

Some Issues in the Regulation of Victim Protection in the Hungarian Legal System, with Special Regard to the Crime of Harassment

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Abstract

In today's legal system, victim protection is becoming increasingly important at international, EU and national levels. This paper focuses on one aspect of this: the protection of victims of harassment from a criminal law perspective. The paper covers Hungarian legislation on victim protection, based on relevant international and EU regulations. It examines the latest criminal law instruments and case law of the Hungarian Constitutional Court. The paper also examines whether current legislation on harassment can effectively protect victims.

Keywords: victim protection, victimology, EU victim protection directive, privacy, harassment

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1. Introduction

Protecting victims is an important issue of our time and has been the subject of extensive literature and academic research. This has resulted in concrete measures to support victims around the world, including in Europe. Fortunately, Hungarian national legislation is largely aligned with the EU's directives on this subject, with only a few gaps in the legislation. The relevant harmonization is the result of a long development process, the most important elements of which I will outline briefly below.

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2. On the Concept of Victim

The key problem with the concept of victim is that it can be defined from many different aspects, depending on the point of view of the analysis. We may approach victimized persons from different points of reference, for example, by what caused their harm – war, disaster, crime, *etc.* –, or by whether the harm caused was direct or indirect, or by categorizing at victim groups in terms of their characteristics. Defining the general notion of victim requires careful consideration. The impact of a single trauma can be wide-ranging, therefore, identifying those in need is a key issue when allocating resources and capacities.

The notion of victim has developed gradually, similar to other legal concepts. In the early centuries of known history, scarce resources did not allow for the possibility to help people who became victims and consequently had poorer life prospects. Not only did they lack the material resources, but also the expertise, the cohesion and the institutional system to assist victims. At the same time, there were always people who helped those in need, because they loved their fellow human beings. As with most social issues that affected many, the protection of the victims was addressed by the Church in the context of religion.

There were only a few people who took up the cause of helping the victims. A fine example of this is the life and deeds of Saint Elizabeth of the Royal House of Árpád – daughter of King Andrew II of Hungary. The wife, mother and then widow of the Margrave of Thuringia, she gave all her support to those in need. Although she was a royal heiress, she was admired as a saint for her humble life and her devotion to the poor and the sick. She was canonized by the Church a few years after her death in 1235.¹ Her life is just another example of how in Europe it was primarily the church, priests, nuns and monks who took it upon themselves to provide care and assistance to victims.

Suffice to think of *asylum*, which was essentially a refuge. It was an early approach to human rights, ensured for those who fled from aggressors and combat. In many cases, it was the walls of the temples and cathedrals that provided the protection that was necessary for physical survival. No wonder, therefore, that victim protection was closely linked to religion and church-related organizations in the early periods of history.²

1 Saint Elizabeth of the Royal House of Árpád (1207–1231) was a younger contemporary of Saint Francis.

2 Ágnes Czine, 'Néhány gondolat az áldozatvédelem kialakulásáról', in Andrea Domokos *et al.* (eds.), *Áldozati szerepek*, L'Harmattan, Budapest, 2025, pp. 189–206.

The secular approach to victim protection appeared relatively late. It is said that the word 'victim' was first used in the 1660s to refer to a person who had been injured, tortured or killed by another person. However, the concept of a victim of a crime was essentially non-existent until the 17th century.³ It was at this time that the victim was slowly recognized as a part of the justice system, and some argued that without a victim there would be no need for courts. As a result of these developments, research focusing on victims gradually emerged.

3. The Development and Main Elements of Victim Protection Legislation

It was mainly the second half of the 20th century that brought revolutionary changes in the scientific approach to, and institutional framework for the protection of victims, which emerged first at international, and then at national level. The horrors of World War II had an impact on the emergence of victimology and the shift of attention towards victims. This resulted in the replacement, or at least supplementation of church victim support by a range of secular solutions and institutions. For the purposes of this paper's topic, I would like to highlight two trends: (i) the scientific, theoretical development, (ii) and the development of international legal regulation related to victim protection.

