

Working paper 5

Empirical Research on Public Opinion about Law in Hungary (2000-2020). An overview

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1. Introduction

Public opinion about law and citizens' attitudes towards law are relatively well-studied areas in Hungarian socio-legal studies. This is mostly due to the fact that, from the 1960s, Socialist legal academia was rather supportive to the sociological study of the legal phenomena in general, including the empirical study of both the knowledge and popular assessment of Socialist legal provisions. Thus a tradition of empirical legal sociology had started to take shape at that time and its scholarly success legitimized the socio-legal orientation in socialist legal scholarship during the last two decades of the Kádár-era.¹ In addition, around the pioneers of socialist legal sociology – with special regard to Kálmán Kulcsár and András Sajó – a lively scholarly community has started to emerge and this helped a new generation to come to the fore in the post-transition period. The presence of this multi-generational scholarly community ensured continuity with regard to methodological orientation and thematic choices.²

This paper, as an introductory step, presents some findings of the WJP Rule of Law Index on the rule of law situation in Hungary as well as discusses some relevant Eurobarometer studies. This may provide a proper context for the following discussion, the backbone of the text, which discusses Hungarian empirical studies about public opinion about law from the 2000s. The beginning of 2010s meant the start of a 'new wave' of empirical socio-legal studies in the Hungarian legal scholarship, so most of the pieces discussed are from this period. The material analysed will be structured around two main points. The first one will be a distinction according to the criteria if a study had a general, or national scope or if it was focused on a specific group of the Hungarian society. Then, the other one will be devoted to the question if a study had a quantitative or a qualitative nature. Hopefully, this grouping may help in making this rather colourful material to be more structured. Even if these studies cannot give a sharp, photo-like picture on the entirety of the Hungarian legal culture, some of its main features will definitely become identifiable and this can help the integration of these insight into the broader framework of CITIZENS LAW project.

¹ For a general summary of these empirical socialist socio-legal studies see: B Fekete and I H. Szilágyi, 'Knowledge and Opinion about Law (KOL) Research in Socialist Hungary' (2017) 58 *Hungarian Journal of Legal Studies* 326–358. For a critical discussion of the roots of Socialist legal sociology see: Z Fleck, 'Szocialista jogelmélet és jogszociológia' (2004) 45 *Világosság* 65–78.

² For a summary of the development of Hungarian empirical socio-legal studies in the post-transition period see: I H. Szilágyi, 'Jogtudat-kutatások a Magyar jogszociológiában a rendszerváltást követően I.' (2021) 17 *Iustum Aequum Salutare* 41–71, I H. Szilágyi, 'Jogtudat-kutatások a Magyar jogszociológiában a rendszerváltást követően II.' (2022) 18 *Iustum Aequum Salutare* 45–73,

2. Outlook: the WJP Rule of Law Index and European Surveys

One of the most authoritative project on global rule of law developments is the World Justice Project that publishes the WJP Rule of Law Index yearly.³ So, if one wants to have a general impression on the situation of rule of law in a given country this index seems to be an ideal starting point. Although this index is dominantly based on expert and practitioner evaluation and, therefore, the public opinion of the given country plays only a limited role in the final assessment – cf. General Population Poll⁴ as a part of the index – its relevance is undeniable. As compared to the Netherlands or Denmark Hungary has scored rather consistently low on this index. While in 2015 Hungary had the 37 place from 102 countries, in 2022 it fall back to the 73 place from 140 countries. In regional terms – EU+EFTA+North America – Hungary has always been ranked on the second last or last place by the index.

This negative assessment has also been echoed by various European Union bodies during the last decade. Serious European Union rule of law concerns have also been expressed since the second Orbán government came into power following the general elections in 2010.⁵ For example, the latest EC Rule of Law Report raised questions on judicial independence, with special regard to the appointment of higher level judges, as well as the doubted the broad use of emergency powers during the pandemic.⁶ So, from an institutional perspective, the situation of rule of law in Hungary have widely been criticized in these years by various international NGOs and EU bodies and, in general, it does not look to be favourable as compared to Western standards.

Interestingly, those Eurobarometer studies that focused on the citizens' attitudes towards justice and judiciary or general rule of law issues show a somehow different picture from the perspective of the Hungarian society. For example, the results of Flash Eurobarometer 385 (2013) on 'Justice in the EU' pointed out that Hungarian citizens' attitudes in basic justice

³ For a general introduction to rule of law indices see: A Jakab – VO Lorincz, 'Rule of Law Indices and How They Could be Used in the EU Rule of Law Crisis' (January 25, 2020). 2019 ESIL Annual Research Forum, Goettingen, 4-5 April 2019. Available at SSRN: <https://ssrn.com/abstract=3513250> or <http://dx.doi.org/10.2139/ssrn.3513250>

⁴ See: <https://worldjusticeproject.org/news/how-does-world-justice-project-create-its-rule-law-index>

⁵ As an early warning see the so-called Tavares report. REPORT on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012).

⁶ European Commission 2022 Rule of Law Report Country chapter on the rule of law situation in Hungary. https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf

and judicial themes did not substantively differ from the general EU average. As for the issue of trust in the national justice system 58% of the Hungarian respondents chose the option 'tend to trust', which is even a bit higher than the 53% EU average.⁷ Or, as for the question whether the "the law is applied to everyone equally and without discrimination" 59% of the respondents agreed strongly or tended to agree while the EU average at this field was 41%.⁸ So, the internal perception of the rule of law situation seems to diverge, at least partly, from the external assessment.

In 2019, the Special Eurobarometer 489 entitled Rule of Law also came up with such findings that can strengthen the earlier Eurobarometer data on the public perception of rule of law issues in Hungary. In general, this report indicates that principles of rule of law has a high importance in the eyes of the citizens (9.17 on a 1 to 10 scale, compare NL 9.52 and DK 9.11),⁹ but it also shows that Hungarians are among those nations who are convinced that the situation of these principles has to be improved in the country (9.03 compare NL 6.63 and DK 5.87). Thus, Hungarian citizens tend to value the principles of rule of law, but they are also convinced that the actual rule of law situation is to be improved.¹⁰ In my interpretation, these data reveal relatively high level of public rule of law commitments, even stronger at some points than the Western average, but also point out a widespread critical approach to the recent developments.

⁷ Flash Eurobarometer 385. *Justice in the EU* (2013) 12.

⁸ *ibid.* 29.

⁹ Special Eurobarometer. *Rule of Law* (2019) 8.

¹⁰ 10.

3. Empirical research on public opinion about law between 2000 and 2020

3.1. Nation-wide quantitative studies

As mentioned, a ‘new wave’ of empirical socio-legal research has begun at the beginning of the 2010s. The new start is partly linked to the simple fact that the four grants of National Research Agency were won by legal sociologists at that time, so Hungarian socio-legal studies found themselves in a relatively favourable financial situation that made it possible to carry out various national surveys or finance costly fieldwork. The first project was that of Gajduschek addressing the general features of the Hungarian legal culture,¹¹ the second one was launched by Fleck to study the everyday use of normative argumentation,¹² while the third one focused on the issue of rights consciousness and it was led by Fekete.¹³ Lastly, a project studying the sociology of certain criminal law provisions, led by Hollán, was also supported by the national authority.¹⁴

3.1.1. How can social psychology explain the popular perception of legal order?

In the 2010s, the very first initiative to study citizens’ attitudes towards the legal order came from a group of social psychology experts, led by György Hunyady professor of ELTE Institute of Psychology, who carried out various national questionnaire surveys on the perception of the law between 2010 and 2013. Although, due to the social psychology nature of these projects, these studies had a wider scope than conventional socio-legal studies – for instance political attitudes were also extensively discussed¹⁵ – they also meant a relevant contribution to the discourse of legal sociology.

