UDC: 34(439) DOI: https://doi.org/10.56461/iup_rlrc.2022.3.ch12

Katalin IZSÁK-SOMOGYI*
Pázmány Péter Catholic University

SELF-EXCULPATORY OR SELF-INCULPATORY APPROACHES TO THE MEMORY LAWS IN HUNGARY

After 1989/1990, with the downfall of the communist regime, the opportunity for the historical memory of the trauma of the 20th century had changed in Hungary as well. In 2004, with other Central and East European countries, Hungary became a member state of the European Union; there was another sweeping change in the Hungarian politics of the memory. Hungary's remembrance had to be fitted in the European „Holocaust-focused" memory-politics, with its two-folded, „Holocaust- and communism-focused" past. This situation resulted a rival victim-narrative, which effected a huge change in the structure of the Hungarian memory laws. After the downfall of the communist regime, the state approach was rather self-exculpatory, due to Hungary regarding itself just as a victim of the dictatorships of the 20th century. The Hungarian politics of memory does not want to confront the self-inculpatory narrative, despite the fact that no dictatorships could function without Hungarian „perpetrators". The paper seeks for the reason behind the change between the self-exculpatory and the self-inculpatory approaches of the Hungarian legal governance in the last three decades.

Keywords: memory law, self-exculpatory or self-inculpatory approach, historical memory.

1. INTRODUCTION

The term „*loi mémorielle*" was mentioned the very first time on the 16th December 2005 by *Francoise Chandernagor*. She used the phrase to refer to the laws which were enacted with the intention of „forcing on historians the lens through which to consider the past." But without giving an exact definition. In order to highlight this „bad practice", she referred to the following examples from the French legislation :1. *loi Gayssot* (adopted in 1990); 2. *loi Arménie* (adopted in 2001); 3. *loi Taubira* (also adopted in 2001); 4. *loi Rapatrié* (adopted in 2005.).[1] *Chandernagor* protested against the increasing number of such laws, as they

* LLM, PhD Student, ORCID: 0000-0001-8791-8233, e-mail: *izsak.somogyi.katalin@gmail.com.*

[1] The adoption of *loi Rapatrié* was the final „straw" for some of historians, beacuse it required the schoolsystem of France to teach on the French colonization only in positive terms.

lead to a distorted and inauthentic interpretation of the past. The article in the *Le Monde* leads to a wide and interdisciplinary discussion about the independence of the historical research and the legislation regarding the remembrance.[2]

The phenomenon has not only national, but transnational character as well. Moreover, it has an EU-related interpretation. In the beginning of the 2000s it was widely discussed among historians, legal experts, linguists and psychologists. As a consequence, the organization *MELA*[3] was established in 2016. It is an EU-sponsored consortium dedicated to analysing the analogies and the differences among the memory laws in Europe.

Neither of the *Chandernagor*'s article, nor the MELA-project, even other researchers, organizations or publications researching the *loi mémorielles* provide an unambiguous definition about *memory law*;[4] instead, they rather explore the concept of the terminology. However, the term has been translated to many different languages. The most common term in English is *memory law*, even though *memorial law* would be more precise. The German term is *Erinnerungsgesetz,* the Spanish is *ley de la mémorica historia.* In Hungarian *emlékezettörvény* is regarded the most common term*;* however various other terms – in a somewhat broader sense – have been used to denote this type of laws as well.

2. SELF-EXCULPATORY AND SELF-INCULPATORY APPROACH OF LEGAL GOVERNANCE

Though the thesis does not try to give a precise definition of the memory law, it states that is not only a legal, but a cultural manifestation. According to this perspective, the paper analyses how states, in particular Hungary, try to find their own way to remember their history. This includes the question of how to reflect on own past and describe this reflection properly.

In 2019, the term self-inculpatory law was debated between *Eric Heinze*[5] and *Antoon de Baets*.[6] At the beginning of the debate, the Model Declaration[7] was explained by Eric Heinze.[8] In the debate, Heinze examines how states limit speech in order to control public awareness about past." As an example, he refers to Turkey and China. In order to punish or discipline those who accuse the state of having committed human rights abuses, both

---

[2] As a result of the debates new organization, named the *Liberté pour l'histoire was formed*.