3.1. Scientific Progress

Two fundamental approaches to the concept of victimhood have been identified: these are the active and passive approaches. (i) In the context of *active* approach, the term 'sacrifice' denotes the act of relinquishing something and bestowing it upon another, such as a deity or a superior. In English, the original form of the term is denoted by the word 'sacrificium', which also conveys its religious character derived from the Latin version of the word. (ii) The *passive* approach emphasizes suffering, which implies helplessness and innocence. The notion of 'victim' in this sense comes from the Latin root 'vic-

3 Jo-Anne Wemmers, 'A short history of victimology', in Otmar Hagemann *et al.* (eds.), *Victimology, Victim Assistance, and Criminal Justice, Perspectives Shared by International Experts at Inter-University Centre of Dubrovnik*, Niederrhein University of Applied Sciences, Mönchengladbach, 2010, at <https://ssrn.com/Abstract=2482627>.

tima.⁴ The latter concept is the basis for the discipline of victimology, which will be outlined below.

The development of victimology was given a boost by World War II as a sub-discipline of criminology: the scientific study of the victims of crime. Its aim is to study the relationship between victims and offenders; to identify those particularly vulnerable to crime and the victim within the criminal justice system.

The scientific study of victimology dates back to the 1940s and 1950s. Two criminologists, *Mendelsohn* and *Von Hentig*, began exploring the field of victimology by creating 'typologies' – as such, they are considered the 'fathers of victimology'. These scientists, the new 'victimologists', started studying the behavior and vulnerability of victims. *Mendelsohn* created a typology of six types of victims, in which only the first type was innocent, the other five types having contributed in some way to their own injury, having been involved in their victimization. *Von Hentig* (1948) studied homicide victims and said that the most likely type of victim was the 'depressed type', who is an easy target, careless and unsuspecting. This was followed by *Wolfgang's* (1958) research, whose theory was that homicide victimization was in fact caused by the victim's unconscious suicidal urge.⁵

All these statements and typologies emphasize that victims are not entirely 'innocent', because they have certain characteristics that contribute to their becoming victims of crime. Victimologists have attributed this to a variety of factors, such as the external characteristics of the victims, their behavior, their social status and other causes. It should be added that the assessment of victimization is mainly a probabilistic approach, but there is no doubt that anyone, even the person with the best chances, can become a victim of crime. There are, however, factors that provoke criminals, offering perpetrators the opportunity to commit crimes based on certain personal characteristics, behaviors, situations, locations or motives.

3.2. The Main Elements of International Law on Victims

The emergence and further development of the scientific basis of the discipline of victim protection provided the theoretical foundations for the de-

4 László Levente Balogh, 'A magyar nemzeti áldozatnarratíva változásai', *Korall*, Vol. 59, 2015, p. 37.

5 Tiwari, Pramod, 'Victimology: a Sub-Discipline of Criminology', *Dehradun Law Review*, Vol. 4, Issue 1, 2012, pp. 88–89.

velopment of international legal instruments and then national legislation. First, I will look at the general rules on the protection of victims, and then at a specific category of victim, namely the victims of harassment.

From among the relevant international documents, I would like to highlight the declaration known as the Magna Charta of Victims, which has had a major impact on academic research. In 1985, the United Nations issued a declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power (hereafter: the 1985 UN Declaration), which for the first time defined at international level and in a general way (i) the concept of victim and (ii) the rights of victims.

Ad (i) Definition of victims. The definition of ‘victims’ is defined as persons who have suffered harm, individually or collectively, including physical or mental injury, emotional distress, economic loss, and whose fundamental rights have been substantially impaired by acts or omissions in violation of the criminal law of the Member States in force, including those prohibiting abuse of power. The term ‘victim’ includes close family members or dependents of the direct victim, as well as persons who have been injured in the course of intervening to assist victims in distress or to prevent victimization.⁶ The new features of the general concept of victimhood: it (i) include not only the victims of crime, but also the victims of abuse of power and human rights violations, regardless of whether the state in question criminalizes the act in question; and it encompasses (ii) not only the person against whom the act is directly directed, but also those who suffer collateral damage, such as immediate family members or witnesses to the specific act, or persons who may have intervened or assisted in the crime; and (iii) the definition of harm has been extended, which may include physical, mental or emotional injury, as well as economic loss.⁷

Ad (ii) Rights of victims. The rights of victims are included in the document. These are the rights to be treated with dignity and compassion (point 4); access to justice, legal redress (points 4–5); immediate compensation (point 4); information (point 6/a); legal assistance (point 6/c); defence, witness protection (point 6/d); compensation and reparation (points 8–13); right to necessary financial, medical, psychological and social assistance (points 14–17).

