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**FACING AND OVERCOMING
THE LIMITATIONS OF
ANTI-CORRUPTION LEGISLATION**

PHD DISSERTATION

Thesis Abstract

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I. THE GOALS OF THE RESEARCH

While the number and scope of anti-corruption laws is constantly growing both on international and national level, there are significant deficiencies and gaps in the implementation of such legislation. There is no homogenous approach to corruption, not even under the auspices of international organizations with declared common principles. Furthermore, research proves that there is solid domestic resistance against the realization of anti-corruption policies¹, and even if the legal frameworks have been established, they are often ignored or violated. Interestingly, reports also found that lacking legal regulations did not necessarily result in widespread corrupt misconduct.² The choice of legal actors whether to implement, challenge, avoid or consciously ignore formally adopted state law cannot be separated from the social context their decisions are made in. Social groups also produce their own norms, which might only have meaning regarding their members and collide with international regulations and state law. Ideally, such multiplicity of laws, i.e. legal or normative pluralism results in an individual or collective effort to reach a compromise to fill the gaps between state law and society as far as the enforcement of regulations are concerned.

Nevertheless, *if there is no such common understanding, upon the underlying hypothesis of this study, personal interests and choices, behaviour and traditions precede over, thus limit the implementation of enacted law.* Moreover, the gaps between law and its subjects could become even wider if the elite in power neglect communities in the lower strata of society, because such groups, as a consequence, might begin to distinguish themselves from the legal regulations the elite adopted.³ In case of anti-corruption regulations lacking commitment at government level and

¹ 'The Marketplace of Ideas for Policy Change: Who Do Developing World Leaders Listen to and Why?' (Executive Summary) AidData, The Institute for the Theory and Practice of International Relations (2015)
(Available at: http://aiddata.org/sites/default/files/marketplaceofideas_executivesummary.pdf) p. 13
(Last accessed: 26 January 2016)

² 'The Money, Politics, and Transparency Campaign Finance Indicators: Assessing Regulation and Practice in 54 Countries across the World in 2014' (2014) Global Integrity.
(Available at: <https://www.globalintegrity.org/wp-content/uploads/2015/07/MPT-CFI-2014-Key-Findings.pdf>) p. 10 (Last accessed: 26 January 2016)

³ Ernő Tárkány-Szűcs (1981) Magyar jogi népszokások. Gondolat, Budapest. p. 820

among people, a common perception that such legislation is merely a tool of cross-pressure by other states, deeply rooted, thus dominating social traditions, emerging new public moralities as well as radical normative transformations can limit efficiency significantly. Hungary offers a unique insight to the limitations of anti-corruption law in a country that has gone through almost 450 years of foreign occupation and influence, oppressive political regimes, thus multiple social, political, economic and cultural changes since its foundation more than thousand years ago. Therefore the dissertation provides an important opportunity to advance both the theoretical and practical understanding of corruption under international and national law and, in particular, in the Hungarian society.

This study embarks on a journey exploring the personal, social, legal, political and economic limits of anti-corruption regulations and aims to explore several principal questions:

- (1) Are there limitations to anti-corruption regulations and if yes, what are the reasons for the law's lacking ability to frame and regulate corruption?*
- (2) If corruption, as widely argued, poses threats the democratic operation of states and the implementation of human rights, how does the inefficiency of anti-corruption laws influence the protection of human rights and democratic principles?⁴*
- (3) Taking Hungary as the subject of closer examination, how has the country's national legal system and society been facing the limits of anti-corruption law throughout historical, legal and social transformations?*
- (4) How do individuals experience corruption, anti-corruption legislation in their everyday life, the ever-changing social reality, and how do they respond to them as time passes?*
- (5) How is the law and, particularly, the state is supposed to react to its own limitations?*

⁴ According to the Preamble of United Nations Convention against Corruption (hereinafter: UNCAC) corruption poses threats “to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law”.