The most relevant contributions of these projects were those of Mihály Berkics, who analysed the results of two representative national surveys (N=1000) and a smaller one focused on respondents having a higher education degree (N=240).¹⁶ All these survey concentrated on legal attitudes and they were partially comparable due the similarity of certain question sets, in addition, their methodology was also rather sophisticated as besides

¹¹ *Legal Culture in Hungary* (2012-2016) (NKFIH 105552).

¹² *Normative Arguments in Everyday Use* (2013-2017) (NKFIH 109439).

¹³ *Lack of Rights Consciousness in the Legal Cultures of Central-Europe and Balkans. Myth or Reality?* (2017-2021) (NKFIH FK 125520)

¹⁴ *Novelties of Criminal Law in Legal Consciousness* (2017-2020) (NKFIH 125378).

¹⁵ See for example: P Krekó-A Kende-D Máriási, ‘Átpolitizálódott-e a hejléktalankérdés? Politikai attitűdök és médiareprezentációk’ in Gy Hunyady-M Berkics (eds.), *A jog szociálpszichológiája. A hiányzó láncszem* (Budapest, ELTE Eötvös, 2015) 191–219.

¹⁶ M Berkics, ‘Laikusok és jogászok nézetei a jogról’ in Gy Hunyady-M Berkics (eds.), *A jog szociálpszichológiája. A hiányzó láncszem* (Budapest, ELTE Eötvös, 2015) 142.

conventional, Lickert-scale based attitude questions they also applied situative question sets in which the respondents had to make a decision in a questionable situation exposing a conflict among competing formal and substantive justice claims.

A main issue of these surveys was to make a distinction between attitudes centered on liberal and rule of law oriented ideas and attitudes focusing on substantive justice claims. It was expected that these attitudes would form two distinct factors those of 'liberal rule of law' and 'substantive justice' and they would contrast each other openly. However, and this was surprising even for the author, data and correlations did not enable to create a proper two factor-based factor structure.¹⁷ But, on the contrary, respondents seemingly tended to agree with attitude statements that otherwise contradict each other according to settled legal thinking. For example, in the 2011 survey sample, almost three quarters of the respondents agreed with both statements 'There are some basic freedoms that apply to everyone equally' and 'Only those shall have rights who also fulfil their obligations'.¹⁸ In addition, the smaller sample with highly educated respondents indicated almost the same answer ratio, so this strange phenomenon seemed to be independent of the level of education. Berkics, therefore, argued that public attitudes towards the law were incoherent to a greater extent and this incoherence did not come from the lack of legal knowledge but it is related to other, unidentified social dynamics, if any. The level of education had a different impact on popular legal attitudes, the higher level of education, the higher chance that the respondent will endorse liberal and rule of law oriented attitudes.¹⁹

Another important conclusion of Berkics's studies was that "the relationship to the judiciary and the legal order in general is also a political question".²⁰ The 2011 survey data convincingly proved the voters of FIDESZ – came to power in 2010 – had the most positive view on the everyday work of courts, had the highest level of trust in the legal order in general, and they were the least alienated from the legal order.²¹ In addition, the smaller sample also showed that those who had a legal degree were less alienated from the legal order than other professions. In general, Berkics argued that legal alienation correlated to system justification and belief in a just world negatively while fears had a clear positive correlation to it.²²

When studying the relationship to 'the system' – meaning the actual shape of the socio-political system in the post-transitory Hungary – Berkics revealed an interesting point in macro terms with the help of cluster analysis. Normally, one may suppose that citizens can

¹⁷ *ibid.* 143.

¹⁸ *ibid.* 144.

¹⁹ *ibid.* 147.

²⁰ *ibid.* 154.

²¹ *ibid.* 154.

²² *ibid.* 155.

have two major attitude towards ‘the system’. On the one hand, they can accept it as it is – the attitude of ‘system justification’ – or, on the other, they can reject it as such – the attitude of dissatisfaction –. The first group of citizens are characterised by feeling that they find ‘the system’ relatively just and satisfactory, while the second group is dominated by a strong moral outcry rooted in the perceived deficiencies of ‘the system’.²³ However, and this a new insight in Berkics’s discussion, there is a third attitude set as for the relationship towards ‘the system’, this is cynicism what implies a strong criticism of ‘the system’, but lacks the element of moral outcry so it is based on acceptance or resignation. That is, there is a group of citizens who see well the problems and deficiencies of ‘the system’, however they are willing to accept it and try to use it to find their ways.²⁴ Later, Berkics connected these attitude sets to some formal and substantive justice claims and he pointed out that – for example – the ‘claim of rule of law’ mostly characterized those who accepted ‘the system’ and those who were dissatisfied by it, while the cynical cluster did not endorsed neither the ‘claim of rule of law’, nor substantive justice claims.²⁵

In conclusion, these ‘early’ studies exposed two major feature of legal attitudes in Hungary. First, respondents did not have coherent ideas on the law when formal and substantive justice claims were at stake, so the popular ideas on the law are rather fuzzy and incoherent. Second, legal alienation is a question of political preferences to a great extent, therefore political opinions, with special regard to the sympathy or antipathy to the actual government, seriously determine how someone regards the legal order and legal institutions and how will he or she assess it.

3.1.2. Hungarian attitudes towards law as a statistical factor?

Róbert and Fekete tried to analyse the general structure of Hungarian public attitudes towards law with the help of a factor analysis in 2015. This research was part of a Gajduscek’s general empirical research on Hungarian legal culture. In the frame of this research a national survey on the features of Hungarian legal culture was made in 2015 and this survey also contained those questions on which this study relied. The survey was carried out on a random, representative sample of the Hungarian population (N=1000) and it used standard questionnaire method with personal interviewing.

The aim of Róbert and Fekete was not simply to collect some unique data on the major features of the citizens’ attitudes towards law but they tried to put the empirical results into a comparative context. In order to do so, they relied on the question set of the well-known

²³ M Berkics, ‘Rendszer és jogrendszer percepciói Magyarországon’ in Gy Hunyady-M Berkics (eds.), *A jog szociálpszichológiája. A hiányzó láncszem* (Budapest, ELTE Eötvös, 2015) 353.

²⁴ *ibid.*

²⁵ *ibid.* 358.

Gibson-Caldeira research on the European legal attitudes.²⁶ The use of this question set provided a proper basis for a cross-country comparison of popular legal attitudes. It has to be mentioned that the Hungarian sample for the study was substantially bigger (N=1000) than the national samples used by the Eurobarometer survey (from N=191 to N=313, in sum N=3667 for 12 European Community countries) cited in the paper of Gibson and Caldeira.