6 1985 UN Declaration, approved by A/RES/34, 29 November 1985, points 1–3.

7 Ilona Görgényi, ‘Az áldozat fogalmának és jogainak újr szabályozása az Európai Unióban’, in Andrea Borbíró et al. (eds.), *A büntető hatalom korlátainak megtartása: a büntetés mint végső eszköz. Tanulmányok Gönczöl Katalin tiszteletére*, ELTE Eötvös, Budapest, 2014, p. 175.

European regional international organizations have been at the forefront in the development of the relevant regional regulation. EU legislation on victim protection was created with the aim of strengthening cooperation between Member States and developing common values. The protection, safeguarding and promotion of victims' rights is an integral part of the EU's general objectives, in particular in the field of the rule of law and the protection of human rights. An important step in the development of the legal framework for the protection of victims is the Council's *Framework Decision 2001/220/JHA on victims' rights*, adopted in 2001, which requires Member States to guarantee respect and protection to victims.⁸ The aim of the Decision is to improve the legal situation of victims and to provide them with adequate information and support regarding the consequences of crime. *Directive 2012/29/EU*,⁹ which entered into force in 2012, further developed victims' rights and emphasized that all victims have the right to personal and psychological support. The Directive requires Member States to ensure that victims have access to the necessary information and the right to participate in criminal proceedings. Another important aspect of Directive 2012/29/EU is that it extends victims' rights not only to the judicial proceedings of criminal offences, but also to the pre- and post-criminal phases. This means that Member States must ensure that victims have access to appropriate psychological and financial support and legal assistance. Within the legal framework, EU law requires that victims are informed of their rights and of how to access these forms of support.

The EU has also launched a number of programmes to reinforce victim protection and support. These include national centers that provide comprehensive information to victims and help them receive the support they need. The programmes aim to ensure that the rehabilitation and reintegration of victims is smooth, despite cultural and legal differences. The EU system for victim protection is therefore evolving, with a steady increase in obligations and mechanisms to protect rights across the Member States. However, it is important that victims are aware of their rights and the resources available, as the support they can access can effectively contribute to their recovery and reintegration into society.

8 Framework decision 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

9 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.

The Directive clarified the definition of 'victim' [Article 2(1)(a)] and did not link victimhood to the fact that it can only be the consequence of an offence under national law.¹⁰ The importance of clarifying the concept lies in the fact that it is only on the basis of the determination of victimhood that it is possible to determine the means and benefits that may be provided to a particular category of victim. The Directive sets minimum standards for the rights, support and protection of victims of crime and ensures that victims of a crime are recognized and treated with respect. However, the European Commission's 2020 evaluation recognizes that there are shortcomings in the practical implementation of the Directive by Member States. This is due to, among others, the fact that some of its provisions are not specific enough. The review of the Directive is part of the EU's strategy on victims' rights 2020–2025, which aims to strengthen the rights of victims of crime across the EU.¹¹

However, the EU has not stopped at this Directive in its quest for developing victim protection but continues to monitor the activities and implementation of the Directive in the Member States and develops the necessary programmes. As a result of this work, on 24 June 2020 the European Commission adopted the first *EU Strategy on Victims' Rights (2020–2025)*. Its main objective is to ensure that all victims of crime, regardless of where in the EU and under what circumstances the crime occurred, can fully invoke and enjoy their rights. To this end, it outlines actions to be implemented by the European Commission, Member States and civil society.¹²

In July 2023, the European Commission adopted a *proposal to revise Directive 2012/29/EU on victims' rights*. The review was accompanied by an extensive consultation process and an impact assessment following the evaluation of the Directive.¹³ The evaluation shows that, while the Directive has broadly delivered the expected benefits and positively affected victims' rights, specific problems remain regarding victims' rights under the Directive. The Commission's proposal to amend the Directive therefore foresees targeted measures to enable victims to better assert their rights under

10 Ágnes Czine, 'Néhány gondolat az áldozat, a sértett és a passzív alany fogalmi összefüggéseiről', *Magyar Jog*, Vol. 70, Issue 3, 2023, p. 145.

