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DOCTORAL SCHOOL OF LAW AND POLITICAL SCIENCES

**THE SYSTEM OF PERSONAL PROTECTION INSTRUMENTS
IN THE HUNGARIAN LABOUR LAW
WITH PARTICULAR REGARD TO THE GRIEVANCE AWARD**

Abstract of Doctoral Thesis

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I. SUBJECT AND RESEARCH OBJECTIVES

The subject of my dissertation is the examination of the Hungarian labour law regulation of personal protection. The actuality of the topic is that the most recent Hungarian private law recodification harmonized the rules of civil law and labour law in relation to certain legal institutions, thus the protection of personal rights – for the first time in its history – appeared in the effective Labour Code in 2012. The legislator emphasized even more the rules for the protection of personality in labour law by requiring that the Civil Code, which entered into force in 2014, prescribes the application of sanctions for personal rights and their violation, with the rules of labour law liability governing the enforcement of liability.

The first hypothesis of my thesis is that even in the absence of explicit legal regulations in our previous labour law, the rules for the protection of personal rights were present - primarily thanks to the law-developing role of the courts - and even personal rights and the sanctions applicable in the event of their violation won their place in the Civil Code at the cost of several centuries of struggle. The guiding thread of the first part of my dissertation is therefore aimed at exploring the points of connection between personal protection and labour law, while I try to find and analyse the interactions between judicial practice and these two areas of law. In order to verify this hypothesis, in part A) I examine the formation and development of the institution of privacy protection in European and Hungarian private law, as well as in labour law.

After that, in part B) of my thesis I turn to the *de lege lata* examination and analysis of privacy protection. The second hypothesis of my dissertation is that the grievance award¹ introduced as one of the sanctions for the violation of personal rights in the current Civil Code is a new sanction that was not introduced instead of non-pecuniary compensation, and therefore cannot be considered as its successor. In addition to proving my hypothesis, I am also examining how the grievance award fits into the Hungarian private law instrument system for the protection of personal rights as a new institution. I conduct the investigation not only by processing the legislation and the exploration of the specialized literature, but in part C) of my thesis, I also study and analyse the labour law judicial practice of personal protection.

¹ The Act V of 2013 on the Civil Code (hereinafter: CC) calls the new legal institution „sérelemdíj”, which has no official English name. In this study, I use the „sérelemdíj” with the translation according to the National Legal Database, see: https://njt.hu/translation/J2013T0005P_20210701_FIN.PDF

In my dissertation, not only as a conclusion, but also at the end of the larger structural units, I strive to draw conclusions and formulate proposals: I will address these in the subsummaries at the very end of parts A) and B) and also at the end of the chapters of part C).

Finally, in the section on the purpose of the thesis, I also consider it necessary to clarify what my thesis is not about. First of all, it is important to emphasize that the thesis is not a work of comparative law, so in the thesis I will not analyse the effective rules and solutions of individual states regarding the protection of privacy. The reason for this – in addition to the obvious scope limitations – is that there is no uniform law in the field of privacy protection based on either an international convention or a source of European Union law, so the sanctioning of violations of privacy rights falls entirely within national competence. Of course, this does not mean that in the introductory part of my thesis I did not describe the provisions on personal protection of foreign codes that have had significant influence on Hungarian law. The purpose of this was precisely to shed light on the difficulties of the comparison, i. e. the fact that personal rights and their protection and the regulation of labour law are extremely sensitive to changes in the current political-economic-social environment. It follows from this that a comparative legal analysis of personality rights and the sanctions for their violation could be a separate thesis in itself, so I would like to conduct a separate research on this in the future.

Continuing the "negative" framework of the thesis, it deserves to be emphasized that in my evaluation I deal with the labour law aspects of personal protection, therefore, after the merging of personal protection and labour law, which started from two separate paths, I only examine the judicial practice of labour law. Thus, I will cover the civil law practice of privacy protection only in a narrow circle, in part B) of my thesis, when I consider it necessary.

II. BRIEF DESCRIPTION OF THE RESEARCH AND METHODOLOGY

My dissertation – with the exception of the introductory and closing sections – illustrates the unity of historical development, theory and judicial practice and consists of three large structural parts: A) as a historical part, B) as a theoretical part and C) as a practical part. Below, I present each structural units separately.