With regard to the general structure of Hungarian citizens' attitudes towards law the authors argued: „As a result of exploratory factor analysis on the Hungarian data a structure based on four factors emerges. These four factors explained almost 70% of the total variance of the original eight statements.”²⁷ The first one of them is the factor of legal alienation, explaining 30% of the structure, while the second one is the factor of rule of law. The last two factors has less relevance as for the entirety of the factor structure, they are those of predictability of law and evaluation of individual liberty. That is, in general, legal alienation and the idea of rule of law seem to be such phenomena that have a formative role on the general setting of Hungarian external legal culture.

The comparison of the survey results can help in putting the Hungarian citizens' attitudes to a European scale. The authors pointed out that this comparison of Hungarian data to their 'European' counterparts can be interpreted in two, rather divergent ways. First an optimistic interpretation is possible. This interpretation argues that “an attitude set conforming with the general Western patterns has already emerged in Hungary as the Hungarian data provide the picture of such a legal culture where law-abiding behavior is a real value”.²⁸ But, the results of comparison may lead us to think that “[T]hese results can only indicate that the majority of the Hungarians at least has an idea about what may be the proper, that is, the socially accepted and justified attitudes when talking about their relation to the basic questions of law.” Although scepticism is clearly justified since the impact of the political transition process on the formation of Hungarian citizens' legal attitudes has never been comprehensively studied and this insight is reflected in the pessimistic interpretation, the comparison of Hungarian legal attitudes to those of in other European Community countries showed that there has been no essential divergences in Hungary from the general European patterns.

With the help of the method of variance analysis the impact of socio-economic background variables was also analysed in this study. The findings confirm a main insight of Gibson and Caldeira, namely socio-legal variables have less significance in the formation of attitudes

²⁶ JL Gibson and GA Caldeira, 'Legal Cultures of Europe' (1996) 30 *Law & Society Review* 55–85.

²⁷ B Fekete and P Róbert, 'Understanding Hungarian Attitudes Toward Law in an International Context' *Available at SSRN 3120933* (2018) 11.

²⁸ *ibid.* 10

towards law than it may be expected in general.²⁹ But, the ANOVA analysis also pointed out that from the various variables the level of education as well as income significantly correlate with some of the answers. This correlation is especially relevant in the case of the factor of rule of law. It is argued by the authors that “[T]he respect for and evaluation of rule of law is stronger with those whose level of education is higher than with those who are less educated, and the low income status (in addition to the lower level of education and social position) makes the acceptance of negligence of law in some cases more likely.”³⁰ Thus, data analysis suggests that the level of the support for the ideas of rule of law seems to be dependent on an educational and income status.

3.1.3. To what extent may some ideas about breeding explain punitiveness?

The 2015 comprehensive national survey on the features of Hungarian legal culture made it possible to discuss the phenomenon of punitiveness in more detail, too. H. Szilágyi and Gajduschek analysed the possible correlation between punitiveness expectations and ideas on breeding in 2016. Basically, they supposed that ideas on the nature of breeding have an impact on how a person considers the role of punishment in social life and how serious punishment is expected.³¹ One of the survey items specifically addressed the issue of capital punishment, whether it makes sense and it should be reintroduced into the corpus of Hungarian law, while another one contained four petty crime situations and asked the respondents if the wrongdoer has to be punished or it is satisfactory if he or she makes an agreement with the victim thereafter.³² In addition, the questionnaire also had a specific item asking the respondents’ opinion about the general goal of childhood breeding, with special regard to the problem to what extent should a parent discipline the children.³³

In general, the authors submit that the Hungarian society is pervaded by a high level of punitiveness. In addition, this claim of punitiveness correlates with the ideas about breeding to some extent. However, an earlier hypothesis – from the 70s – asserting that the discipline-focused breeding ideals, leading to formation of an authoritarian personality, explain the general punitive attitudes in Hungary cannot be confirmed by the findings as, it is argued by the authors, the value basis of the Hungarian society has considerably changed during the last fifty years.³⁴ Thus, although ideals of childhood breeding has definitely an impact on punitiveness – those who are more conservative in this issue tend to be more supportive towards capital punishment and also favours punishment in all the four questionnaire situations – they cannot exclusively explain this generally high level.

²⁹ Gibson and Caldeira (n 26) 71–73.

³⁰ Fekete and Róbert (n 27) 14.

³¹ I. H. Szilágyi and GY Gajduschek, ‘Nevelés és büntetés’ in I. H. Szilágyi (ed.), *Jogtudatkutatók Magyarországon 1967-2017* (Budapest, Pázmány Press, 2018) 221–237.

³² *ibid.* 224–225.

³³ *ibid.* 223.

³⁴ *ibid.* 231.

When looking for other components of a more complex explanation the authors set up a new hypothesis. They argue that “the formation of punitiveness likely correlates with the fact that Hungarians are very doubtful about politics (low level of competence and political activity), but also claim a strong state. And, when claiming a strong state, they distrust in judiciary and law such.”³⁵ That is, the high level of punitiveness in Hungary needs a complex explanation and, besides some personal factors, such as personal ideas about breeding, macro factors, like lack of trust and political scepticism, can also have a considerable explanatory role.

3.1.4. What does comparison to a Western country reveal about the main features of Hungarian legal culture?

In 2015, Gajuscsek launched a subproject aiming at mapping the main features of Hungarian legal culture in a comparative context. His goal was to highlight some major components of Hungarian legal culture by comparing the data collected in Hungary with data from Serbia and the Netherlands. The selection of foreign countries was inspired by the so-called ‘most different research design’³⁶ and it implied that the Dutch data – coming from a country being a well-established democracy and having an enduring tradition of rule of law³⁷ – was used as a quasi-control group for the two East Central European countries being different at many points but also sharing a common post-communist past. The questionnaire survey was carried out in Hungary in November 2015, while the same survey was made in the Netherlands and in Serbia at the beginning of 2016. All the national samples were representative as for the adult population (N=1000 in Hungary and in the Netherlands, N=1080 in Serbia) and CAPI, CAWI and PAPI methodologies were applied for interviewing.

The survey covered eight main components of legal cultures: (i.) previous experience with law, (ii.) trust in the legal system, (iii.) readiness to turn to law (legal mobilization), (iv.) the relationship of law to the interest of the public and that of the elite, (v.) the relation between law and morality, (vi.) the conflict between individual rights and social order, (vii.) the relationship between law and state, and (viii.) the potential of law to mitigate or exacerbate conflicts.³⁸ The comparative analysis of data collected pointed out various important conclusions. First of all, it showed that the features of Hungarian and Serbian legal culture have a high degree of similarity except the issues whether law has to defend individual rights or social order and the potential of law to settle or exacerbate conflicts. Conversely, the features of Dutch legal culture contrast the post-communist legal culture in a rather apparent way. Second, in the eyes of Gajuscsek, most of the results strengthen the

³⁵ *ibid.* 234.

³⁶ GY Gajuscsek, ‘Wild East and Civilised West? Some Indicators of Legal Culture in Hungary, Serbia, and the Netherlands’ (2019) 60 *Jahrbuch für Ostrecht* 168.