11 See at [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).

12 See at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025_en.

13 See at <https://www.brusselstimes.com/sponsored/840815/what-is-next-for-the-eu-rules-on-victims-rights>.

the Directive. The proposal covers five areas: better information for victims, improving the assessment of the protection needs of vulnerable victims (*e.g.* children), increasing the involvement of specialized services, making legal advice more widely available, improving access to compensation.¹⁴ The amendment is currently under negotiation before the European Parliament and the Council.¹⁵ This is expected to have an impact on national legislation.

4. The Development of Legislation Tailored to Specific Victim Groups

First the UN and then regional international organizations have adopted conventions for specific categories of victims. The identification and separate treatment of the characteristics of specific categories of victims allows them to be treated individually, and the specific needs of victims to be identified as fully as possible, and their grievances to be addressed for further harm to be prevented. One specific group of victims is the category of victims of harassment.

4.1. Victims of Harassment

One in two women in the European Union has been sexually harassed at least once since the age of 15 and 32% of victims say the perpetrator was their superior, colleague or client. 75% of women in skilled or senior management positions; 61% of women in the service sector have been sexually harassed.¹⁶ According to UNICEF's online survey conducted in Hungary, the majority of child respondents, 60%, clicked on the answer that they had been bullied online. When asked where the most cyberbullying occurs from among the platforms, 53% answered Facebook and 43% said Instagram. Online bullying is more prevalent among girls (55%) than boys (27%), but for both genders, the number of respondents who have experienced such

14 Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

15 See at <https://eur-lex.europa.eu/legal-content/HU/ALL/?uri=CELEX%3A52023PC0424>.

16 European Parliament resolution of 1 June 2023 on sexual harassment in the EU and the evaluation of the MeToo movement (2022/2138(INI)), point E.

unwanted contact is high.¹⁷ According to statistics from the Public Prosecutor's Office, the number of registered harassment offences in our country ranged between 4600 and 5300 annually between 2018 and 2022.¹⁸ A large number of harassment offences remain undetected, as many do not know where to turn, or in which cases harassment is legally sanctioned.

The US led the way in criminalizing harassment. In 1990, the State of California became the first to enact a law making it a crime to stalk someone. Stalking is when one intentionally and repeatedly stalks or harasses another person, on at least two occasions, and makes serious threats with the intent to cause a reasonable fear for the victim's safety or that of their family.

Legal definitions became more varied and sophisticated over time, and around the turn of the millennium the crime of harassment appeared in the criminal codes of several European countries. For example, in Belgium (*Nötigung*) in 1998, in the Netherlands (*belaging*) in 2000, in Germany (*Gewaltschutzgesetz*) in 2001.¹⁹

The spreading of the concept of harassment and its criminalization in Europe dates back to the 1990s and the millennium. The instruments of European law and international law, in particular the recommendations, directives and resolutions drawn up by the EC, later the EU, and the Council of Europe, played a significant role. Suffice to mention the most important of these: the Commission's *Recommendation 92/131/EEC* of 27 November 1991 on the protection of the privacy of women and men at work²⁰ focused on so-called sexual harassment (at the workplace) and measures to combat it. The most recent provisions on discrimination and (sexual) harassment are set out in *Directive 2002/73/EC* of the European Parliament and of the Council of 23 September 2002 amending Directive 76/207/EEC on the application of the principle of equal treatment for men and women as regards employment, vocational training and promotion.²¹ A third document is also worth mentioning, namely *Directive 2000/43/EC* of 29 June 2000 imple-

17 See at <https://unicef.hu/igy-segitunk/hireink/keves-gyerek-fordul-felnotthoz-ha-a-net-en-zaklatjak>.

18 Information on crime data 2022, at <https://ugyeszseg.hu/wp-content/uploads/2023/11/tajekoztato-a-bunozes-2022-evi-adatairol.pdf>.