[3] Memory Laws in European and Comparative Perspectives.

[4] The most exhaustive overview of the definition can be found in *Memory Laws, Memory Wars. The Politics of the Past in Europe and Russia* by Nikolay Koposov. Cambridge: Cambridge University Press, 2017.

[5] Eric Heinze is a professor of law and humanities at Queen Mary University of London, and he is one of the writer of the Model Declaration on Law and Histrocial Memory of the MELA Project.

[6] Antoon de Baets is a professor of history, ethics, and human rights at the Univeristy of Groningen, in the Netherlands.

[7] The Model Declaration on Law and Historical Memory will be presented at the MELA Conference, which will be held at the Brussels School of International Studies, University of Kent (Belgium). This Declaration will be a summation of the best practices developed by the Project over the course from 2016, establishment of the MELA till 2019. Available at: http://melaproject.org/node/534 (8. 8. 2022).

[8] Heinze, E. 2019b. *Should governments butt out of history?* Available at: https://freespeechdebate.com/discuss/should-governments-butt-out-of-history/ (8. 8. 2022).

states „routinely exert legal and social controls to self-exculpate, that is, to punish or to discipline those who accuse the state of having committed human rights abuses." In contrast to the interpretation, there are numerous states where the government does not "butt out" of their history, to borrow the rather colloquial term used in the title of Heinze's article.

It is a self-inculpatory approach of the legal governance to historical memory. This approach is based on bans: „For example, controversies have arisen in recent years around the laws prohibiting Holocaust denial." *Heinze* refers to the Model Declaration as a model to be followed. According to its para. 3 „The right to scrutinise and criticise past actions or policies of governing entities shall be guaranteed, irrespective of the citizenship, residence, or location of any individual or organization exercising that right."[9] Reflecting on this statement, *Antoon de Baets* points out the deficiency and inconsistency of the basic distinction between self-exculpatory and self-inculpatory approach, and emphasizes that the self-inculpatory laws do exist. His first argument is really simple: the temporalityi.e. that the state, that commits the atrocity crimes, is not the state that wants to decree self-inculpatory laws. *De Baets* refers to the historical narratives of Germany and Spain as examples. „The question arises to what extent, if any, a successor state can inherit the guilt of a perpetrator state and decree self-inculpatory laws."[10] After this statement, he does not agree with this division – using the word „posing" in his explanation, he focuses on the misunderstandable situation of the memory law-terms by *Heinze*. *De Baets* offers a different approach: „In my view, the decisive divide should not be between inculpation and exculpation but between opinion and hate speech: laws that prohibit historical opinions – including erroneous ones and even those that offend, shock, and disturb – are inappropriate. Only laws that prohibit historical opinions reaching the threshold of hate speech are appropriate. This distinction is prominent in articles 19 and 20 of the International Covenant on Civil and Political Rights."[11] The third „round" of the debate consists of a contribution by *Heinze*. He points out the considerable difference between talking and debating about „law", „code" and „statute". As he put it, „The entire legal system empowers officials to impose such penalties, in addition to the state's sweeping censorship of information about the past. … As I argued some time ago …, history certainly does suggest that the more abusive a regime, the less likely it is to self-inculpate. However, no serious study of law and historical memory could ever strictly limit itself to conduct incurring only formal international criminal liability."[12] *Heinze* refers to the West German Holocaust commemoration and then the unified German policy and challenges the *de Baets*' argument about the strictly formalist construction of law. The response of *de Baets* followed in six days. [13] He argued that *Heinze* broadened the discussion from the legal direction to „ethical" and „cultural"

[9] Available at: https://melaproject.org/node/534 (8. 8 2022.)

[10] de Baets, A. 2019b. *Self-inculpatory laws do not exist*. Available at: https://freespeechdebate.com/2019/12/self-inculpatory-laws-do-not-exist/ (8. 8. 2022).

