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**POINTS OF LAW ON IRREGULARITY  
PROCEDURES CONNECTED TO EU  
SUBSIDY GRANTED FROM THE  
STRUCTURAL FUNDS**

Theses of PhD dissertation

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## **I. Presentation of the research topic**

Analysis of cohesion policy is interdisciplinary, among others jurisprudence, sociology, social science, economics deal with this topic. It is special because it is placed on the border of the above scientific fields, its efficiency and effectiveness can be examined from more aspects. Literature increases mainly on the field of economics, furthermore, analyses in regional development also get a priority role. Based on my experiences more legal research would be necessary at the area of EU subsidy. Many lawyers deal with the financial fraud regarding the EU budget within criminal law, but only a few lawyers examine this field from a civil law and administrative law aspect. If criticism made of the institutional and legal system of regional policy would be taken into account the use of funds could be more efficient, to the benefit of both the financial supporter (including the EU and its members states) and the beneficiaries. During my research I followed the civil law and administrative law direction, my aim is to enlarge the legal literature with a wide and thorough analysis.

The system of EU subsidies is so complex and diverse that the description and analysis of all (legal) rules of fund usage could not have been the topic of a dissertation. Therefore, I limited my research to a smaller area found to be problematic in practice: the **points of law at irregularity procedures**.

In practice, during the actual use of EU subsidies or funds unlawful acts, omissions and acts contrary to the funding contract are usually taken. Funding contracts and laws are breached – negligently or intentionally –, projects are fulfilled against the plans or does not start at all. There are several forms and reasons of breaching a funding rule, which can be committed not only by a beneficiary, but also by the financial supporter. Such breaches and omissions are called irregularity, its examination and legal consequences are specified in law. The irregularity procedure, serving this purpose, is a special procedure

which is governed by civil law and administrative law jointly, in a uniquely mixed manner, the border line is extremely hard to define.

Irregularity procedures may be run only by the financial supporter in case of a breach of law or contract. Should it establish an irregularity, it can apply various legal consequences, a few of them can be considered as incredibly adverse for the beneficiary. Although the examinations show that irregularities are not always attributable to the beneficiaries, the problem has deeper roots. The institutional system and its operation, the legal rules – which all are the state's responsibility – play a great role in the commitment of irregularities, all of them are demonstrated in the thesis. The entire system is criticized generally, serious institutional and regulation defects were found, the remedy of which go very slowly. Important legal questions are raised regarding the irregularity procedures, however the academic life deals much less with it than it would be necessary and many questions are found to be controversial in the legal literature. However, the easy understanding and transparency of the present complex regulation would be particularly relevant in practice, during the actual use of subsidies and when beneficiaries are exercising their rights. With regards to the aforementioned, in the thesis I examine those legal questions that I considered as the most important ones.

**Among the wide range of EU subsidies, my PhD dissertation deals only with the legal questions of irregularities within the European Structural and Investment Funds and other points of law strongly connected to it.** This is the most important fund, the biggest financial support is granted to our country from this fund, this is why I put the focus only to this field. From the aspect of the research, the structural changes of the above funds have a great importance. Nowadays the European Structural and Investment Funds are comprised by the European regional development fund, the European social fund, the Cohesion fund, the European agricultural fund for rural development and the European maritime and fisheries fund. The last two are part of the European Structural

and Investment Funds only since 2014, earlier these were handled separately and the name of the Funds was only Structural Funds.

These two time periods have significant differences in Hungarian law, therefore the rules regarding European agricultural fund for rural development are also examined before 2014, in order to ensure the comparison of the financial periods. Since European maritime and fisheries fund has a less importance in Hungary, my examination does not cover this. However I note that the rules applicable after 2014 and presented in the thesis are also valid for this fund and other subsidies beyond European Structural and Investment Funds, because the relevant law has a uniformed ruling on the use of these funds.