In *Part I* of the study I introduce the *theoretical limitations of anti-corruption laws* originating from to the paradoxes inherent in the wide variety of corruption definitions. I analyse how the different social standards, morals and values make anti-corruption laws and policies become marginalized and futile, how power relations and actors influence the implementation of such regulations, and discuss the relevance of the arguments emphasizing the possible economic and social gains of corruption. Until recently the damages done by corruption have mostly been seen in terms of economic consequences, and handled under the scope of criminal law. Thus the recently evolving human rights approach might be regarded as the result of the “*humanization of international law*” turning the attention to the situation of individuals as well as finding new ways for effective legal advocacy to overcome the *limitations of international legal instruments against corruption*.⁵

Part II of the study describes how the anti-corruption and human rights regimes are connected under international law, the jurisdiction of international human rights tribunals and the rather progressive proposals of the academia. To illustrate how a national legal system constructs and adopts anti-corruption laws under the influence of social and legal traditions, historical transformations and, above all, the power relations between legislators and the political elite in *Part III* of the study I explore how the understanding of corruption and the regulations concerned have developed throughout the modern history of the Hungarian state. In *Part IV* of the study I set out to examine the ‘*anthropology of corruption and law*’ through the experiences of elderly Hungarian people and their life experiences connected to specific conducts in health care and education as well as their attitudes to the relevant legal regulations and the authorities concerned.

⁵ Jan Wouters, Cedric Ryngaert and Ann Sofie Cloots, *The International Legal Framework against Corruption: Achievements and Challenges*. *Melbourne Journal of International Law* 14, 205 (2013) pp. 1-76, p. 66

II. THE METHODS APPLIED IN THE RESEARCH

Corruption offers no simple solution in terms of its own description.⁶ Academic disciplines, instead of providing one unified definition, rather emphasize the different economic, political, social and cultural characteristics, attributes, paradigms and inherent contradictions related to corruption. As for the practice, the most commonly used definition by the World Bank, “*the abuse of public office for private gain*” is rather straightforward and relatively easy to apply to a great variety of deeds in the public sector.⁷ On the other hand, while the strength of the World Bank definition lies in its simplicity, it disregards many important aspects of corruption including the corrupt transactions committed in the business sector. For the sake of the study, particularly in the empirical part of the research, I also refer to the widest possible understanding of the phenomenon, ‘*the abuse of entrusted power, office or competence for private gain*’ which might entail pecuniary and non-pecuniary benefits for the parties concerned. However, it is important to note that there are significant discrepancies between the aims of legislators, the definitions proposed by researchers and the everyday experiences of people as I indicate it throughout the dissertation.

To contribute to a more comprehensive and in-depth understanding of the limitations of anti-corruption law the study combines legal research with the conceptual framework offered by legal anthropology. Legal analysis provides a thorough overview of what international and Hungarian regulations have been adopted with the goal to settle how society and its members ‘ought’ to act towards corruption. On the contrary to legal scholars and professionals, anthropologists “*cannot take either the nature or the presence of law for granted*” as they “*must always question the categories of analysis*” that they “*can appropriately employ to describe what our subjects do and how they think about legal phenomena*”.⁸ Therefore drawing inspiration from socio-anthropological disciplines allows a deeper understanding of

⁶ The UNCAC, for example, despite of being the most fundamental international instrument concerned includes no tangible definition.

⁷ <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (Last accessed: 26 January 2016)

⁸ Fernanda Pirie (2013) *The Anthropology of Law*. Oxford University Press, Oxford. p. 4

social facts, traditions and patterns of individual behaviour influencing the ‘artificial construct’ of state law.⁹ To paint the most comprehensive picture possible the study relies both on legal and non-legal sources. The dissertation introduces and analyses the relevant international and Hungarian legislation, court case law from a variety of countries and international tribunals, administrative briefings and documents, results of numerous surveys and other social, primarily anthropological research, reports of think tanks and NGOs as well as journalistic sources.

I have also done semi-structured life-story interviews with elderly Hungarians to enrich the legal findings with empirical data coming from personal testimonies and combined them with the conceptual framework of legal anthropology. The ten in-depth interviews with the at least 70-year-old respondents were recorded between September 2014 and August 2015 using a previously compiled script of dominantly autobiographical questions aiming to recall their memories. As far as the temporal aspect is concerned, in the parts with relevance to Hungary the study deliberately embraces a historical approach to show the complexity of the social context of state law and its implementation being constantly shaped by, inter alia, political, cultural and economic transformations.

III. THE MAIN FINDINGS OF THE DISSERTATION

Are there limitations to anti-corruption regulations and if yes, what are the reasons for the law’s lacking ability to frame and regulate corruption?

- Exploring the enforcement of anti-corruption law on international, national and personal level revealed many of its obstacles and limitations. The legal understanding of corruption and the specific countermeasures are constantly changing and developing notions.