[11] *Ibid.*

[12] Heinze, E. 2019a. *Self-inculpatory laws exist.* Available at: https://freespeechdebate.com/2019/12/self-inculpatory-laws-exist/ (8. 8. 2022).

[13] de Baets, A. 2019a. *Criminal regimes are never soft on history*. Available at: https://freespeechdebate.com/2019/12/criminal-regimes-are-never-soft-on-history/ (8. 8. 2022).

direction; in contradiction he focused explicitly on crimes and also provided a critical view of the Declaration. „It is well known that most dictatorships invest much energy in keeping up a semblance of legality in a contorted attempt to enhance their legitimacy. … I cannot think of a single regime in history that first kills, the secrets that it is guilty of it. For such a self-inculpatory regime to exist without any rupture explaining it, something unprecedented bordering the inexplicable must have taken place."[14] As summarized by *Eric Heinze*, the self-inculpatory approach on a – practically – official narrative should be created by the state itself. This approach could avoid the politicization of historical remembrance. Conversely, the self-exculpatory approach is completely politicized as it attempts to influence the historical narrative of the state.

Maria Mälksoo establishes a similar classification of memory laws. According to this classification, the approach of the states could be reflective or mnemonical security-oriented. „… Her interpretation of the self-exculpatory and the mnemonic security approaches, are associated with the rule of law deterioration in various states."[15] According to the reflective approach, the state has a huge ability of cooperation and self-reflexivity. In contrast, the mnemonic security-oriented approach relies on the state's behaviour being more confrontational and self-assertive. According to *Mälksoo*, the latter is similar to the *Heinze's* self-exculpatory approach, as both of them use punitive memory laws.[16]

3. THE CONCEPT OF MEMORY LAW IN HUNGARY

As mentioned before the academic discourse has still not delivered a proper the definition for memory law. This, naturally, also applies to the academiain Hungary as well. Hungarian academia uses two terms: *emlékezettörvény* and *emléktörvény*, after this dichitomy. „In the Hungarian language, two terms refer to memory laws: *emléktörvény* – indicating specifically declarative type of memory laws and *emlékezettörvény* – an umbrella term similar to the connotation of memory laws in English."[17] The term *emléktörvény* can also be attached to a individual person or a famous historical event.: „It can be literally translated as >>individual memory law or law of a single memory<<."[18]

The main argument of this paper is that, after the democratic transition in 1989-1990, *emlékezettörvény* is more frequent than, as *emléktörvény*. I argue that the reason for this difference lies in an excursion to the self-exculpatory approach. The first reference to the memory law in the Hungarian legislation can be dated to 1996.

Regarding the Act LVI of 1996, which sanctioned the memory of Prime Minister *Imre Nagy*, who died a martyr's death, and the memory of his mates in the martyrdom, *Miklós*

---

[14] *Ibid.*

[15] Mälksoo, M. 2019. The Transitional Justice and Foreign Policy Nexus: The Inefficient Causation of State Ontological Security-Seeking. *International Studies Review,* 21(3), pp. 373-397.

[16] See the criminal aspects from the earlier debate.

[17] Bán, M. 2020. *The Legal Governance of Historical Memory and the Rule of Law*. PhD Thesis. University of Amsterdam, p. 48.

[18] Bán, M. 2020. *The Legal Governance of Historical Memory and the Rule of Law*. PhD Thesis. University of Amsterdam, p. 166.

Tamás Gáspár explains the connection between historical memory and law after the change of the regime; he used the term *emléktörvény*, but does not provide a detailed analysis of it.[19]

Iván Halász and *Gábor Schweitzer* used the term *emléktörvény* again in 2010, but they did not provide an explanation.[20] In that year they published another thesis, titled *'Law – remembarnce – cult'*. They give a definition of the term *emléktörvény* in the following way: „Who is put on a pedestal of the legal remembrance by the Hungarian legislator from the numerous „historical hall of fame?"[21]

A study written by *Judit Tóth* offers several definitons of *memory law*. She used a teleological approach, investigating the purpose of the bill?[22] She distinguishes between the so-called „merit-law", „project-law", „memorial-law" and laws about commemorative coins. Toth's approach is commendable, but not entirely acceptable, as there are a numerous memory laws (also in Hungary) which could be the part of some kind aforementioned type. It would be more important for the the Hungarian academia to first provide a definition, or decide between *emlékezettörvény* or *emléktörvény*.