During the examination of the legal questions **I focus only on the financial periods 2007-2013 and 2014-2020**. Hungary joined the European Union on 1 May 2004, in the middle of the financial period 2000-2006. Our country tried to set up a system harmonizing with EU rules, but the legal provisions were not detailed and prompt enough. Both the beneficiaries and financial supporters faced a new system that time that definitely needed changes. Accordingly, I put an emphasis only for the period after 2007, as the legal rules are more detailed that time, furthermore the 2007-2013 financial period has not been closed completely, ex post evaluations and irregularity procedures are still ongoing.

The thesis intends to introduce the specialties of irregularities in another member states as well, however I did not have the opportunity to prepare a thorough analysis about the procedure applied in one or two member states or to make a detailed comparison between specific member states, due to more reasons. On one hand, I have not found foreign literature that would involve very detailed specification of irregularity procedures abroad, beyond the publications I used. On the other hand, my focus was on a few legal questions that could be examined regarding other member states only if I would know the entire general legal regulation – civil law, administrative law, implemented EU

law - of that member states, which is not a possibility. Consequently, the thesis concentrates on legal questions exclusively in Hungarian law.

To sum up, during the research my purpose was a complex analysis of an area that is yet not insufficiently examined from legal point of view, and to increase the literature, to help legal interpretation with a practical summary.

## II. Methodologies applied

In researching the chosen subject, I almost immediately had to confront the fact that the irregularity procedures are fairly unexplored from a legal point of view in both Hungarian and foreign legal literature, they only scratching the surface of information rights. The novelty of the subject was from this viewpoint a clear disadvantage, the research made the application of several methods necessary.

As funding relationships are governed by administrative law and civil law jointly and in a uniquely mixed manner, the research had to be done necessarily by **multi-disciplinary method**. Area of public procurement and criminal law were also involved into the examination. Connected to this, as an unavoidable method, the **normative method** was also applied. EU and Hungarian law were interpreted from a viewpoint of grammar, logic and range of species. I put a great emphasis on ignoring the summary of exact procedure and legal ruling of irregularity procedures (as it would have been a repetition of the law), instead I made my best endeavors to a **critical, dogmatic analysis** of legal instruments and points of law. I drew the academic conclusions as a result of this and the legal case research (**deductive method**). Beyond the interpretation of legal texts, **descriptive-demonstrative analysis** of Hungarian and foreign literature, heavy emphasis was placed on the application of **inductive method**: searching and evaluating the EU and Hungarian judicial legal cases, summarizing the experiences of authorities dealing with the monitoring of exact usage of EU funds (e.g. European Commission, European Court of Auditors, Hungarian Court of Auditors). Interviews made with employees at former associated bodies was a great help to get to know their experiences as well. I also endeavored to make **statistical data collection** and a **comparative analysis** of such data and peculiarities of more EU member states that are in connection with the research topic.

**Historical method** could also not have left out of consideration, as the examination of historical development of irregularities and the expression of irregularity by the **definition analysis method** was also very important.

### **III. Short summary of scientific results, varieties of utilization**

#### Short summary of scientific results

During the research many practical legal questions and four assumptions were examined. These were not only a starting point, but affect several chapters of the thesis, they are in strong connection to each other and consequences can be drawn only if their interaction is also viewed. I summarize the scientific results as follows:

#### **1. Defects in regulation set by the member state for the use of EU funds play a role in committing irregularities.**

A member state has two main tasks in connection to use of EU funds: passing the national legal rules that are harmonizing with EU law and setting up an institutional system that will handle the distribution, the use of money. Since 2004, when Hungary joined the EU, various problems are experienced, but the government does not show a significant intent to remedy them. Such defects also appear in other member states.