³⁷ Terms used by the author see: *ibid.* 168

³⁸ For details: *ibid.* 171–178.

conclusion that the decisive factor behind the differences between Western and post-communist legal culture is “the way the law and the legal system are conceived.”³⁹ In Hungary, and in Serbia, too, “the law is generally considered as a product of the state, a suspicious entity that is not to be relied on by members of the ordinary public.”⁴⁰ That is, distrust, and thereby legal alienation, too, have long been coded into these legal cultures and this goes back to some modern historical experiences – Habsburg rule and Soviet rule – generally alienating people from state and public power.⁴¹

Because of this general setting of Hungarian legal culture Gajduschek is also very sceptical with regard the proper functioning of rule of law in the post-communist context. He asserts as for the Hungarian context “the rule of law was conceived as a product of transition, which itself became rapidly perceived as illegitimate associated with injustice.” In addition, he also notes that “[I]nstitutions linked to rule of law have been blamed for the inability of the state to clamp down on notorious law-breakers, resulting, among other things, in widespread social malaise.”⁴² Thus, the broad legal alienation in the Hungarian legal culture and the controversies of the post-communist transition process created such an intellectual climate that raises serious doubts on the successful implementation of rule of law commitments in a longer run.

3.1.5. Institutional trust explained: a stronger impact of procedural fairness expectations?

The relevance of institutional trust from the aspect of legal compliance in Hungary was analysed by Boda, a leading Hungarian political scientist, in 2017. His study relied on a longitudinal analysis of European Social Survey data, from 2002 to 2014. As a theoretical framework Boda referred to the well-known ideas of Tom Tyler⁴³ and argued that institutional trust may have a crucial role in the effective functioning of the legal order besides sanctions and punishments traditionally regarded as main motivations of compliance. In addition, Boda also explains, following Tyler’s insights, that procedural fairness in administrative procedures can be a major condition of the formation of institutional trust.⁴⁴

³⁹ *ibid.* 179.

⁴⁰ *ibid.* 179–180.

⁴¹ For a detailed discussion see GY Gajduschek, ‘The Opposite is True...as Well. Inconsistent Values and Attitudes in Hungarian Legal Culture: Empirical Evidence from and Speculation over Hungarian Survey Data’ in B Fekete and F Gárdos-Orosz (eds), *Central and Eastern European Socio-Political and Legal Transition Revisited* (Frankfurt am Main, Peter Lang, 2017) 49–51.

⁴² Gajduschek (n 36) 183–183.

⁴³ TR Tyler, *Why People Cooperate: The Role of Social Motivations* (Princeton, Princeton University Press, 2010).

⁴⁴ ZS Boda, ‘Bizalom, legitimitás és jogkövetés’ in I H. Szilágyi (ed.), *Jogtudat-kutatások Magyarországon 1967-2017* (Budapest, Pázmány Press, 2018) 264–265.

With the help of the analysis of ESS data Boda points out some general conclusion on nature and level of institutional trust. First, relevant data clearly show that the various levels of trust in different state institutions strongly correlate in Hungary, although their particular level obviously differ, that is, one may talk about a general level of institutional trust in Hungary.⁴⁵ Second, data analysis also reveals that the trust in legal order is higher than the trust in other state or political institutions, so people tend to trust in the law in general as compared to state bodies.⁴⁶ Third, as compared to the similar Western European data it is apparent that the average level of institutional trust is lower in the Central and East European region, however, intra-regional comparison also indicates that institutional trust is a slightly higher in Hungary than in other regional countries.⁴⁷ Boda submits that this difference of Western European and Central and Eastern European levels of institutional trust can be explained by some macro-level variables, especially the GDP per capita has a strong explanatory value.

Boda also points out that these data manifestly question some settled scholarly narratives emphasizing that Hungarian law has been pervaded by legitimacy deficit and lack of trust for a longer while.⁴⁸ Even if these sceptical narratives cannot be refuted entirely as the historical formation of the modern Hungarian legal order differs from the general Western pattern at many points,⁴⁹ Boda calls for a deeper consideration of the role of trust in the formation of contemporary legal attitudes. In his words: “I would submit as a hypothesis that the Hungarian legal culture reflects our general social situation and, therefore, normativity based trust, rooted in democratic legitimacy, and legal compliance also appear in it, although not as strongly as westward from us and also contrary to the fact that the Hungarian legal culture is also pervaded by other influences such as disbelief in the state and efforts to push forward and rationalize self-interest.”⁵⁰

3.1.6. Lawsuit pessimism in Hungary? How do people assess their own chances in a lawsuit?

Legal mobilization was another issue of quantitative studying of the Hungarian legal culture. The before mentioned national survey on the features of Hungarian legal culture, in 2015, also aimed to reveal some of citizens attitudes towards legal mobilization. One question of this survey specifically addressed this issue as the participants were asked if they are engaged in a lawsuit how likely is that they would win this case against various respondents,

⁴⁵ *ibid.* 268.

⁴⁶ *ibid.* 269

⁴⁷ *ibid.* 270.

⁴⁸ See for example: A Sajó, ‘Az állam működési zavarainak újratermelése’ (2008) 55 *Közgazdasági Szemle* 690–711.

⁴⁹ For details: F Hörcher and T Lorman (eds.), *A History of the Hungarian Constitution. Law, Government and Political Culture in Central Europe* (London-New York, I. B. Tauris, 2019).

⁵⁰ Boda (n 44) 277.

provided that they are right in the given case. The possible respondents in this hypothetical lawsuit were (i.) the National Tax Authority, (ii.) the police, (iii.) a bank, (iv.) the boss at the workplace, (v.) a politician, (vi.) a rich businessman, (vii.) a neighbour. The results were analysed by Róbert and Fekete and they argue that a so-called “lawsuit pessimism” is to be detected in the Hungarian society.

Interestingly, the respondents were the most confident in their chances to win a case against their neighbours (3.36) – a five point Likert scale was used to measure individual attitudes – while they were very sceptical when a case against a politician was at stake (2.17). If we disregard the assessment of a case against a neighbour, the other six averages on the chances to win varied from 2.78 (the boss at the workplace) to 2.17 (a politician) which indicates that the citizens were rather sceptical about their chances in front of a court although it was supposed that they were right in their cases.⁵¹

In order to explain this manifest pessimism ANOVA variance analysis was made with regard to some socio-demographic variables and some other factors, such as previous legal experience and institutional trust. From the various background variables, again, the level of education and income had some relevance. A strong positive correlation between the level of education and a more positive assessment of the chance to win a case was detected and this was the same for income. Interestingly, the place of residence also had an impact on the view on chances as those who lived in Budapest saw higher chances to win a case as compared to those who had a residence in the countryside. In addition, positive correlation was also revealed in some cases with regard to the factors of personal satisfaction and interpersonal trust. Lastly, it has to be mentioned that the fact that someone has already read the text of a bill or participated in a court case also positively correlated with the assessment of individual chance before the court.