19 Edit Fogarassy, 'Zaklatás: egy ismeretlen fogalom a magyar jogban', *Jogtudományi Közlöny*, Vol. 57, Issue 2, 2002, pp. 73–78.

20 92/131/EEC: Commission Recommendation of 27 November 1991 on the protection of the dignity of women and men at work.

21 Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

menting the principle of equal treatment between persons irrespective of racial or ethnic origin, which covers ethnic and racial harassment.²²

As far as the more recent international instruments are concerned, the Council of Europe Convention on preventing and combating violence against women and domestic violence,²³ popularly known as the *Istanbul Convention* is most prominent, which Hungary signed on 14 March 2014 but has not ratified since. Article 34 of the Convention contains the threat of harassment, which refers to the general concept of harassment, while Article 40 sets out the internationally recognized concept of sexual harassment.

Traditionally, legal scholarship has distinguished three main categories of harassment. (i) Protection against ethnic and racial harassment is covered by Directive 2000/43/EC. (ii) Protection against harassment in the workplace, often identified as sexual harassment, is provided for in Recommendation 92/131/EEC of the Commission of 27 November 1991 on the protection of the privacy of women and men at work. (iii) Personally motivated harassment is when the perpetrator typically harasses the victim for a long period of time, persistently, continuously or repeatedly. This may be considered a third category, since there is a wide range of possible motives for such harassment.²⁴

4.2. Regulation of Harassment in Hungary

The legal regulation of harassment is contained in several pieces of legislation in the Hungarian legal system. Victims' rights and protections – established through the implementation of the aforementioned EU Directives²⁵ – are enshrined in Act CXXXV of 2005 on assistance to victims of crime and

22 Fogarassy 2002, p. 73. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

23 See e.g. Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence. COM(2016) 111 final.

24 Ágnes Czine, 'Szerelmi téboly ellen nincs büntetőjogi védelem', *Acta Universitatis Szegediensis: Acta Juridica et Politica*, Vol. 81, 2018, p. 201. See also <https://birosag.hu/hirek/kategoria/magazin/ne-valaszolj-ne-vagj-vissza-es-mentsd-bizonyitekot-zaklatas-elleni>.

25 See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Act CXXV of 2003, Section 65, points a, and f.

on state compensation. Owing to of the approximation of national law to EU law, the concept of harassment was defined for the first time in Hungarian law by Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter: the Equal Treatment Act). In essence, the concept contains the conceptual elements of the EU Directive cited above.²⁶ The Equal Treatment Act established the Equal Treatment Authority,²⁷ which may order the termination of the unlawful situation, may publish its decision and impose a fine on the offender.²⁸ A typical place of this type of harassment is the workplace.

4.2.1. Constitutional Protection of Privacy

It is also worth mentioning the constitutional basis of criminal law protection, or the protected legal subject matter: privacy. Since the formulation of the statutory definition of harassment, the Hungarian Constitutional Court has elaborated in detail the aspects of privacy protection, which contained a fundamental rights argument based on the previous Constitution. In its *Decision No. 17/2014. (V. 30.) AB*, the Constitutional Court examined Articles II and VI of the Fundamental Law, recalling its interpretation of the right to privacy and its relationship to the right to human dignity laid down in *Decision No. 32/2013. (XI. 22.) AB*. It held that Article VI(1) of the Fundamental Law comprehensively protects the private sphere: the private and family life, home, relations and reputation of the individual. With regard to the core essence of privacy, the Constitutional Court upheld the Constitutional Court's previous practice that the essence of privacy is that it is not possible for others to enter, or be seen by others against the will of the person

26 Harassment is a conduct of sexual or other nature which is offensive to human dignity, which is related to a characteristic of the person concerned as defined in Section 8 of Equal Treatment Act and which has the purpose or effect of creating an intimidating, hostile, humiliating, degrading or offensive environment towards a person. Equal Treatment Act, Section 10.