Part A): The formation and development of the institution of privacy protection in Hungarian and European private law

In the first part A) of my thesis, I present the formation and development of the institution of privacy protection in three chapters. In my opinion, in order to understand and evaluate the current Hungarian legal framework, the "modern" institution, it is essential to get to know the past and the foreign codes that have had influence on the Hungarian legal system. First I outline the antecedents of the institution of personal protection in European private law, from ancient Roman law to the modern codifications of the 19th and 20th centuries. Carrying out the institutional history overview in chronological order, I present the private law codification efforts of the dominant countries of the continental European legal families (France, Prussia, Austria, Germany, Switzerland) without claiming to be complete, focusing only on the provisions of the codes related to personal rights and personal protection.

In the second substantive chapter, I briefly review the development of the system of Hungarian private law from the period of the conquest to the appearance of Hungarian private law codification efforts. After that, I will present in more detail the tortuous path leading to the creation of the first Hungarian Civil Code, and in the meantime I will try to illustrate the impact of the foreign codes discussed in the previous chapter and the jurisprudence emerging in this context on the development of Hungarian law.

After the civil law codification effort has come to fruition, I will turn to the presentation of the institutional historical precedents of labour law, as well as to the path leading to its legal independence. Then I explore the provisions regarding the appearance of the institution of privacy protection in the history of Hungarian labour law, and then, moving further in time, I examine the relationship between labour law and civil law, which foreshadows the problems of the applicability of the privacy protection rules known from civil law in labour law.

I close the first part of the thesis with the entry into force of the two last Hungarian codification products that are significant for my topic: the current Civil Code and the Labour Code².

Part B): Privacy protection in today's Hungarian labour law

In the second chapter of the second, B) part of my thesis, which follows the first, introductory chapter, I deal with the basic issues of the protection of personal rights: first of all, I look for an explanation for the fact that why the CC failed to define the concept of personal rights, then I will try to determine the scope of those entitled to the protection of personal rights with regard to the individual and collective subjects of labour law. After that, I examine the limits of the protection of personal rights, taking into account the most important characteristics of the employment relationship, i.e. the subordination relationship between the parties, and the resulting extensive control, instruction and control rights of the employer. Finally, omitting a detailed presentation of all the personal rights mentioned in the CC, I will deal with the rules for the protection of private life, since the CC defines for the first time the requirement to respect private life as a personal right, and this is also of particular importance from the point of view of the employment relationship.

In the third chapter of part B) of my dissertation, I turn to the study of the system of private law instruments for the protection of personal rights, with the fact that it is already known from the previously effective legislation - such as the old 1959 Civil Code and the old 1992 Labour Code, and the legal institutions presented in part A) of my thesis are mentioned here only tangentially, and I concentrate only on the newly introduced legal solutions. In accordance with this objective, in the first point of the third chapter, I will discuss in more detail the transfer of pecuniary advantage from the range of sanctions independent of responsibility for the violation of personal rights, since the legislator left four of the five no-fault sanctions unchanged compared to the old, 1959 Civil Code.

It can be said without exaggeration that one of the biggest innovations of the entire Civil Code – including the rules on personal protection – was the introduction of a new sanction, grievance award. Therefore, the focus of my dissertation is on the study of the institution of grievance award, which is the reason why III.2. subsection became the most extensive. In this section of my thesis, I present the circumstances of the introduction of the grievance award, as well as examine the functions of the grievance award, the conditions for the admissibility of the

² The Act I of 2012 on the Labour Code (hereinafter: LC).

grievance award, and the aspects that can be taken into account when determining the amount of the grievance award.

At the end of the third chapter of this part of my thesis, I also briefly deal with compensation that can be used as a sanction for the violation of personal rights. Instead of a detailed presentation of the institution of compensation, I will pay attention to the differences between the conditions for the obligation to pay grievance award and the conditions for labour compensation. Furthermore, I will briefly explain the changes in the conditions for exemption from liability with regard to the new rules of LC.

In closing, at the end of part B), I summarize the most important lessons from this part of the dissertation, now specifically focusing on the new and most important sanction, the compensation for grievance award.

Part C): Privacy protection in the light of judicial practice

In part A) of my thesis, I demonstrated that the legal development activity of the judicial practice played a significant role in the development of the civil law and labour law practice of personal protection. There is no doubt that the law-making function of jurisprudence prevailed the most in Hungary, which remained without explicit legal rules for a long time, but even after the publication of the first private law code, courts played an important role in the interpretation of the new rules.

It was no different in the case of the second civil code: the editors and the legislator – especially in the area of grievance award – relied heavily on the law-developing work of the courts. In view of all this, in the last major thematic unit of my dissertation, after presenting the history of the formation and development of personal protection, as well as the study of the private law instrument system for the protection of personal rights, I consider it essential – based on the last eight years – to analyse the labour law judicial practice of grievance award.