The thesis discovered those system errors which influences the number of irregularities indirectly, from the backstage. The problems are:

<b>Legislation problems</b>	<b>Institutional problems</b>
- unclear legal rules - late legislation - implementation and interpretation problems	- continuously changing institutional system - capacity constraints, changes in staff - lack of knowledge and expected education



The above issues could be remedied by simplification of law and with more clear legal rules. In the long run this would add to the effectiveness of EU funds, lower number of irregularities. Changes are necessary not only on a national, but also on EU level as the Committee places the task of determining detailed rules to the member states. More clear EU law is also necessary, the requirements should be better detailed in the EU regulations as EU level legal rules usually do not answer legal questions, in case of a doubt in national law EU law rarely helps.

Beyond the legal regulations the Hungarian institutions, that are handling money arising from EU funds, are also continuously changing, both the number and type of the institutions. This necessarily goes hand in hand with the frequent change of employees. Evaluations shows that preparedness of staff is one of the key factors in a successful development strategy. My opinion is that a more stable organizational structure, that is not changing much from financial period to financial period, would serve a more effective operation of the system. Paying more attention to the stability of human resource and to maintain their competency is also advised. The above definitely influence the irregularity risks. A properly working institutional system is essential in the cohesion policy.

## **2. Administrative law and civil law elements are combined uniquely in the funding legal relationship and in irregularity procedures.**

Administrative law and civil law elements of a funding legal relationship are thoroughly examined in the thesis in general and especially regarding the funds arising from the Structural Funds. My research proved a unique combination of these law areas that was cleared by court only after years, furthermore literature contains also contradictory opinions. Most experts argue the domination of administrative law, however civil law regulation plays an increasing role,

especially since 2014. My table below shows the ruling law in case of each financial period and type of fund:

financial period / fund type	ERDF, ESF, CF	EAFRD	
2007-2013	civil law	Non-tender procedure: administrative law	tender procedure: civil law
2014-2020	civil law	civil law	

In my opinion, the most important scientific result of the thesis is the above separation of law areas and the clarification of remedy options based on the legal cases analysis. The proper determination of the ruling law area has a great significance: this gives the applicable legal rules, clarifies the rights and obligations of the parties, determines the competent court. Exercising right is impossible without it, this is a key issue in practice. Furthermore, it plays a role also in debt collection procedures, which results a very unique procedure in Hungarian law.

### **3. Complexity of law of funding legal relationship and irregularity procedure results in unclear rules and difficulties in legal interpretation.**

This issue had an effect on my entire research. Although the legal uncertainties were dissolved by the end of the research, I still believe that the problem influences all funding rules. The legal system seems to be complex and impenetrable, but not only for the first sight. The varied court practice, the different legal interpretation of courts and the long time that was necessary for passing the guiding Supreme Court decisions all proves it.

The different regulation of each financial period and the changing grouping of funds makes the overview of legal system difficult, moreover this results in various definitions (especially at the area of irregularities), legal procedures, and applicable law. The consolidation of ruling of funds belonging to the

Structural and Investment Funds after 2014 shall be considered as a positive step, as only one system needs to be interpreted.

Another problem affecting the complexity of law is that the relevant law not always comes into effect by the starting date of the financial period, furthermore EU law often consists of too general texts and there are also interpretation problems between EU and national law.

**4. Beneficiaries have remedy options against the irregularity decisions, however law does not exactly mention them and finding these opportunities also need expertise. Consequently, the remedy rights seem to be limited and the opportunity to initiate a law suit, to choose between administrative and civil law suit is hindered for those who are not aware of the court practice.**

The law on use of funds contains only limited opportunities for remedy, therefore at the beginning of the research I felt that there are only a few remedy rights against the irregularity decisions. However, as a result of the legal case research I came to the conclusion that beneficiaries have wider remedy rights than it seems for the first sight. To know the rights, we need to turn to the case law and properly select the ruling law area. However the law does not exactly call the attention to it, but there is an opportunity to initiate a law suit against an irregularity decision, not only the remedy right defined in the law on funding can be followed. Even the personality of the financial supporter seems to be exceptional and higher in hierarchy, there is no second instance authority which would supervise the activity of the financial supporter in merit (as in administrative procedures), courts also have no power to carry out this job, which is a big disadvantage.