4. THE DEMOCRATIC TRANSITION AS A CEASURA

4.1. Starting point

In Hungary, as well as in other Central and East-European countries, after the democratic transition in 1989-1990, the memories of both of the dictatorships of the 20th century could be expected to appear in legislation. However, I assert that this happened only a very limited extent, and that there is a clear difference between the self-exculpatory and the self-inculpatory approach of the legal governance.

4.2. Hungary as a bridge

Due to its position in Central and Eastern Europe, Hungary has a different specific narrative: the so-called national localization. It is based upon its the self-identity, resulting from its position between East and West. This position is not only geographical, but historical and political as well. Over the tumultuous centuries, most of the time, Hungary not independent. However, focusing on the last seven decades, Hungary lost its national sovereignty under the Soviet control, when, according to the pseudo state's perspective, the East triumphed over the West, or basically over Europe. After the fall of communism,

---

[19] Tamás Gáspár, M. 1996. *A Nagy Imre-ügy*. Beszélő, 1. évf., 5. szám. Available at: http://beszelo.c3.hu/cikkek/a-nagy-imre-ugy (2. 8. 2021).

[20] Halász, I. & Schweitzer, G. 2010b. *Szimbolika és közjog: az állami és nemzeti jelképek helye a magyar alkotmányos rendszerben.* ('Symbolism and public law: the symbols of state and national in the Hungarian constitutional sytem'). Pozsony: Kalligram, p. 27.

[21] „Kit emel ki a magyar jogalkotó a népes történelmi arcképcsarnokból a jogi megemlékezés piedesztáljára?" Halász, I. & Schweitzer, G. 2010a. Jog – emlékezet – kultusz. (Law – remembrance – cult) In: Nótári, T. (ed.) *Ünnepi tanulmányok Sárközy Tamás 70. születésnapjára*. Szeged: Leclum, p. 124.

[22] Tóth, J. 2002. A jelképes jogállam. *Mozgó Világ*, 2002(3). Available at: http://epa.oszk.hu/01300/01326/00027/marc1.htm (17. 11. 2021).

many Hungarian political and social leaders advocated for a "returning back to Europe"". However, in this narrative, the real East-West localisation is symbolic: Europe means the Christianity, the Roman or Habsburg Empire, while, on the other hand, the East means the Ottoman Empire or the USSR. Due to our memory construction, Hungary has to choose between, them as they are mutually exclusive alternatives. After 2004, Hungary became a part of Europe, the European Union, the West. Achieving this desired state consequently allowed it to become part of Western European memory narrative on the dictatorships of the 20th century. "The narrative characteristics of remembrance relate to the 'golden age' that arrived upon joining the EU (in the sense of EU=Europe); it means in other words that the works of King St. Stephen.[23] were fulfilled. In line with its accession, the centre-periphery axis has become relative. "[24]

4.3. Back to Europe?

Moreover, in 2004, as the EU expanded and most of the post-communist countries became member states, the EU had to face another historic trauma of the 20th century: communism. This dual or competitive remembrance politics became a real transnational need to understand the past. The reason for this duality or so-called competition is that Western European countries had their own strategy to confront their own past. It is important to bear in mind that, before the fall of the Iron Curtain, it was forbidden "in the East" to remember WWII, other than their "liberation" by the Soviet army, or the Holocaust or any traumatic historical events of this era. Since these countries perceived themselves as victims of the Stalinist dictatorship, their membership status in the EU was the result of reconstituting the postmodern founding myth.

4.4. Victim-narratives

In conclusion, I argued in my paper that Hungary has a dual victim-narrative, being a victim of the communism and being a victim of the Holocaust. It is in this this dual or competitive victim-narrative where it attempted to find the way between self-exculpatory and/or self-inculpatory approach.