The issues of institutional trust came up in an unconventional way. Obviously, there is a strong positive correlation between institutional trust and the assessment of chances to win. The higher is the general trust in institutions, the more confidence in reaching personal goals with the help of a lawsuit. However, the level of institutional trust also depends on the question how someone sees his or her personal chances in a lawsuit. If someone is sceptical about his or her chance against a given institution in a lawsuit, his or her level of trust in the same institution will also be considerably decreased. This is most striking in the case of having a lawsuit against a politician. The difference of the averages of the level of trust in the Parliament between those who suppose that they would win and those who think they have no chance is 1.16 (3.77-2.61), which is quite a considerable variance.⁵²

⁵¹ For details see: P Róbert and B Fekete, ‘Ki ellen nyerne meg Ön egy pert?’ (2017) 13 *Iustum Aequum Salutare* 83.

⁵² *ibid.* 90–91.

3.1.7. How can the study of rights consciousness contribute to learn more on attitudes towards law?

A comprehensive research project addressing the state of rights consciousness in Hungary was carried out by Fekete, Bartha, Gajduscek and Gulya from 2017 to 2021. The core of this project was a comparative questionnaire survey, but quantitative research tools – professional interviews and focus group study – were also applied. The survey research was made in Hungary, the Netherlands, and Serbia (sample N=800 in each country) – similarly to Gajuscek’s choice in 2015 – in order to enable the research team to interpret the Hungarian results in a broader context. From the aspect of public opinion on law the analysis of data on legal mobilization may be of a crucial importance.

In order to measure people’s ideas why or why not to start a case if someone has an ordinary conflict with a legal relevance eight items in the questionnaire addressed some positive and negative incentives of legal mobilization. The first four variables were summarized as positive legal mobilisation and they addressed the citizens’ attitudes about (i.) the competence of authorities, (ii.) the peaceful conflict settlement, (iii.) the unbiased nature of decisions, and (iv.) the predictability of procedures. On the contrary, negative legal mobilisation was created from attitudes towards (i.) the lack of efficiency in enforcement, (ii.) the length of procedures, (iii.) the costly nature of procedures, and (iv.) complexity and incomprehensibility of procedures.⁵³ The average of these questionnaire items meant the value of both positive and negative mobilization.

The analysis of Hungarian data pointed out a rather unconventional phenomenon. The average of positive legal mobilization was 3.31, while the same for negative legal mobilization items was 3.08. That is, Hungarian citizens perceived both positive and negative incentives to start a claim with almost the same intensity “which, at the aggregate level, suggests uncertainty, and also implies that legal mobilization also depends on subjective factors.”⁵⁴ That is, beliefs about the functioning of judiciary does not seem to be decisive in legal mobilization in Hungary. As compared to the attitudes of the citizens of the Netherlands and Serbia the average of positive legal mobilization is the lowest in Hungary, and this may imply that the Hungarians are the most sceptical with regard the result of judicial procedures relatively.⁵⁵ Lastly, for Hungarian citizens the predictability of procedures is the strongest positive incentive to start a lawsuit, while the length of procedures is the most deterring factor at the same time.

⁵³ B Fekete-A Bartha-GY Gajduscek-F Gulya, ‘Rights Consciousness in Hungary and Some Comparative Remarks. Could an Increasing Level of Rights Consciousness Challenge the Autocratic Tradition?’ (2022) 47 *Review of Central and East European Law* 238.

⁵⁴ *ibid.* 238.

⁵⁵ *cf. ibid.* 239.

Some socio-demographic variables have a clear impact on legal mobilization attitudes. For instance, employment status is relevant as entrepreneurs value more the competence of judiciary, while they are also more aware the lack of enforcement and the high costs. As for gender, data analysis showed that “women take the factors that deter people from pursuing a remedy through courts more seriously”⁵⁶ than men. And, age also has an influence on these attitudes as the older someone in Hungary, the more likely he or she recognise the positive features of judicial procedures. Lastly, data analysis also confirmed that any kind of personal experience with law can have a positive impact on attitudes toward legal mobilization.⁵⁷

3.1.8. Does a dramatic change in criminal law provisions influence the level of punitiveness?

The issue of punitiveness as a societal attitude was also studied by Hollán and Venczel in 2018. The authors’ research design targeted specifically the problem of age limits of criminal responsibility and through analysing the popular understanding of this particular legal issue they were able to reach some general conclusions on punitiveness and the impact of opinions on it. The survey was made as a part of an omnibus survey and the sample (N=1200) was representative as for the adult population. The respondents had to assess four specific situations in which the wrongdoers’ age varied from 15 to 13. Criminal law provisions dramatically changed in 2012 as the Criminal Code opened up the possibility to sentence someone being younger than 14 years old in specific cases – for instance murder or robbery – if he or she was able to recognize the consequences of the act.⁵⁸ Beforehand, the age limit of criminal responsibility was 14 years in general, with no exceptions, and this was a constant element of Hungarian criminal law from the early socialist years. So, the introduction of this new provision has definitely marked a breach with the settled tradition.

Basically, from the four situations set forth by the questionnaire⁵⁹ in three cases the wrongdoer can be held criminally liable, although in the third one he or she is only 13 years old, in the light of the new Criminal Code provisions. The respondents were asked in each four cases whether – according to the valid criminal laws – the wrongdoer is punishable for his or her act and whether he or she should be punished for what he or she did. With the help of this phrasing the question set was particularly able to measure both the level of

⁵⁶ *ibid.* 241.

⁵⁷ For details see: *ibid.* 240–241.

⁵⁸ M Hollán and T Venczel, ‘Age Limits of Criminal Responsibility for Property Offences. A New Empirical Research on Legal Consciousness in Hungary’ (2019) 60 *Hungarian Journal of Legal Studies* 383.

⁵⁹ (1) A 15-year-old knocks down their classmate and takes their cell phone, worth 55,000 HUF. (2) A 15-year-old takes their classmate’s cell phone worth 55,000 HUF. (3) A 13-year-old knocks down their classmate and takes their cell phone worth 55,000 HUF. (4) A 13-year-old takes their classmate’s cell phone worth 55,000 HUF. *ibid.* 384.

knowledge of new criminal law provisions as well as the level of punitiveness with regard to younger wrongdoers in the Hungarian society.