I believe that once a lawyer can properly determine the guiding law (civil law or administrative law), it can also define the remedy option. In case civil law prevails, it is essential to look at the relationship of the financial supporter and beneficiary as parties in coordinate position, then the lawyer can come to the conclusion to initiate a law suit and define the legal basis of it. However,

considering the long time of my research I can say that there is not always enough time to analyze the law that deeply.

### Possibilities for using the scientific results

The legal rules on using EU funds, including the irregularity procedures are so complex that anyone can get lost in it, and doubts usually cannot be cleared after a more hours or days long research. However, beneficiaries and lawyers not always have more time to get familiar with the topic. Furthermore, literature often does not analyze the questions that arise in practice, the state and the financial supporters do not support the beneficiaries with written guidance.

This definitely makes application of law difficult, and sometimes the vindication of beneficiaries' rights impossible. My thesis is the result of several years of research, and tries to provide a thorough and practical analysis of the rules, support the practitioners and set out a starting point for further researches.

The results of thesis, especially chapter 5 is **such a unique summary which may be used by literature, appliers of law and legislators**. Case law research and separation of administrative and civil law elements **assist the judges and attorneys**, helps to understand the legal opportunities and **get familiar with the practice of courts**.

The thesis could be also used at universities, on **postgraduate studies** dealing with EU funds since similar summary work cannot be found within the literature or course books. As several system and legal problems are lightened in the thesis, **legislators may also get ammunition to the development of the system**. This would improve our country's appreciation within the European Union, the budget position of the European Union and Hungary and the success of cohesion policy.

#### IV. Own publications related to the PhD dissertation

1. Szandra SZABÓ: *Az uniós forrásból származó támogatások felhasználására előírt ütemterv betartásának jelentősége, különös tekintettel a közbeszerzési törvény szerinti jogorvoslat erre gyakorolt hatására.* In: A hely szelleme - a területi fejlesztések lokális dimenziói, presentations at Fial Regionalisták Konferencia VIII., Széchenyi István Egyetem Regionális- és Gazdaságtudományi Doktori Iskolája, Győr, 2013, 557-564
2. Szandra SZABÓ: *Uniós támogatások visszafizetésének kötelezettsége.* In: conference volume Jogalkotás és jogalkalmazás a XXI. század Európájában, Budapest-Debrecen, 2014, 466-473
3. Szandra SZABÓ: *Az európai regionális politika kialakulása és fejlődése.* In: Tavaszi Szél conference volume, Budapest, 2013, 135-140
4. Szandra SZABÓ: *Szabálytalansági eljárások a gyakorlatban két közreműködő szervezet tapasztalatai alapján.* In: Doktoranduszok Fóruma, Miskolci Egyetem Állam- és Jogtudományi Kar Szekciókiadványa, Miskolc, 2013. november 7., 263-267
5. Szandra SZABÓ: *Judicial practice of the European Union on the financial correction applied in case of irregularity.* In: Tavaszi Szél conference volume, Doktoranduszok Országos Szövetsége, Debrecen, 2014, 260-266
6. Szandra SZABÓ: *A Strukturális Alapok ellen elkövetett közösségi csalás.* In: Miskolci Doktoranduszok Tanulmányai 13, Miskolc, 2014, 449-467
7. Szandra SZABÓ: *Financial correction applied in case of irregularity.* In: Studia Juridica et Politica Jaurinensis electronic journal, 2014.2, 27-31
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9. Györgyi NYIKOS– Szandra SZABÓ: *Szabálytalanságok az EU kohéziós politikában – magyar tapasztalatok és tanulságok*. In: Európai Tükör 2019/1. 67-87
10. *Uniós támogatásokkal kapcsolatos szabálytalanságok kialakulásában közrejátszó háttérfaktorok*. In: Bibó Jog- és Politikatudományi Szemle Folyóirat 2020. évi II. szám (under publication)