5. HUNGARIAN EXAMPLES FOR THE SELF-EXCULPATORY AND SELF-INCULPATORY APPROACHES OF THE LEGAL GOVERNANCE[25]

This section provides an overview of two segments of the Hungarian memory laws after the aforementioned Hungarian definitions. By adopting *emlékezettörvény* 5.1. is

[23] The first king (1000-1038) of Hungary.

[24] Zombory, M. 2011. Visszatérés Európába. Állami emlékezetpolitika és magyar hovatartozás, In: Zombory M. (ed.), *Az emlékezés térképei*. Budapest: L'Harmattan, p. 115.

[25] See more: Könczöl, M. 2017. Dealing with the Past in and around the Fundamental Law of Hungary. In: Belavusau, U. & Gliszczyńska-Grabias, A. (eds.), *Law and Memory. Towards Legal Governance of History*. Cambridge: Cambridge University Press, pp. 246-262.

looking for the connection among the post-democratic transitional memory laws. In section 5.3. it will be explained that *emléktörvény* in Hungary could be wider titled than as self-inculpatory memory laws. The distinction between those is the aim: looking back into the past, using the shame as constitutional sentiment, or looking forward into the future, using pride as a constitutional sentiment. Section 5.2. could be read as a transitional area of the self-exculpatory and self-inculpatory approaches – these memory laws could be considered as a transition.

5.1. Examples for the self-exculpatory approach of the Hungarian legal government

The Fundamental Law of Hungary was promulgated on 18 April 2011 and entered into force on 1 January 2012. It attempts a coherent narrative to explain Hungarian history as a memory law.[26] In the Fundamental Law, there two parts relevant for this observation. The first part of the document is entitled „National Avowal" and it contains solemn declarations about the concept of the nation where the self-exculpatory aspect is visible in the following sentence: „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."[27] [28] Moreover, as is not titled as a constitution, the Fundamental Law carries a real elaborated historical overtone. Constitutional scholars have formulated a plethora of ideas to clarify the role of the historical allusions, and references included therein, and also the constitutional structure of Hungary. After several years another problem arose in relation to the aforementioned governmental self-exculpatory approach. Article 3 of the Fourth Amendment of the Fundamental Law enacted Article U, which entered into force on 1 April 2013. Article U has a lot of „constitutional" specialities. One of them most notable ones is that only the communist dictatorship was irreconcilable with the rule of law. As opposed to the statement from the aforementioned National Awoval's, Article U does not refer to the other 20th century dictatorship in Hungary.

„ (1) The form of government based on the rule of law for making public policy, established by the will of the nation upon the first free elections in 1990 and the previous communist dictatorship are irreconcilable. The Magyar *Szocialista Munkáspárt* (Hungarian Socialist Workers' Party) and its predecessors, and all other political organizations set up in their service under the communist ideology were criminally charged organizations …" Another specialty is the responsibility of the *Magyar Szocialista Munkáspárt*: „The political organizations legally recognized in the process of the democratic transition as the successors of *Magyar Szocialista Munkáspárt* share the responsibility of their

[26] There is a remembrance day in Hungary about the Fundamental Law: it is the 25 April – after the Closing and Miscellaneous Provisions, para 5.

[27] Fundamental Law of Hungary. Available at: https://njt.hu/translation/TheFundamentalLawofHungary_20220723_FIN.PDF (10. 8. 2022).

[28] About the debates of the historical memory in Hungary see more: Schweitzer, G. 2013. Fundamental Law – Cardinal Law – Historical Constitution: The Case of Hungary Since 2011. *Journal on European History of Law,* 2013(4:1), pp. 124-128.

predecessors, being the heirs of the wealth, they had amassed unlawfully."[29]

One more characteristic of the 4th amendment of the Fundamental Law is that Article U provided the legal basis for the foundation of the Committee of National Memory, tasked with investigating crimes committed during Hungary's totalitarian regimes. According to Article 1 of the Act CCLXVI of 2013 on the Committee of National Memory (hereinafter Committee) the Committee has the responsibility to preserve the political memory of the communist dictatorship and to reveal the power structure of the dictatorship. This a truly real „impressive" example of the self-exculpatory approach of Hungary: why there was not a general committee? There are many constitutional questions about the working process of the Committee however, since it is a committee that was established by the Fundamental Law, which made it very difficult to disregard; the result of the committee's work means the governmental historical narrative about the last five-six decades of Hungary.