27 The state initially performed these tasks within the framework of an independent administrative body. Later, legislation transferred this power to the ombudsman. According to Act CXXVII of 2020, the powers of the Equal Treatment Authority was transferred to the Commissioner for Fundamental Rights from 1 January 2021. Within the framework of administrative authority proceedings, the commissioner shall act in matters concerning equal treatment and the promotion of equal opportunities, in accordance with the relevant procedural rules.

28 Equal Treatment Act, Section 17/A.

concerned.²⁹ It pointed out that there is a particularly close link between the right to privacy guaranteed by Article VI(1) of the Fundamental Law and the right to human dignity guaranteed by Article II. Article II establishes the protection of the inviolable area of privacy, which is completely excluded from any state interference, as it is the basis of human dignity. However, the protection of privacy under the Fundamental Law is not limited to the internal or intimate sphere, which is also protected by Article II, but also extends to the private sphere in the broad sense (relationships) and to the spatial sphere in which private and family life unfolds (the home). In addition, personal image (the right to reputation) is also protected in its own right.³⁰ This private and intimate sphere is protected by criminal law through the criminalization of offence of harassment.

4.2.2. The Nature and Characteristics of the Criminal Law Offence

Harassment according to the Hungarian Criminal Code, is punishable if it is committed as a deliberate act with direct intent (*dolus directus*). Since the act is aimed at achieving a specific goal as defined by law, e.g., instilling fear, it can only be committed with direct intent.³¹

The conduct of committing the offence is the systematic and persistent harassment of others,³² making threats,³³ and creating the appearance of an offensive or threatening act.³⁴ Today's criminal law definition of harassment has been developed gradually in several stages and will certainly continue to evolve. In Hungary, Section 4 of Act CLXII of 2007 introduced the statutory definition of harassment into Hungarian criminal law, partly by adopting the wording of dangerous threat in Section 151(1)(a) of Act LXIX of 1999 on Administrative Offences, in force until 1 January 2008, and partly by criminalizing harassing, intrusive and annoying behavior.³⁵

The new Criminal Code (Act C of 2012), in its Section 222(2)(b) included the new offence of harassment. Accordingly, a person commits har-

29 Decision No. 36/2005. (X. 5.) AB, ABH 2005, 390, 400.

30 Decision No. 3018/2016. (II. 2.) AB, Reasoning [27]–[29].

31 István Kónya (ed.), *Magyar büntetőjog. Kommentár a gyakorlat számára*, HVG-ORAC, Budapest, 2015, p. 856.

32 Section 222(1) of the Hungarian Criminal Code.

33 Section 222(2)(a) of the Hungarian Criminal Code.

34 Section 222(2)(b) of the Hungarian Criminal Code.

35 Anikó Gelányi, 'A zaklatás bűncselekményének jellemzése, különös tekintettel annak telekommunikációs eszköz útján történő megvalósítására', *JURA*, Vol. 16, Issue 2, 2010, p. 194.

assment who gives the impression that an event is occurring that is harmful to or directly endangers the life, physical integrity or health of another person. Section 2 of Act XLIII of 2012 amending Act C of 2012 on the Criminal Code amended the definition of offences and added to the list of aggravated cases the abuse of influence and the offence of harming a public official at a place or time that is incompatible with the official's official activities.³⁶

The seventh amendment to Hungary's Fundamental Law reinforced the protection of privacy. Consequently, public officials also have the right to rest without any disturbances following their official duties, for example at home, during their holidays, and not to be harassed. In view of this, the legislator has provided in Section 222(3) of the Criminal Code adequate protection against conduct that constitutes harassment under criminal law, when it is carried out against a public official in a place or at a time that is incompatible with their official activities.³⁷

Subsequently, a further amendment was made for the protection of the interests of the child. An aggravated case of harassment was introduced, applicable to cases where harassment is committed against a minor under the age of eighteen. The purpose of this was to deter perpetrators from harassing children by threatening them with a more severe punishment.³⁸

The legal tools used to deal with harassment cases, while gradually evolving, face many obstacles in practice. The complexity of the evidentiary procedures and the difficulties in enforcing injunctions pose serious challenges to legislators and authorities.³⁹

The amendment made to Section 222(1a) of the Criminal Code, which entered into force on 1 March 2025, sought to resolve the possible jurisprudential disputes as to whether an unlawful and purposeful contact with the victim following a clear official order (e.g., a restraining order) based on an earlier criminal act constitutes harassment. The amendment clarifies that such conduct also constitutes harassment.⁴⁰

36 Viktor Bérces, 'A zaklatás törvényi tényállásába ütköző cselekmények minősítése és bizonyítási kérdései', *Magyar Jog*, Vol. 64, Issue 7–8, 2017, p. 457.