⁹ James M. Donovan and H. Edwin Anderson (2003) *Anthropology & Law*. Berghahn, New York. p. 32

- Both positivist and natural law scholars have recognized the influence of social and religious norms and traditions on legal regulations, though the extent of the impact is seen differently. Legal practice as well as social and anthropological studies have showed that even carefully planned anti-corruption policies and pieces of legislation become ineffective or even contra-productive if instead of recognizing the already existing normative pluralism, decision-makers simply disregard social reality. While unproductive laws merely leave the level of corruption and social order without real impact, malicious regulations with embedded corrupt intentions (state capture) distort the legal system and state operation at the same time.
- Much is known and regulated about how anti-corruption laws and policies are created, but there is significantly less academic and political interest in the success or failure of their implementation.
- Social norms and traditions, power relations as well the paradoxes of economic advantages mutually determine the success or failure of anti-corruption regulations.

How does the inefficiency of anti-corruption laws influence the implementation of human rights and democratic principles?

- Though fundamental anti-corruption principles as transparency, accountability and rule of law are rarely discussed in the human rights discourse, the level of corruption evidently determines democratic operation and the protection of human rights in each country.
- In most cases anti-corruption and human rights principles are intertwined both addressing impunity, abuse of power and discrimination, while often casting light on the deprived situation of vulnerable groups such as women, children and others living on the periphery of society.

- The recognition of the legitimacy of a common understanding of human rights and anti-corruption measures is a tendency that overarches states. International bodies such as the United Nations Human Rights Council and, gradually, the European Court of Human Rights lead the way to the mutual enforceability of human rights and anti-corruption measures. By transforming international jurisdiction into national law the common principles and norms could also be channelled into national legislation, court practice and policy making.
- Nevertheless, linking human rights and anti-corruption measures is a relatively new phenomenon both in social and legal discourse, thus it should be treated with adequately careful consideration as far as the risks related to the weakening normativity and increasing hypertrophy of rights is concerned. If linking human rights protection to anti-corruption legislation is merely a top down legislative or advocacy measure without social reciprocity, any regulation or advocacy action could be in contempt of the traditions and interests of society thus would meet widespread resistance.

How has the Hungarian national legal system and society been facing the limits of anti-corruption law throughout historical, legal and social transformations?

- The Hungarian legal history showed that the strength of anti-corruption measures are largely influenced by the popular attitude towards the state and its legitimacy, the government's actual political and economic interests.
- In Hungary the most important actor regarding anti-corruption measures has always been the state. Meanwhile, the exclusive and discretionary power coming from that monopole position has turned into a general social demand towards the state to take an active lead in such initiatives, while citizens, in general, expect the laws to have impact on their livelihoods in a rather passive manner.
- The deeply rooted traditions of clientelism, the rather patriotic mistrust in any state bureaucracy (whether foreign or Hungarian), and the trust vested in networks and power seemed to take precedent over the implementation of laws.

As the experiences of the socialist era have proved such tendency does not necessarily lead to social anomy but to a chain of secondary transactions in society. However, history has also showed that such parallel normative and economic systems cannot be sustained on the long run.

- From the second half of the 20th century the international organizations have gained an important role in shaping anti-corruption policies. Becoming a member state of the European Union and the adoption of several anti-corruption conventions has generated plenty of laws upon the interest and influence of the international community. The reports and recommendations of the monitoring bodies set up by the internal instruments have all shaped the relevant measures as well. While the international recognition and economic incentives have played a very significant part in the Hungarian state's intentions, the measures were less of the direct interest of its citizens.
- Recently, the number of regulations and strategies aiming to reduce the level of corruption has increased significantly, but even with the growth of specifically designed and targeted legislation, both the measured and perceived level of corruption exacerbated. That signals that there are fundamental mistakes in the dominant top-down approach applied in anti-corruption legislation also influencing the implementation of democratic principles and human rights in Hungary.

How do individuals experience corruption, anti-corruption legislation in their everyday life, the ever-changing social reality, and how do they respond to them as time passes?

- When the 'official' norms are changing persistently, due to the mistrust and resignation regarding both the law and the authorities entrusted with its enforcement individuals are keen to find stability and reliability in norms, traditions and personal relationships outside the scope of the laws preferring non-transparent and non-accountable solutions of their matters.