Data analysis showed important conclusions. First, the authors argue, that “[T]he willingness of Hungarian society to punish is high with regard to age-limits of criminal responsibility for crimes against property. (...) 79% of respondents say that every case should be punished.”⁶⁰ Thus, there is a general tendency of punitiveness that pervades the Hungarian society. Second, they also submit that knowledge of specific legal provisions, such as the age limit, is strongly influenced by the respondents’ opinion, thereby their attitude towards punitiveness. In the authors’ words: “In all four situations, opinions and the supposed regulation coincided in the case of half of the respondents (50%), while case-independent criminalization is only 16% and general decriminalization is negligible (1%). Two thirds of the respondents have not only schematic knowledge but also schematic opinion.”⁶¹ Lastly, it has to be mentioned, too, that the logistic regression pointed out the place of residence – settlement size in the questionnaire – correlated with the opinions in general. And, it can be argued, that the residents of countryside tend to have a more conservative view on punitiveness as “Hungarian society has a high willingness to punish crimes against property, especially among those living in the countryside.”⁶²

3.1.9. How did legal attitudes change from 2010 to 2018?

H. Szilágyi, Kelemen and Hall carried out, perhaps, the most impressive nation-wide survey research on various attitudes determining the view on the legal order in 2018. Their first data collection was done in 2010 than they had another ‘turn’ of data collection, with almost the same questionnaire in 2018.⁶³ This approach made it possible to make a longitudinal comparison. Therefore, not only a static picture could be made about the citizens’ attitudes towards law, but some dynamics of transformation could also be identified. The questionnaires contained 35 items, some of them was composed of more sub-elements, and they touched upon issues as – among others – media consumption, punitiveness, regime criticism, system justification, alienation, and socio-demographic variables.⁶⁴

As descriptive findings data analysis pointed out various features of Hungarian attitudes towards the legal order. First, a higher level of punitiveness was confirmed as “[A]n overwhelming majority of Hungarians believe that harsher court sentences deter crime.”⁶⁵

⁶⁰ *ibid.* 396.

⁶¹ *ibid.*

⁶² *ibid.* 395

⁶³ I H. Szilágyi-László Kelemen-Sam Gilchrist Hall, *Changing Legal and Civic Culture in an Illiberal Democracy. A Social Psychological Survey of the Hungarian Legal System* (London, Routledge, 2022) 37–41.

⁶⁴ See for details: *ibid.* Appendix. 105–119.

⁶⁵ *ibid.* 95.

However, interestingly, as for capital punishment the majority (54%) agreed that it is right to abolish it.⁶⁶ The phenomenon of criminality is mostly explained by “inner, subjective factors”,⁶⁷ and external causes such as poverty or the lack of social stability has only a marginal explanatory role. Second, although a great number of respondent was critical with the justice system, “50% believe that it is good idea to take legal action, while 59% of them claim that court sentences are acceptable.”⁶⁸ The most pervasive criticism of the justice system were its injustice and favouritism.

The longitudinal frame of this study enabled the research team to analyse how these attitudes changed in an 8 years term. In addition, as 2010 was the year when the second Orbán-government came to power and thereafter the FIDESZ won two general elections (2014, 2018) this longitudinal analysis could also shed light on the issue how the formation of this new political regime influenced public thinking about broader legal issues. The analysis pointed out certain interesting conclusions that do not fit into a very schematic understanding – awaiting a general decrease of institutional trust and strengthening of punitiveness due to the autocratic affections of the subsequent Orbán governments – of these changes. For example, the support for the reintroduction of capital punishment apparently weakened, contrary to the previous two-third of respondents who backed it only 54% supported it in 2018. Or, in general, punitiveness seems to decrease, as prohibitions and threat of punishment had less popular support in 2018 than in 2010.⁶⁹ On the other hand, although the general trust in the justice system still rather low, the ratio of those who believe that judiciary is free from political influence and are also convinced that lawsuits can have positive results slightly increased.⁷⁰ That is, the authors conclude that “most Hungarians perceive the changes that have taken place since 2010 positively.”⁷¹ But, they also point out that the assessment of these changes is very polarised due to the personal political worldviews, and, “indeed, the gap between two radically different perceptions of the institutions of the civil society and the rule of law in Hungary – one classically liberal in nature and one tending toward the authoritarian – became significantly more pronounced between 2010 and 2018.”⁷² That is, public attitudes towards law seems to be tied, at least partly, to political preferences with special regard to the support or rejection of the Orbán government.

⁶⁶ *ibid.*

⁶⁷ *ibid.* 96.

⁶⁸ *ibid.*

⁶⁹ *ibid.* 97.

⁷⁰ *ibid.* 98.

⁷¹ *ibid.*101.

⁷² *ibid.*102.

3.2. Studies focusing on specific groups and using quantitative methodology

3.2.1. Some early examples of group studies with quantitative tools

Quantitative research tools were also applied to study the legal attitudes of some specific groups for instance students in general,⁷³ or law students specifically in 2000s. One may even argue that law students are certainly the most studied subgroup in the Hungarian society as their socio-demographic background and their attitudes, including general and specifically legal ones, have already been studied many times by socio-legal scholars. Even if these studies were not limited to attitudes towards law, but they had a much broader scope, H. Szilágyi argues that some influences on the formation of legal attitudes can easily be identified. Not surprisingly, legal education as such has a prejudice taming impact⁷⁴ and it also contributes to the strengthening of trust in judiciary in general.⁷⁵ Thus, education at law faculties definitely led to a stronger identification with the values of rule of law by the law students.

3.2.2. Why do people comply with the provisions prohibiting smoking in the bus and tram stops?

At beginning of the 2010s the Budapest Transport Company introduced a new provision that prohibited smoking around the bus and tram stops. Accordingly, only five meters away from a public transport stop could someone smoke, if closer this would clearly mean a breach of this rule. Surprisingly, many of the passengers complied with this rule in a shorter while, and Gajduscek found this situation proper to measure and assess the main motivation behind obeying legal provisions. In order to do so, he prepared a brief questionnaire focusing on the issue of compliance and hired a company to make this survey around some busy bus and tram stops in Budapest. The empirical research was carried out at the end of March 2013 by four interviewers and 517 respondents replied to the questionnaire. Only those were asked, who seemingly complied with this provision, meaning that they were smoking and they stood at least five meters away from a public transport stop.

A main finding of this survey was that although 60% of the respondents agreed with this prohibition of smoking, 57% of them said that without the threat of being sanctioned he or she would disrespect this rule. That is, the threat of a negative consequence was the major motivation behind this widespread compliance.⁷⁶ This point is strengthened by another

⁷³ For details see: H. Szilágyi, 'Jogtudat-kutatások a Magyar jogszociológiában a rendszerváltást követően I.' (n 2) 57–58, 60–61.

⁷⁴ H. Szilágyi, 'Jogtudat-kutatások a Magyar jogszociológiában a rendszerváltást követően II.' (n 2) 48.

⁷⁵ *ibid.* 50.

⁷⁶ GY Gajduscek, 'Miért engedelmeskednek az emberek a dohányzást tiltó jognak?' in I H. Szilágyi (ed.), *Jogtudat-kutatások Magyarországon 1967-2017* (Budapest, Pázmány Press, 2018) 287.

finding of data analysis, when the questionnaire asked the same people if they still comply with the same provision in case no sanction is attached to it, almost their two-third (67.3%) gave negative answers.⁷⁷ That is, the fear from negative consequences seems to be the decisive motivation for all those who comply with this new rule.

In addition, the questionnaire also raised the problem of individual motivation of compliance. Here, by analysing some data related to certain alternatives of motivation (eg. fear from punishment or a formal respect for law as such) Gajduscek set up two factors that explain the 70% of the entire variance. The first one is related to all motivations that are connected to the formal law (fear from being punished, the general respect for law as such, and agreeing with the provision), while the second one refers to moral convictions such as the shame if others see that someone disrespects a legal provision.⁷⁸ In conclusion, Gajduscek argues that the fear from being sanctioned is a real motivation to comply with legal provisions in Hungary and, therefore, Tyler's ideas on the relevance of procedural fairness in the effective functioning of the legal order can only be applied with some scholarly reservation in Hungary, and perhaps in Central Europe, too.

