub-hypotheses. The existence of 1945 and 1989/1990 as symbolic boundaries is perhaps unequivocal: based on the changing perceptions of humanity, it has been substantiated that the laws of memory associated with these units share similarities. 1945 as a watershed has multiple symbolic meanings, also in terms of collective memory as well: the end of World War II, the division of Europe, the beginning of the memory of the largest organized genocide in modern history, etc. In the subsequent four and a half decades, Western and Eastern Europe took such divergent paths that there may be no 'way back', only a peaceful coexistence of memories is possible. The democratic transition from communism affected only a smaller group of countries, so the impact on collective memory was faced by fewer nations. Regarding the period following the regime change, the

assumption that 2004, as the accession to the European Union, and 2010, as a domestic political turning point, both signal the beginning of a new period, could be confirmed only partially. It is not possible to show in Hungarian memory laws any change that was based on or generated by the country's coming closer to the European memory canon.

In the period following the regime change, however, the system of Hungarian memory laws underwent significant structural changes. I identified four possible causes for that. Among them, the first is the question of competing victim narratives. Some speculate that the founding myths of postmodern Europe are the memories of the Holocaust and communism. However, one result of Europe's division was the emergence of a Holocaust-focused collective memory west of the Iron Curtain, which was based on victimhood. However, following the regime changes, it became possible, and even obligatory, for states east of the Iron Curtain to remember historical traumas; the basis for this is that these states were also victims of both the Holocaust and communist regimes. When the European Union admitted post-communist states in 2004, there was a need to accommodate the victimhood of communism in this European collective memory. A sort of competition emerged because memory, to use an analogy from economics, is a finite resource. In Hungary, it is clearly evident that after the year 2010, there has been a change as to which trauma memory the legislator considers more significant. It is clear that for certain years, the two trauma memories were measured in parallel and at the same level (for example, in the field of criminal law), while after 2010, the memory of communism became more prominent – according to the legislator. This can be shown, for example, by the exclusive focus on communism in the act on the National Memory Committee (CCXLI of 2013). The second reason is the relationship between constitutional emotions and the law. According to the dissertation, there is a very close correspondence between the emotions that can be textually demonstrated and the types of memory laws. As mentioned in point I, the series of commemorative laws mainly contain formulations centred around pride and gratitude, while memorial laws are shame-centric. The third reason for the structural change is the shift along the so-called self-exculpatory/self-inculpatory axis. This dichotomy originally appeared in the work of with Eric Heinze, one of the senior members of the MELA Project, one of the key initiatives in memory law research, as well as one of the drafters of the *Model Declaration on Law and Historical Memory*, formulating some basic principles for the field. The terms denote state attitudes regarding how certain states construct official narratives about their own past. This type of self-reflection can lead to confronting, admitting mistakes, or even self-accusation. Examples of this kind of introspection include Hungarian nullification or compensation laws. On the other hand, if a particular state, upon self-reflection, concludes that it bears no

responsibility for past traumatic events but rather shifts the blame elsewhere, then we may encounter a form of self-exonerating interpretation. An example of this is found in an excerpt from the preamble to the current Fundamental Law of Hungary, the National Avowal: " We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected organ of popular representation was formed. We shall consider this date to be the beginning of our country's new democracy and constitutional order. " As one of the reasons for the structural change, I found that in the period following the regime change, the ratio of these laws had changed, a change that can be traced through different governments. Finally, the last reason is the nature of the 'Trianon narrative.' The Trianon Peace Treaty, generally regarded as one of the greatest traumas in Hungarian history, has numerous relevant effects on collective memory and 20th-century political decisions. In my research, I examined whether other historical traumas (such as the Battle of Mohács, 1526, or the Battle of Trencsén, 1708) appear in Hungarian legal memory, but the result was negative. However, in this current study, I have come to the conclusion that while they do not appear directly, they do manifest in the memory of the post-regime change period. This indirectness is evident both at the level of memory laws and commemorative laws. Its basis lies in the kind of victimhood that emerged precisely as a result of World War I: the heroic victim figure was reinterpreted and transformed into a passive role with an external, imposed identity. However, this role of the victim can have far-reaching consequences if used by the legislator as a sort of active counter-attack, approximately eight to nine decades later. Thus, the memory law concerning Hungarians beyond the borders gains its unique memory context, closely linked to the commemorative law on Hungarian heroes.