The chapters of this part of my thesis follow the same structure: firstly, grouped according to personal rights that were violated, I will describe some cases which can serve as examples and important lessons due to the conditions for the admissibility of grievance award or to the aspects evaluated when the courts determined the amount of the award. I will cover the other relevant cases only briefly, to the extent it is relevant to my topic. Unlike the previous two parts of my thesis, I do not allocate the sub-summary for this part at the end of the structural unit, but close

all chapters with a sub-summary, thus not only the presentation of the cases, but also their principle findings and the conclusions that can be drawn from them have been grouped.

Research methodology

The subject of the research naturally determined the research methods. The aim of part A) of the dissertation was to present the history of the formation and development of the two seemingly completely different legal fields, the protection of personal rights and labour law, with which I wanted to prove that these two fields have many common characteristics, and several points of connection can be discovered among them in the course of legal history. The method of this part of my research was legal historical source research: after studying the literature of the given time, the collections of laws, and later the materials related to legislation (law proposals, committee minutes, reports, justifications), as well as the legislation, I linearly presented European and Hungarian private law and labour law privacy protection rules appearing in the codification history.

In part B) of the dissertation, I studied the system of private law instruments for the protection of personal rights based on the current regulations, paying particular attention to the newly introduced sanction, the grievance award. In this part, too, the various bills, justifications and materials from parliamentary committee meetings played a decisive role in the exploration of the codification process, and I also used the available literature. In view of the law-developing activity of judicial practice, I also examined court decisions that aid the interpretation of individual provisions and guide legal practice.

In the course of the research, when analysing the judicial practice of the protection of personality in labour law, among the other sanctions, I scrutinized only the grievance award. The decisions included in my investigation were primarily the decisions of the Curia of Hungary, as well as their "history" in connection with the given case, the first and second instance judgments. The Collection of Court Decisions (hereinafter: CCD),³ where courts must publish their substantive decisions, served as the database for my research.⁴ I selected the decisions on which the analysis is based from the CCD as follows: I entered the term "sérelemdíj" (grievance award) in the search engine and I set the following filters: court – "Kúria" (Curia of Hungary), years: 2014–2022. With these search parameters, 230 hits were

³ CCD is available at the following link: <https://eakta.birosag.hu/anonimizalt-hatarozatok>

⁴ See: Act CLXI of 2011 on the organization and administration of the courts sec. 163–164.

received, from which I selected the cases in which the courts dealt with the claim based on grievance award, regardless of whether the claims were found to be well-founded or were rejected.

III. THE RESULTS AND THE APPLICABILITY OF THE RESEARCH

I summarize the thesis and scientific results of my dissertation in the points below.

1. The grievance award was introduced into the Civil Code as a new sanction and not instead of non-pecuniary compensation.

At first, the legislator envisioned the legal consequences of the violation of personal rights in a "dualistic" model: it wanted to introduce the institution of grievance award in addition to non-pecuniary compensation.

The provisions relating to the compensation for grievance award first appeared in the concept of the new Civil Code (Concept-I.), which would have introduced the grievance award instead of the institution of the public interest fine, which would have been imposed if the conduct that violated the personality was serious and the violator exhibited reprehensible behaviour, but non-pecuniary damages could not be established, or could not be determined in proportion to the severity of the violation.

In the end, the legislator decided to introduce the grievance award not in addition to, but not instead of, non-pecuniary damages. This is proven on the one hand by the fact that the grievance award is not compensation, so the governing provisions were not placed in the law of obligations, in the section on compensation, but among the sanctions for the protection of personal rights. On the other hand, the grievance award differs from non-pecuniary compensation not only in that it is no longer applicable as compensation, but also in that it has acquired a new function.

In fact, the legislator somehow "smuggled" the punitive sanction created in connection with the institution of the public interest fine - and which is difficult to reconcile with the spirit of private law - into the institution of the grievance award, which thus already fulfils a dual function.

2. Legal interpretation difficulties also arose in case law when the grievance award was introduced.

After analysing the judicial practice, it can be seen that at first it was difficult for the courts to completely abandon the practice of non-pecuniary compensation, which appeared in four areas.

- a) The new legal institution requires the use of new concepts, however, the impact of non-pecuniary compensation could be still felt initially as some judgments consistently used the old terminology or mixed it with the new concepts.
- b) Proof of non-pecuniary disadvantage was considered a condition for admissibility of grievance award.
- c) The conditions for admissibility of the damages award and the criteria governing the determination of the amount of the grievance award were not sharply separated.
- d) In the beginning, filtering out trivial cases (involving only peculiar damages) also caused problems.