37 Ministerial explanatory memorandum to Section 12 of Act XLIII of 2018 amending Act C of 2012 on the Criminal Code.

38 Section 21 of Act LXXIX of 2021 on stricter action against pedophile offenders and amending certain Acts in order to protect children.

39 Tamás Hornung, 'A zaklatás büntetőjogi szabályozása és gyakorlati kihívásai Magyarországon', *Magyar Rendészet*, Vol. 24, Issue 4, 2024, pp. 45–63.

40 Explanatory memorandum to Section 22 of Act LXIV of 2024a on the need to further effectively combat online fraud and other acts.

5. Some Remarks on the Regulation of Harassment

The concept and criminal law protection of harassment currently suffices to regulate this area of law, however, as with all rules, it is far from being fully satisfactory. Below, I list a few elements I believe are worth reflecting on to find new regulatory solutions.

(i) *Evidence.* Harassment is not always easy to prove, and the detection rate is not high. Not only because it is a matter of appreciation how regular or persistent the repeated harassing behavior is. The main problem is the difficulty of proof. The difficulties of proof stem from a number of factors. For example, harassment often takes the form of clandestine, ongoing behavior and is therefore difficult to document. Victims often do not have sufficient evidence, as most of the harassment does not take place in public. In many cases, the description of the harassment event is based on subjective experiences and may not reach the threshold to alarm an outside observer. It is often difficult for victims to accurately delineate what behavior of the harasser, rather than other circumstances, has caused them fear and distress, rendering legal action difficult. The involvement of witnesses is also problematic, as harassment does not always take place in the presence of others, so there is no witness testimony or witnesses are unwilling to take the risk of testifying. The applicable legal framework and the assessment of evidence may also pose problems, as harassment is not always obvious and the credibility of the victim can easily be questioned by the defence. These factors make it particularly difficult to prove harassment, and many victims are more likely to withdraw rather than to take legal action.

(ii) *Harassment.* Very often the perpetrator of harassment and the victim interact owing to their pre-existing relationship (e.g. sharing earlier emotional or family bonds, or them being neighborhood or workplace acquaintances). It has been suggested that the victim should not react to the harasser or take counter measures, as this will only fuel the fire, but also because it may confuse the facts and thus jeopardize criminal conviction. Why is this wrong? Harassment is essentially a unilateral activity, harassing, making threats, etc. If the victim does not tolerate this and immediately returns the harassment, a reciprocity is established, but it is the perpetrator and not the victim who will be held accountable. The *Kúria* of Hungary has already given a legal interpretation to this situation in a relatively early decision. Accordingly,

“[t]he unlawfulness of the conduct in question is not in itself altered by the fact that the perpetrator is also the victim of the same conduct. In the

case of conduct which is distinct in time, this does not require any particular explanation. In the case of conduct which reacts directly to another at the same time, the succession of attack and defence may, as succession, confer on the defendant immunity from liability for his acts on the grounds of legitimate defence [...] The possible reciprocity of the conduct of the two parties is irrelevant, because the reciprocity of the conduct at the same time, which is an element of the legal situation, necessarily eliminates the arbitrariness of both parties, since it cannot be considered unilateral. Reciprocity with a give/take substance does not in fact lead (as does the acceptance of a challenge in the context of a legitimate defence) to the exclusion of criminal liability.”⁴¹