5.2. Self-exculpatory and self-inculpatory approaches together

After four years of the democratic transition the Act IV of 1978 on the Criminal Code was amended in 1993, which introduced the so-called „Use of Symbols of Despotism" crime.[30] It determined which are those symbols from the 20th century's despotism: the swastika, the insignia of the SS, the arrow cross, the sickle and hammer, the five-pointed red star and envisaged grounds for prosecution for the use of these symbols. This list is exhaustive and includes a symbol that can only be connected with Hungary - the arrow cross. In the debate between *Heinze* and *de Baets* it could be read that the aforementioned bans implies a somewhat more self-inculpatory approach. From 2013, the „Open Denial of Nazi Crimes and Communist Crimes" also became penalized, renderning both despotic regimes dealt with in the criminal code.[31] On 1 July 2013 a new Criminal Code entered into force, the Act C of 2012, where both the mentioned crimes are still envisaged.

The ban of totalitarianism can be read in a very powerful non-punitive memory law of Hungary, in Article 3 (6) in Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (hereinafter: Ctv.).

„ (6) The name of a company may not contain:

a) the name of any person who held a leading role in the foundation, development or continuance of an authoritarian political regime of the 20th century; or

b) an expression or the name of an organization that may be directly associated with an authoritarian political regime of the 20th century".

This regulation is definitely a memory law ban, which is more self-inculpatory, than a self-exculpatory approach. What does the totalitarian political system of the 20th century refer to? In Hungary, there were more than two totalitarian political systems, namely the

[29] This amendment is Janus-faced, because of the political overtones. In that year the governmental party, the FIDESZ had one of the significant opposition power, the MSZP. But after the enactment of Article U, the legitimacy of this party had been questioned.

[30] Enacted byArticle 1 of Act XLV of 1993, effective as of 21 May 1993.

[31] Article 269/C in Act IV of 1978: „Any person who publicly denies the crime of genocide and other crimes committed against humanity by Nazis and Communists, or expresses any doubt or implies that it is insignificant is guilty of felony…"

red and the white terror after WWI. In the historical narrative, it could be crucial that how on the chronological curve far is the researcher from the historical trauma? There is a fundamental question from the jurisprudential aspect: how can a a law be predictable, if it can be influenced by the context, by the Hungarian historical traditions or the knowledge from the historians? Furthermore, the amendment of the Ctvcame into force in 2013; as mentioned before, the Hungarian Criminal Code(s) incriminated the 'Use of Symbols of Despotism' years before that with the whole interpreting models of the totalitarian political systems.

5.3. Memory laws in the light of the Hungarian translations

As indicated *before,*s the definition of memory law can be translated into Hungarian as *emléktörvény* and *emlékezettörvény*:. In this section, showed some of the examples from the Hungarian memory laws which could be classified as *emléktörvény* will be presented as mentioned above, despite of the Marina Bán-definiton, it is my opinion that that the diachronic aspect could be decisive as well. Section 5.3elaborated on the *emléktörvény,* which are looking into the future. The examples presented show, the changing of the structure among the memory laws after the democratic transition. These are non-punitive memory laws, which commemorate famous figures and events.

The very first of Hungarian memory law after the democratic transition is the Act XXVIII of 1990, which prescribed the importance of the revolution and freedom fight in October 1956. It was enacted on 8 May 1990 – this date has immense relevance in the Hungarian historical memory and constitution, as the first free democratic elections were held on 2nd of May 1990. was. As indicated before, the National Awoval proclaims that the Hungarian self-identity had a break from 19 May 1944 till 2 May 1990. Therefore, the mentioned Act it is one of the very first acts of the first freely elected Parliament.