3. It does not follow from the dual nature of the grievance award that both functions are equally emphasized: the compensation function is the primary one, and the satisfaction is only of supplementary nature. The role of private law punishment may come to the fore if the compensatory function is not applied to an adequate extent, however, grievance award cannot be awarded as a penalty alone.

The function of the grievance award is twofold: the indirect compensation of the violation of personal rights through financial compensation and at the same time a penalty under private law, which provides more effective protection for the person whose personal rights have been violated, since in order to determine the grievance award, the court does not have to investigate the disadvantage that occurred on the part of the injured party, nor does the injured party have to prove it. The compensation function itself has a dual nature: financial compensation serves to reduce the subjective feeling of lack caused by the unlawful behaviour in the injured party, and it also includes the social condemnation of the violation.

The additional function of the private law penalty of the grievance award can be particularly important when, due to reasons inherent in the person of the victim, it is not possible to provide another advantage, or when the disadvantage caused is not significant, but the court wishes to

express the disapproval of society. The function of satisfaction may be more prominent in liability structures based on responsibility, otherwise the degree of responsibility may also play a role in determining the amount of the grievance award.

Both the literature and legal practice agree that the functions of the grievance award must be applied together, they cannot be separated from each other, so the function of the private law penalty cannot be applied alone. In labour law adjudication, the compensation role usually arises from the dual function of the grievance award, it is very rare for the courts to judge the grievance award as a penalty under private law. From my point of view, it is rarely clear from the decisions which function of grievance award is followed as the primary one, however, and this could be important as the application of the two different functions have different dogmatic backgrounds.

4. The condition for admissibility is that the infringer is responsible for the personal injury based on some form of liability. In labour law, the rules of employer's or employee's liability for damages must be applied, depending on who is responsible for the violation. In both forms, the following are the common elements:

- a. connection with the employment relationship;*
- b. illegality;*
- c. non-pecuniary damage;*
- d. the causal connection between the illegal behaviour and the non-pecuniary damage, and – as a negative condition – that*
- e. the offender cannot exempt himself from the responsibility.*

An additional condition for admissibility of the grievance award may be responsibility, which only plays a role in the general structure of the employee's liability for damages.

After analysing the jurisprudence, it can be seen that in the majority of cases, in the justifications of the judgments, the courts do not list and explain in details the individual conditions for the admissibility, they usually only highlight the few elements that were of particular importance in the given case. It can be stated overall that the reasoning of the courts' judgments usually does not examine individually the above conjunctive conditions defined by the legislation but

only as a whole. In my opinion, remedying this would not only make the work of law seekers and higher courts easier, but would also contribute to the development of judicial practice.

5. Due to the diversity of personal rights and the unpredictability of the facts, we cannot set up a comprehensive system of criteria to be taken into account when determining the amount of the grievance award. The CC highlights some of the circumstances to be considered – such as the gravity of the violation, whether it was committed on one or more occasions, the degree of fault, and the impact of the violation on the aggrieved party and his environment; but the law leaves the development of further aspects to judicial practice.

The cases that were subject of my analysis can be divided into two groups based on the aspects taken into account when determining the amount of the grievance award: there were judgments where the courts repeated the rules found in the CC but did not fill it with content. In the other group of cases the courts carefully considered all the circumstances of the case and explained in detail the basis on which the amount of the grievance award was determined.

In conclusion, labour law jurisprudence uses all four guiding aspects named in the CC when determining the amount of the grievance award, and they are interpreted broadly, taking into account all the circumstances of the case, which is of decisive importance from the aspect of the further development of judicial practice.

6. Judicial practice plays an indispensable role in the formation of the institution of grievance award.

In all parts of my thesis, I emphasized the important role of the law-enhancing activity of the courts and proved it at many points.

At this point, I would like to highlight only the two issues in which the legislator gave the courts room not only in the direction of legal interpretation, but also in the direction of law formation.

One of these areas is the inexhaustible "catalogue" of personal rights, and the other is the – also endless – range of aspects to be taken into account when determining the amount of grievance award.

As a conclusion of my dissertation, it can be stated that personal protection – as a result of centuries of development – has made its way in the field of labour law with the introduction of the grievance award and explicit legal rules.

Based on the judicial practice of labour law, from the perspective of the last eight years, the conclusion can be drawn that the grievance award for personal injury has become the dominant instrument in the system of personal protection, but at the same time, in my opinion, personal protection could be enforced even more widely if parties also used other sanctions.

On the basis of civil law practice, it can be seen that, in appropriate cases, also objective sanctions can provide adequate and effective legal protection even in cases where the conditions for admissibility of grievance award are not met.