(iii) *Abnormal state of mind*. In the case chosen as an example, the facts of the case show that the female defendant and the male victim worked at the same workplace. The female defendant was a colleague of the victim, had graduated from university, was married, and after her employment ended, she called the victim daily from two phone numbers. She not only phoned the victim, but also sent approximately 40 multimedia messages about herself and more than 15,500 text messages to the victim’s phone over the course of a year. The calls, the multimedia messages and the thousands of text messages were intended to prove her love for the victim and she visited the victim in person on several occasions at his workplace and at his home. The victim did not answer the defendant’s telephone calls and did not respond to her multimedia messages or her telephone messages. A year later, the victim filed a complaint against the accused for the offence of harassment in violation of Section 222(1) of the Criminal Code and filed a private complaint with legal effect, and requested the punishment of the accused. On the basis of the evidentiary proceedings conducted, the court accepted the opinion of the forensic experts and found that the accused had been suffering from a pathological mental condition known as love madness for several years, which clearly excluded her criminal liability in the case in question. The court found that the accused had committed the offence of harassment in violation of Section 222(1) of the Criminal Code, but her offence of harassment was not punishable, because her pathological state of mind precluded her criminal liability. Therefore, the court acquitted her of the charges brought against her.

The example is quite unique, as the presence of unaccountable perpetrators is rare in harassment cases, but the current criminal sanctions system

41 Judgment of the *Kúria*, BH2014.169.

cannot provide an adequate solution to protect victims in such cases. Compulsory medical treatment could be an option, but the legal conditions for this are not met in the absence of a violent crime against the person.⁴² In such cases, instruments beyond criminal law could be considered. The victim can initiate the placement of the accused under guardianship with the prosecutor or the guardianship authority.⁴³ However, the defendant under guardianship can also text and phone the victim. Thus, she could make the victim's life difficult by sending thousands of harassing text messages over the next years. For the time being, however, there is no doubt: there is no criminal law protection against love madness.⁴⁴

(iv) *Private motion and date of commission.* Harassment can be committed in a systematic and sustained series of acts, so in practice it can be problematic to determine the date when the crime was committed. This, however, is particularly important because under Section 231(2) of the Criminal Code harassment is prosecuted upon private motion and there are 30 days to file such a motion. In practice, in criminal proceedings for harassment, it is understandably difficult to determine the date of the threat to commit any criminal offence of violence or public nuisance against an individual. The victim, particularly in the case of offences against relatives, is often the victim of a long process of harassment and cannot, afterwards, tell the exact date on which the threats were made.

According to the relevant judicial practice the person submitting a private motion cannot, at the time of doing so, seek to hold someone liable for future, as yet unrealized acts. When a private motion is filed, the criminal claim is only valid for the act alleged therein; the criminal claim must be re-filed for any subsequent acts of the same nature.⁴⁵ Thus, a new private motion is required for further acts committed after the private motion has been filed.⁴⁶ The aforementioned prosecutorial investigation found that this was rarely enforced in the practice of the public prosecutor's office or the courts.

The Prosecutor General's Office suggests that a new practice should be applied by the investigating authority to solve the problems raised by the validity of private motions. The victim must be informed by the investigating authority that it is not sufficient to make a statement about the private

42 Ágnes Vadász, 'Hogyan tudnék élni nélküled? Avagy a párkapcsolatok megszűnése utáni zaklatás szankcionálásának aggályai', *Ügyészek Lapja*, Vol. 28, Issue 5, 2021, pp. 17–30.

43 According to Act V of 2013 on the Civil Code, Section 2:28(1).

44 Czine 2018, p. 200.

45 See BH.2014.169.

46 See ÍH.2014.86.

motion when filing the report or during the witness interview. If the perpetrator continues his activities, the victim must also make a statement about maintaining the private motion within 30 days with regard to subsequent acts.⁴⁷

6. Outlook

The protection of victims of harassment can only be ensured through adequate legislation. In particular, for the purposes of the case mentioned above, the legal system should provide for a regulatory mechanism which offers proper protection against a harasser suffering from a pathological state of mind when committing the crime, for which they cannot be punished. It is clear, that the solution to such situations for the protection of victims is to resort to instruments within the realm of the health care system and to develop a procedure to avert attacks from abusers suffering from love madness.

⁴⁷ See (in Hungarian): *Összefoglaló jelentés a zaklatással kapcsolatos ügyészségi gyakorlat vizsgálatáról*. Legfőbb Ügyészség, Budapest, 2015, at <https://ugyeszseg.hu/repository/mkudok7747.pdf>, p. 7.