3.3. Studies focusing on specific groups and using qualitative methodology

3.3.1. The use of qualitative tools: the latest development in Hungarian socio-legal studies

The application of qualitative research tools has been the latest development in Hungarian socio-legal scholarship. This novel methodological orientation had some precursors in Hungarian legal anthropology, around the 2000s, when H. Szilágyi and Loss applied participant observation to research the legal status of Roma minority in Hungary.⁷⁹ But, a conscious use of qualitative research tools to study attitudes towards law has only started in the second half of 2010s, mostly by efforts of Fleck and his research group to discuss the role of law, or legal arguments, in ordinary normative argumentation.

3.3.2. What may life story interviews tell about Hungarian legal consciousness?

The project of Zoltán Fleck's research group represented an entirely new understanding of socio-legal studies in the country's academic community. This novelty had both methodological and substantive implications too. As for the substance, the research group intentionally tried to go beyond the legacy of positivist legal sociology which has been dominant since the Socialist period, relying instead on the intellectual framework of postmodern North-American critical legal consciousness studies.⁸⁰ Their methodological

⁷⁷ *ibid.* 288.

⁷⁸ *ibid.* 294.

⁷⁹ For example: I H. Szilágyi and S Loss, 'A cigány per' (2001) 6 *Beszélő* 94–100; I H. Szilágyi and S Loss, 'Opening Scissors. The Legal Status of the Gypsy Minority in the Nowadays Hungary' (2002) 33 *Rechtstheorie* 483–494.

⁸⁰ Z Fleck et al, *A jogtudat narratív értelmezése* (Budapest, ELTE Eötvös, 2017) 11–99,

choices convincingly reflected this orientation, as the research group applied the so-called life story interviews. Essentially, they tried to capture the reflection of the law in individual experience and the relation of this experience to the formation of personal identity. In sum, the members of the research group conducted 39 life story interviews, which meant about 150 hour recorded material and almost 1500 pages of transcription. The great majority of the interviewees were younger or older people from Budapest, and most of them lived in relatively marginalised conditions.

The members of the research group analysed the transcripts from three main perspectives: the impact of history on legal consciousness, the connection between vulnerable identities and legal consciousness, and the role of legal consciousness at workplaces. A major finding of this study is that people's thinking about law does not contain a coherent set of legal concepts, if any. Thus, the reflection of "the law" is rather fragmented, fuzzy, and distorted. In addition, the language of rights does not exist in the everyday life: normally, rights are not referenced if an ordinary conflict is at stake.⁸¹ So it is very difficult, if not impossible, to make any generalised statements on legal consciousness in Hungary.

However, the analysis of the interviews also pointed out that relevant factors can be identified that may be decisive from the aspect of the formation of individual legal consciousness as part of personal identity. These factors are not fixed and static by their nature, rather they should be interpreted as the possible ends of various scales. These scales appear as follows. (i.) Whether someone has a personality that is focused on consensus-building or if they have a more conflict-oriented mind set. (ii.) Whether someone prefers to think in principles or if they have an attitude oriented toward technical legal details. (iii.) Whether someone is conscious of the existence of legal relations or not. (iv.) Whether someone is an experienced player in legal affairs or if they have no such personal experience at all. (v.) Whether someone is able to think in terms of community if legal issues are at stake or if they prefer acting individually. (vi.) Whether someone has a rich life experience or not. Lastly, (vii.) the nature of personal historical experiences may also have an impact.⁸²

3.3.3. Can survey findings on rights consciousness be confirmed by focus groups?

A new research project that addressed the issue of rights consciousness in Hungary was launched in 2017. Besides a quantitative part – questionnaire surveys in Hungary, Serbia, and the Netherlands – it also applied qualitative methods. In order to have a better vista on the findings coming from quantitative data collected in 2019, a smaller focus group research was also carried out in 2020. This focus group study aimed at clarifying certain points of the previous questionnaire surveys, for instance whether the intention of people to start a case is considerably diminished if one of parties in the conflict is a private or state institution.

⁸¹ *ibid.* 215.

⁸² *ibid.* 344.

However, besides helping in the interpretation and understanding of some earlier findings, the focus group discussions also offered important insight with respect to legal alienation.

First of all, the analysis of the focus group discussions pointed out that the group members were generally reluctant to turn to law in case of an ordinary conflict. The various legal ways of dispute settlement were not among the primary ways of problem-solving. Instead, the making of personal agreements and professional consultations were mentioned as primary strategies. In fact, turning to law and more specifically invoking certain rights were regarded as an *ultima ratio* approach. In cases where nothing else works to reach a proper agreement, people may be willing to consider the legal ways of settlement. Interestingly, many of them explained that the reason behind their reluctance towards law was due to the perceived financial costs of a legal procedure, including attorney fees. Thus, these focus group discussions indicated that people may generally be alienated from the law in ordinary conflicts, and that they prefer to solve their cases without involving official, legal procedures. However, the law may also have a role in an escalating debate as *ultima ratio*.⁸³

Transcript analysis also showed that the focus group members almost entirely lacked the linguistic capacity to properly describe their cases. References to specific rights were extremely rare, and the conscious use of some basic terms – for instance: contract, obligation, or right – cannot be observed in their stories. That is, it seems that in ordinary discussions the law loses its subtlety and professional character, and it becomes similar to any other, so to say, normal spheres of life.

⁸³ B Fekete, 'Rights Consciousness in Hungary: What is Behind the Numbers? Lessons of a Focus Group Study' in R Cotterrell – H Hyden – D Nelken – U Schultz (eds.): *Remembering Reza Banakar* (Oxford, Hart 2022) (forthcoming) 6–7.

4. Legal alienation: a main source behind Hungarian attitudes toward law

The previous discussion points out that one of the main themes of Hungarian socio-legal studies has certainly been legal alienation. Even though some pieces did not refer directly to it, their conclusions describes such phenomena that can easily be associated with legal alienation in general, or with one if its specific appearances.⁸⁴ This part of the paper aims at discussing legal alienation in the light of the previous studies in more detail.

First, it has to be mentioned, that the research of legal alienation did not begin in the 2000s but even socialist legal sociology were studying it rather extensively. In the second half of the 80s, András Sajó carried out a comprehensive research programme on the state of the Socialist Hungarian legal culture, with special regard to the role of rights. Sajó's findings were supported by an empirical questionnaire survey (N: 1650) managed by the Centre for the Study of Mass Communication in 1986. In addition, prior to the empirical research phase Sajó also did rather impressive theory building in his seminal work entitled *Látzat és valóság a jogban* (Illusion and Reality in Law).⁸⁵ In sum, not surprisingly, Sajó's findings suggested that rights had almost no role in everyday social life, and this indicated quite a high level of legal alienation. The main points of Sajó can be summarised this way: (i.) the social value of rights was not recognised by the majority of people; (ii.) the claiming of rights had a dominantly pragmatic character, if any, in mass thinking, so rights were mostly understood as tools in a tactical social game about pursuing individual interests; and (iii.) an alienated and disenchanted attitude boosted the popular understanding of law in general, meaning that the Socialist legal culture was characterised by a deep disregard for the law in general.