The Act LXXXI of 1994 is closely related to the Hungarian government's role in WWII. On December 21st 1944 the „Temporary State Assembly" was established, which wanted to establish a modern rule of law after the totalitarian system.

The very first mention of the Hungarian definiton *emléktörvény* is based on the Act LVI of 1996, which sanctioned the memory of Prime Minister *Imre Nagy*, who died a martyr's death and the memory of his mates in the martyrdom. The definition not could be read in the act, but rather in one of the academic mentions by Miklós Tamás Gáspár.[32] In 1996 many memory laws were adopted, as this year marked the 1100th anniversary of the conquest of the Carpathian Basin.

The Year 2000 marked the thousand-year-old-anniversary of the establishment of the Hungarian state – and consequently the Act I of 2000 was promulgated to commemorate King St. Stephan the first and the significance of the Holy Crown.[33]

---

[32] Tamás Gáspár, M. 1996. A Nagy Imre-ügy. Beszélő, 1. évf, 5. szám. Available at: http://beszelo.c3.hu/cikkek/a-nagy-imre-ugy (2. 8. 2021).

[33] The Holy Crown has in Hungary not only a symbolic role, but it means the integrity, the independence and the continuity of the Hungarian state. It has an unique public law tradition.

With the Act LXIII of 2001 „the perpetuation of the Hungarian heroes' memory and the Commemoration of the Hungarian Heroes" was introduced. According to its Article 2, the last Sunday of May is a Remembrance Day of the Hungarian heroes, who gave their lives for the freedom, for the independence of the Hungarian state and the survival of the nation from the era of King St. Stephan the First until present day. with the Law is imbued with positive assertions which shows that this is a non-punitive memory law without the axis of self-exculpatory or self-inculpatory approach of the legal governance.

5.4. Constitutional sentiments

As mentioned in sections 5.1. and 5.2., there are a lot of self-exculpatory approaches of the legal governance in Hungary. These memory laws imply shame as constitutional sentiments. This shame does not necessarily relate to the Hungary itself – but rather to the feelings one should have with regards to the totalitarian political systems. In section 5.3. ome examples of memory laws which imply the proudness as constitutional sentiments are provided. There is a specific aspect of legal governance in the historical memory: the mnemonical constitutionalism.[34] It could be examined also with the aforementioned constitutional sentiments.

6. CONCLUSION

Remembrance can have both advantages and disadvantages– let us think to the basically thoughts of Tzvetan Todorov or Pierre Nora. In the postmodern era, the digital world has one of the most meaningful roles in remembrance, while humankind ostensibly wants to race for limited memories. These memories are basic components of not only the individual identity, but rather the collective self-identity. The legislators, who have the opportunity to influence the remembrance, have their own value system and their own interpretational horizon – leaving them always in the background. As Marina Bán puts it: „The self-inculpatory and self-exculpatory approaches both refer to symbolic, legal or practical measures taken by the state in order to demonstrate its contemporary attitude towards various historical questions. These two approaches encompass every memory law and ostensibly legal measure relating to mnemonic regulation. Indeed, the self-inculpatory and self-exculpatory approaches to the legal governance of historical memory are found in the background (among the motivations) of all historical memory-related provisions."[35]

[34] One of the best well-known legal researcher of the memory laws, Uladzislau Belavusau introduced the concept in 2018. See more: Belavusau, U. 2018. Final Thoughts on Mnemonic Constitutionalism. Verfassungsblog. Available at: https://verfassungsblog.de/final-thoughts-on-mnemonic-constitutionalism/ (19. 8. 2022).

[35] Bán, M. 2020. *The Legal Governance of Historical Memory and the Rule of Law*. PhD Thesis. University of Amsterdam, p. 25.

LIST OF REFERENCES

de Baets, A. 2019a. *Criminal regimes are never soft on history*. Available at: https://freespeechdebate.com/2019/12/criminal-regimes-are-never-soft-on-history/ (8. 8. 2022).

de Baets, A. 2019b. *Self-inculpatory laws do not exist*. Available at: https://freespeechdebate.com/2019/12/self-inculpatory-laws-do-not-exist/ (8. 8. 2022).

