

INTRODUCTION – IDEA, CONCEPT, STRUCTURE AND METHODOLOGY

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*“The tongue has the power of life and death,
and those who love it will eat its fruit”*

Proverbs 18:21

The book that the Reader is currently holding is the intellectual product of two years of research conducted by the members of the Ferenc Mádl Institute of Comparative Law. Before sharing the findings of our distinguished authors, hereby we intend to summarise the ‘journey’ leading to this very point.

Since its foundation in 2019, our organisation has had the objective to engage in international scientific discourse, thus leading research in areas related to the most relevant issues discussed by European scholars of jurisprudence. In 2020, within the framework of the Department of Public Law, the decision was made to commence a major research programme in which each researcher chose a country, analysing its legal framework through a common concept. As a result, the book introducing the main concept of emergency power regulation of European countries from a comparative perspective was concluded,¹ being one of the first comprehensive works in Hungarian in this field of constitutional law, with a unique comparative approach. Little was known about the upcoming pandemic when the concept was developed. Consequently, the topic of emergency power and its limits became the centre of scientific interest on a global level. Since our work has been recognised by the Hungarian scientific society, it was soon decided to make it accessible on an international level – in 2022, a new book, this time focusing on the solutions adopted by Central and Eastern European countries, was released.²

¹ Nagy and Horváth, 2021.

² Nagy and Horváth, 2022.

Seeing the demand for further research activity with a comparative approach, discussion regarding the next major project began in autumn 2022. Based on the latest findings of our experts, both the interpretation of constitutional identity in Europe³ and legal problems of mandatory vaccination⁴ seemed promising topics. Nevertheless, we finally agreed to examine a completely new problematic area: legal reactions to hate induced unlawful activities in the digital sphere from a comparative perspective. The complexity of the subject matter required the exploration of various branches of the selected national legal systems; besides criminal law measures, we strived to recollect the most relevant rules of administrative and media regulation. During the research process, we elaborated five subtopics with a view to creating thorough country profiles: (i) regulation of hate speech; (ii) legislative and practical reactions to the phenomenon of cyberbullying; (iii) institutional measures and best practices on prevention, especially as part of education system; (iv) liability of employers – perspective of labour law; and (v) liability of online service providers. The final results were published during autumn 2023.⁵ The idea of the preparation of this current book was conceived even before the publication of our findings for several reasons. On the one hand, the comparative analysis of the country profiles⁶ revealed that national labour laws do not generally contain specific rules, but that the obligations of the employers in practice can be derived from the principles of the field in question. On the other hand, a new regulation adopted by the European Union reformed the legal framework related to platform liability in the meantime.⁷ The provisions of the regulation concerned entered into force gradually, providing sufficient preparation time for state actors and the affected legal entities; this process terminated in February 2024. Moreover, several authors referred to the fact that relevant legislative procedures were in progress in some Member States of the European Union (e.g. France,⁸ Ireland⁹ and Poland¹⁰).

In line with the above-mentioned changes, country profiles of this latest release consist of slightly different subtopics, omitting thoughts on labour law

3 For the elaboration of the issue by our researchers, see: Horváth et al., 2020; Horváth et al., 2021; Ungvári and Hojnyák, 2021.

4 For the elaboration of the issue by our researchers, see: Horváth, 2022; Horváth and Ungvári, 2023.

5 Nagy, 2023.

6 Nagy and Lindt, 2023.

7 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), Text with EEA relevance, OJ L 277, 27.10.2022, p. 1–102.

8 Szóke, 2023.

9 Horváth, 2023.

10 Benyusz, 2023.

regulation and adding a fundamental law approach in order to better enshrine the connection between the examined areas.¹¹ Furthermore, the list of the countries examined has also been modified – a chapter introducing the legal framework of the USA has not been included, instead, the summary of the Belgian regulation has become part of this work, thereby focusing exclusively on European countries.

The structure of the book can be divided into three major parts. The first part discusses general questions, including common legislative challenges emerging from technological development, approaches of the definition of cyberbullying and criminological aspects of the phenomena concerned. The second part, consisting of two chapters, one on the relevant case law of the European Court of Human Rights and one on the most important instruments of the European Union, outlines the supranational legal framework that influences the content of European national systems. Finally, the third part introduces the profiles of the selected countries, highlighting national specificities.

As regards the methodology applied, the experts, in order to identify the relevant national provisions, used the comparative approach. Here we consider necessary to explain our interpretation on this research method, since different paradigms can be recognised.¹² After World War II, the so-called functionalist approach became more and more widespread. In order to summarise the core meaning of functionalism in a nutshell, we can state that, based on the assumption that different legal systems may have significantly divergent legal notions and solutions, the followers of this trend do not strive to find almost equivalent ones, but to identify those rules that react to the same problems of society.¹³ In other words, functionalism is the problem-based approach of comparative legal research. As regulatory issues related to the digital space are relatively new, a common European doctrine with similar national notions is yet to be created. That is why the research group agreed to follow the aforementioned functionalist approach. In an effort to discover those pieces of legal norms that

11 In our opinion, the issues discussed in this book can be interpreted as practical implications of the conflict between the freedom of expression and certain fundamental rights. In this regard, a comparative constitutional analysis was also desirable, since we believe that even in Europe, legal cultures vary to an extent that the content of certain fundamental rights may differ from country to country, i.e. we applied a cultural relativistic approach of rights. On the issue of universalism and cultural relativism, see: Kovács, 2016, pp. 368–369; Bragyova, 2018, p. 25; Kardos, Lattmann and Mink, 2018, pp. 480–482. Cf. Halász, 2021.

12 For example, Hungarian scholar, *Balázs Fekete* describes three paradigms of comparative law from a historical point of view. Fekete, 2011, pp. 70–72, 109–111, 157–159. Cf. Kecskés, 2015.

13 Horváthy, 2005, pp. 10–11; Fekete, 2015, pp. 442–444. Cf. Szabó, 1975, pp. 124–127.

are regularly applied in connection with such unlawful activities, the experts also analysed works of scholars from the countries concerned and judicial practice where it was necessary.

This book contains the most important data which we have gathered over the past two years of research, supplemented by our critical insights. As these days the analysed area develops dynamically and thus new theoretical and practical challenges emerge quite often, we all sincerely hope that this base of information will serve as a useful source for further research in the field, as well as a discussion starter in the European scientific community.

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On behalf of the Editors,
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