- When law and power are merely perceived as an obstacle to socially desired rewards like education or health, new opaque ways develop to secure ‘back-door’ access to the desired goods and opportunities. As the general tolerance towards the abuse of entrusted power for ‘the right goals’ increases, law loses its authority and normativity in the emerging moral pluralism. There is an evident social imprint of such positive understanding and morality as the tolerance for similar acts remains persistent despite of the radical transition in the political regime.
- Upon the empirical evidence collected in this research it can be concluded that informal payments (*hálapénz*) in Hungary, in the realm of petty or everyday corruption, have become social traditions based upon the general faith vested in their ability to organize and determine social and individual relations as well as for providing power and agency to the parties concerned.
- The objectivity of legal regulations is hardly able to grasp and tackle the highly complex social context of the individual acts and the subjective decisions involved. Informal gratitude payments in the health sector have become deeply embedded social practices with seemingly superficial legal and policy reactions sanctioning and tolerating them at the same time in a greatly confusing manner. Assuming that paying gratitude money after a treatment ‘voluntarily’ is the direct outcome of a balanced and mutually lucrative exchange disregards the imbalanced and defenceless positions within relationships veiled behind ‘gratefulness’.
- There is a high level of mistrust and resignation regarding both the law and the authorities entrusted with its enforcement. The attitude seems to be ‘historically’ persistent and still highly relevant in current everyday life. Keeping such a conscious distance has significant implications as far as the implementation of legal regulations are concerned. It indicates that even the most carefully planned policy initiatives and reforms might miss their targets and fail, because neither state power, neither the normativity of law can guarantee civic compliance on its own.

How is the law and, particularly, the state is supposed to react to its own limitations?

- *First*, the state can accept, *silently tolerate or officially consent* to the situation as it is. In theory, such an attitude could be a sign of acknowledging social change. However, as the example of health care payments showed, superficial knowledge of social reality can produce misleading legal solutions based on erroneous reasons. *Second*, the state and the legal system *can act against the social tradition* of informal payments, and commence social change.

- The state and anti-corruption laws must be able to prove themselves and their benefits compared to the ones offered by corruption. Anti-corruption laws can turn into much resisted ‘anti-corruptionism’ as in the current situation society has much to lose if personal agency and the promise of success by corruption is taken away abruptly. Therefore anti-corruption law can only succeed in a gradual process.

- Law should provide the most evident and tangible measures that promote social co-operation. Social co-operation conveys that the general living conditions, education, social and health services, or merely the ‘chance to get by’ must balance giving up the opportunities corruption opens. If the potential stakeholders do not (1) see the social and individual rewards of the measures beneficial enough to make them ‘buy in’, and (2) trust the government and its bodies designated to carry out the regulations, they will rather confide in the restricted exchanges beyond state control and under their (at least presumed) influence further on. It requires accurate and attentive planning by lawmakers regarding the gains and losses of society on the whole and closing the gaps between those who benefit from corruption and those who can or would not.

IV. OPPORTUNITIES OF UTILIZING THE RESEARCH FINDINGS

The dissertation was written with the aim to give an extensive thematic overview of definitions regarding corruption, and to highlight the theoretical and practical relations or controversies among them. My goal was to provide an equally thorough introduction to the relevant international and Hungarian legislation and jurisdiction to be further utilized both by foreign and Hungarian scholars and professionals of the field. Linking human rights protection to anti-corruption measures not only points out the importance of a common discourse, but opens the way for innovative strategies of joint litigation and advocacy work as well as new curricula and research initiatives in academia and higher education. The linear and coherent description of the Hungarian legal history, historical data, social customs and tradition offers, upon my knowledge, an uniquely comprehensive and up-to-date overview overarching several academic disciplines, and an insight to the origins of social dynamics each policy maker and other stakeholders (whether foreign or Hungarian) should consider when adopting or monitoring the implementation of new laws.

The dissertation compiles and analyses data about the informal payments (*hálapénz*) in the Hungarian health care system in a historical perspective focusing on patients, health care workers and the legal adjudication of the cases respectively. The combination of legal and empirical data provides a solid basis for further empirical research in the sector. For the sake of more efficient and equally accessible medical treatment the dissertation also calls the attention to the urgent need to revisit the current legal regulations and court decisions regarding the issue with more scrutiny of social reality. The findings of the dissertation contain practical guidelines about how to overcome the limitations of anti-corruption laws, and harmonize social traditions, personal (anthropological) perspectives with legal norms for less resistance and more effectiveness.

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