Bán, M. 2020. *The Legal Governance of Historical Memory and the Rule of Law*. PhD Thesis. University of Amsterdam.

Belavusau, U. 2018. *Final Thoughts on Mnemonic Constitutionalism*. Verfassungsblog. Available at: https://verfassungsblog.de/final-thoughts-on-mnemonic-constitutionalism/ (19. 8. 2022).

Chandernagor, F. 2005. *L' enfer des bonnes intentions*. Le Monde. Available at:
https://www.lemonde.fr/idees/article/2005/12/16/l-enfer-des-bonnes-intentions-par-francoise-chandernagor_722124_3232.html (6. 3. 2022).

Halász, I. & Schweitzer, G. 2010a. Jog – emlékezet – kultusz. (Law – remembrance – cult) In: Nótári, T. (ed.) *Ünnepi tanulmányok Sárközy Tamás 70. születésnapjára*. Szeged: Leclum.

Halász, I. & Schweitzer, G. 2010b. *Szimbolika és közjog: az állami és nemzeti jelképek helye a magyar alkotmányos rendszerben*. ('Symbolism and public law: the symbols of state and national in the Hungarian constitutional sytem'). Pozsony: Kalligram.

Heinze, E. 2019a. Self-inculpatory laws exist. Available at: https://freespeechdebate.com/2019/12/self-inculpatory-laws-exist/ (8. 8. 2022).

Heinze, E. 2019b. Should governments butt out of history? Available at: https://freespeechdebate.com/discuss/should-governments-butt-out-of-history/ (8. 8. 2022).

Könczöl, M. 2017. Dealing with the Past in and around the Fundamental Law of Hungary. In: Belavusau, U. & Gliszczyńska-Grabias, A. (eds.), *Law and Memory. Towards Legal Governance of History*. Cambridge: Cambridge University Press, pp. 246-262. https://doi.org/10.1017/9781316986172.013

Mälksoo, M. 2019. The Transitional Justice and Foreign Policy Nexus: The Inefficient Causation of State Ontological Security-Seeking. *International Studies Review,* 21(3), pp. 373-397. https://doi.org/10.1093/isr/viy006

Schweitzer, G. 2013. Fundamental Law – Cardinal Law – Historical Constitution: The Case of Hungary Since 2011. *Journal on European History of Law*, 2013(4:1), pp. 124-128.

Tamás Gáspár, M. 1996. A Nagy Imre-ügy. *Beszélő*, 1. évf, 5. szám. Available at: http://beszelo.c3.hu/cikkek/a-nagy-imre-ugy (2. 8. 2021).

Tóth, J. 2002. A jelképes jogállam. *Mozgó Világ,* 2002(3). Available at: http://epa.oszk.hu/01300/01326/00027/marc1.htm (17. 11. 2021).

Zombory, M. 2011. Visszatérés Európába. Állami emlékezetpolitika és magyar hovatartozás, In: Zombory M. (ed.), *Az emlékezés térképei.* Budapest: L'Harmattan, pp. 85-120.

Legal sources

Fundamental Law of Hungary. Available at: https://njt.hu/translation/TheFundamentalLawofHungary_20220723_FIN.PDF (10. 8. 2022).

Act CCXLI of 2013 on the Committee of National Memory.
Act C of 2012 on Criminal Code https://njt.hu/translation/J2012T0100P_20210708_FIN.pdf (10. 8.2021).
Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings.
Act LXIII of 2001 on the perpetuation of the Hungarian heroes' memory and the Commemoration of the Hungarian Heroes.
Act I of 2000 on the commemorate of King St. Stephan the First.
Act LVI of 1996 on the sanction the memory of Prime Minister Imre Nagy, who died a martyr's death and the memory of his mates in the martyrdom.
Act XXX of 1996 on the 1100. anniversary of the conquest of the Carpathian Basin.
Act LXXXI of 1994 on the remembrance of the Temporary State Assembly.
Act XXVIII of 1990 on the sanction the importance of the revolution and freedom fight in October 1956.
Act IV of 1978 on the Criminal Code.