In my dissertation, I illustrated with numerous examples the obstacles that the introduction of the grievance award caused to legal practitioners, which initially led to some uncertainty in the judicial practice as well. However, after analysing the cases examined in my dissertation, it is clear that the courts have coped with the initial difficulties in a short time, and based on their guidelines, the practice of grievance award is beginning to build up.

Despite this, the courts are not in an easy situation, since the legislator has placed a great burden on them by counting on their legal development activities in several areas of personal protection. Thus, in the future, the courts will also have to meet the challenges posed by the inexhaustible "catalogue" of personal rights, as well as the – also endless – range of aspects to be taken into account when determining the amount of grievance award.

IV. PREVIOUS PUBLICATIONS OF THE DOCTORAL CANDIDATE

IV.1. List of publications related to the area of research

- KRAJECZ Laura: The violation of the employee's personal right to life, physical integrity and health in the light of Hungarian labour law judicial practice with particular regard to the grievance award. *Hungarian Labour Law E-Journal*, 2023/1. (Under publication)
- KRAJECZ Laura: A személyiségvédelem intézményének kialakulása és fejlődése a magyar munkajogban. In: AUER Ádám–BERKE Gyula–HAZAFI Zoltán–LUDÁNYI Dávid (szerk.): *Ünnepi tanulmányok Kiss György 70. születésnapja alkalmából*. Wolters Kluwer, Budapest–Pécs, 2023. (Under publication)
- KRAJECZ Laura: A munkavállaló személyiségi jogainak védelme a munkajogi bírói gyakorlat tükrében II. rész, *Magyar Jog*, 2022/11. 613–624.;
- KRAJECZ Laura: A munkavállaló személyiségi jogainak védelme a munkajogi bírói gyakorlat tükrében I. rész, *Magyar Jog*, 2022/10. 573–583.;
- KRAJECZ Laura: „Fontolva haladás”? – Láttelelet a sérelemdíj munkajogi bírói gyakorlatának alakulásáról. In: ÁBRAHÁM Márta–BERKE Gyula–TÁLNÉ Molnár Erika (szerk.): *Exemplis discimus. Emlékkötet Radnay József születésének 95. évfordulójára*. Kúria–Pázmány Press. Budapest, 2022. 195–219.;
- KÁRTYÁS Gábor–KRAJECZ Laura: A munkára képes állapot értelmezése, különös tekintettel a munkahelyi alkoholos befolyásoltság tilalmára II. rész. *Magyar Jog*, 2021/2., 95–102.;
- KÁRTYÁS Gábor–KRAJECZ Laura: A munkára képes állapot értelmezése, különös tekintettel a munkahelyi alkoholos befolyásoltság tilalmára I. rész. *Magyar Jog*, 2021/2., 86–94.;
- KRAJECZ Laura: A munkavállalók személyiségi jogainak védelme, különös tekintettel a sérelemdíjra. *Munkajog*. 2019/4. 50–64.

IV.2. List of other publications

- KRAJECZ Laura: Munkaügyi nemperes eljárások. In: GELENCSÉR Dániel–REVICZKY Renáta (szerk.): *Polgári nemperes iratmintatár*. HVG-Orac, Budapest, 2019. 579–644.;
- KRAJECZ Laura: ‘Circulus vitiosus’: a szakszervezetek képviseleti joga a munkaügyi perben az új polgári perrendtartás tükrében. In: BANKÓ Zoltán–BERKE Gyula–TÁLNÉ Molnár Erika (szerk.): *Quid Juris? Ünnepi kötet a Munkaügyi Bírák Országos Egyesülete megalakulásának 20. évfordulójára*. Budapest–Pécs, 2018. 225–233.;
- KRAJECZ Laura: Beszámoló a Munkaügyi Bírák Országos Egyesülete jubileumi konferenciájáról és közgyűléséről. *Munkajog*. 2018/1. 69–70.;
- KRAJECZ Laura: A bírói jogértelmezés lehetséges irányai a munkaviszonyban álló vezető tisztségviselő jogi személlyel szembeni kártérítési felelősségének megállapítása során. *Magyar Munkajog E-folyóirat*, 2017/1., 14–22.;
- KRAJECZ Laura: Az Európai Parlament a demokratikus legitimáció tükrében. In: POGÁCSÁS Anett–SZILÁGYI Pál–LÁNCOS Petra–ÁDÁNY Tamás (szerk.): *Jogi tanulmányok tehetségek tollából*. Pázmány Press, Budapest, 2014. 194–199.