The research topic of the dissertation is exceptionally relevant. Historical memory not only forms the basis of individual identity but also shapes the collective identity of a nation as it reflects on itself (or looks back to its past). This reflection raises the importance of the relationship between history and memory. Within the realm of law, due to its instrumental nature, a path can be delineated through which the law-abiding citizen can find exemplary figures to follow or, conversely, interpretations regarding the assessment of past actions. Moreover, we live in an era with a moral obligation to respond to the historical traumas of the 20th century. Therefore, the responses to these traumas in Hungarian, Central-Eastern European, European, and global contexts are identity-shaping. Based on these responses, it is possible to make some predictions at the intersections of memory and historical (re)interpretation.

IV. Related Publications

Katalin IZSÁK-SOMOGYI: Egy metamorfózis margójára. Az írás és újraírás motívuma Schein Gábor: *Lázár!* című kisregényében [Remarks on a metamorphosis: Motifs of writing and rewriting in the novel *Lázár!* by Gábor Schein]. In: *Novum. Az Újraírások Nemzetközi Konferencia Junior szekciójának tanulmánykötete*. Budapest, Eötvös József Kollégium, 2009. 299–319.

Katalin IZSÁK-SOMOGYI: Emlékezettörvények a rendszerváltozást követő Magyarországon [Memory laws in Hungary after the regime change]. In: Csaba ERDŐS (ed.): *Doktori Műhelytanulmányok 2021*. Budapest, Gondolat Kiadó, 2021. 13–29.

Katalin IZSÁK-SOMOGYI: Az Alkotmány és az Alaptörvény mint emlékezettörvény – az alkotmányos identitás és a történeti emlékezeti kánon kapcsolata [The Constitution and the Fundamental Law of Hungary as memory laws: Constitutional identity and the canon of historical memory]. In: Róbert BARTKÓ (ed.): *Doktori Műhelytanulmányok 2023*. Győr, Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, 2023, 112–123.
<https://tinyurl.com/2ery69e5>

Katalin IZSÁK-SOMOGYI: Emléktörvények vs. emlékezettörvények – a magyar emlékezet jogi szabályozása az 1945–1948-as fordulatig [Commemorative laws vs. memory laws: The legal regulation of Hungarian historical memory before the political changes of 1945/48]. In: MISKOLCZI-BODNÁR Péter (ed.): *XXIII. Jogász Doktoranduszok Országos Konferenciája*. Budapest, KGRE ÁJK, 2022, 101–113.
https://ajk.kre.hu/images/doc2022/pr/jog_es_allam_42.pdf

Katalin IZSÁK-SOMOGYI: Self-exculpatory or self-inculpatory approaches to the memory laws in Hungary. *Regional Law Review*, 2022. 195–207.
https://doi.org/10.56461/iup_rlr.2022.3.ch12

Katalin IZSÁK-SOMOGYI: Memory laws in Hungary after the Holocaust. *Regional Law Review*, 2021. 223–233. https://doi.org/10.18485/iup_rlr.2021.2.ch13

Katalin IZSÁK-SOMOGYI: Victims and/or perpetrators. The founding myths of Europe in the light of the traumas in the 20th century. In: Petr AGHA – Jan GÉRYK (szerk.): *Political Imagination and Utopian Energies in Central and Eastern Europe*. Berlin, Peter Lang, 2024. [forthcoming]

IZSÁK-SOMOGYI Katalin: A lágerpókerből a vöröscsillagon át az árpádsávós zászlóig. Jelképek és magyarázataik a kiszámíthatóság nagyítóján keresztül [From lager poker through the red start to the Árpád-stripes flag: Symbols and the interpretations from the perspective of predictability]. In: *Proceedings of the Symposium on Law and Literature*. [forthcoming]