As for the reasons for this distorted mind set regarding rights, Sajó highlights two strongly interrelated major points. First, the existence of parallel normative orders and non-legal justification mechanisms, such as interpersonal agreements, justice or equity claims, or references to various customs. These oriented people towards other ways and strategies of conflict settlement, thereby diminishing the impact of formal legal mechanisms. Second, the authoritarian and paternalistic quality of the Socialist political system made the legal order rather dysfunctional, as it was openly corrupted by political or administrative decisions representing narrow group interests in many cases. This strong impact of the authoritarian

⁸⁴ On the various aspects of legal alienation see: M Hertogh, *Nobody's Law. Legal Consciousness and Legal Alienation in Everyday Life* (London, Palgrave, 2018) 55–60.

⁸⁵ A Sajó, *Látzat és valóság a jogban* (Budapest, KJK, 1986).

political sphere seriously threatened the impartiality and predictability of the legal order and the work of the judiciary, which also contributed to the strengthening of legal alienation.⁸⁶

Sajó's findings are highly relevant even today since they show that legal alienation has been a characteristic and a rather stable component of Hungarian legal culture already for 40 years or even longer, since there is no reason to suppose that something that characterised the Hungary legal culture in the 70s and 80s would not at least partially exist in the 60s or 50s. All this to say that it is a phenomenon having strong historical roots which has had a comprehensive and long-lasting impact on Hungarian popular attitudes. So, legal alienation is certainly neither a product of the political transition starting in 1989, nor of the emergence of the Orbán government in 2010. Instead, it has much deeper, so to say historical roots in the attitude set of Hungarian society.

Second, the project of Róbert and Fekete to map the attitudes towards law as a statistical factor, in 2018, can also contribute some insights to the study of legal alienation. Their results suggest that the attitude set of contemporary Hungarian legal culture is dominantly centred around the values of legal alienation and rule of law. That is, legal alienation has a major role on the formation of public attitudes towards law, while the ideas related to the rule of law also have a stronger, but apparently weaker if compared to legal alienation, impact. The other two factors, predictability of law and valuation of individual liberty had less explanatory value in the factor structure, and this implies that these values have only a secondary role in the Hungarian external legal culture. Nevertheless, and this has to be emphasised, popular ideas on the rule of law have necessarily been embedded in a context deeply pervaded by legal alienation.

Therefore, it can be argued that contemporary Hungarian external legal culture is pervaded by legal alienation in general. However, the ideas related to rule of law also have a meaningful impact on popular attitudes. In macro terms, the variables of level of education and income can have a considerable impact on the attitudes related to legal alienation and rule of law. Furthermore, it can be said that higher social status in terms of both education and income may contribute to the strengthening of rule of law attitudes as opposed to legal cynicism and alienation. That is, this study concluded, the weakening of legal alienation in Hungary is primarily a question of social transformation with special regard to the further strengthening of the middle class.⁸⁷ So, it seems, that the transformation of attitudes towards law cannot be separated from general developments in social stratification. In other words, rule of law as such, and public attitudes toward the idea of rule of law especially, are

⁸⁶ For all these details see: A Sajó: *A jogosultság tudat vizsgálata* (Budapest, MTA Jogtudományi Intézet, 1988), for a critical discussion: B Fekete, 'Rights Consciousness in the CEE Region: Lesson from Earlier Studies' (2019) *60 Jahrbuch für Ostrecht* 187–190.

⁸⁷ Fekete and Róbert (n 27) 17–18.

not simple questions of formal legal techniques and their national implementation, but they are also strongly connected to specific social preconditions.

Third, the study of Fleck's research group on the role of law in ordinary normative argumentation pointed out that legal alienation strongly determines the ordinary life of marginalised people in Hungary, although there are also some factors that may contribute to the formation of a more legally conscious personal attitude. All in all, a special constellation of external factors seems to be needed to overcome the weight of general legal alienation in this segment of society. Thus, individual identity may have a role in taming legal alienation and inspiring a more legal conscious behaviour, but there are no direct effects in this process, most of the influences are indirect and blurred.

Fourth, both quantitative and qualitative data confirmed the finding that any kind of personal experience with legal issues can have a positive impact on attitudes towards law, so it can contribute to the decreasing of legal alienation. For instance, Fekete, Bartha, Gajduschek, and Gulya argued stemming from their results from a survey study on rights consciousness that "personal legal experience in the broadest sense, from the reading of a legal text to participation in a legal case, also has a positive impact on the rights consciousness of Hungarians. That is, the world of legal 'things' has a more negative image among those who have never ever interacted with it."⁸⁸

This transformative influence on legal alienation by previous legal experience was confirmed by some findings of focus group studies from the same research project as group discussions also revealed one remarkable point. It seems that previous personal legal experience can soften legal alienation and can bring people closer to the world of law. From the three focus groups, there was one which was composed of such members who had previous legal, specifically court experience in small claims or divorce cases. Obviously, the narratives on their own stories varied to a great degree, but they also converged on two points. First, they all agreed that their court hearing was a relatively pleasant experience. Although they were rather afraid when entering the court building, the hearing was a relatively positive event, and some of them even also praised the personality and behaviour of the judge. So, their attitude towards courts and thereby towards the law as such definitely changed in a positive way. Second, even though the level of narrative capacity on legal issues was rather low in general, it can also be observed that those who had previous legal experience had a more refined linguistic and narrative capacity, and their 'legal vocabulary' was also richer. Thus, perhaps strangely, encountering the law may change people's attitudes towards a less legally alienated direction – at least in small claims and divorce cases.⁸⁹

⁸⁸ Fekete et al (n 53) 242.

⁸⁹ See: Fekete (n 83).

Fifth, the longitudinal research carried out by H. Szilágyi, Kelemen, and Hall sharply pointed out that political preferences have a crucial impact on attitudes towards the legal order as such. Since the Hungarian society has been deeply divided since the start of the political transition process, and this division has just become broader since 2010, when the second term of the Orbán government began. Intuitively, it can be argued that the more someone disagrees with the ruling political party, the more he or she is sceptical about the functioning of the legal order. That is, distrust in the Orbán government, a pro-opposition political position, also implies a more legally alienated mind set, as legal order and judiciary seem to be nothing else than a tool in the hand of government.

In sum, the earlier empirical studies, among others, sharply pointed out that legal alienation is a major characteristic of Hungarian legal culture, and, therefore, it also has a great impact on legal consciousness in general. Legal alienation can be detected at every segment of legal culture – from value convictions to institutional trust or legal mobilization – therefore, it has a general impact on citizens' attitudes. And, this is definitely not a new phenomenon inspired by the events of 1989 or 2010, but it has strong historical roots that goes back to the socialist era, or even to earlier periods.⁹⁰ However, these studies also revealed, that various factors can have an impact on the actual setting of legal alienation:

(i.) it is strongly connected to social stratification, as the wealthier and more educated segments of the Hungarian society tend to be less sceptical to law as other segments,

(ii.) individual identity formation has a role in the emergence of individual legal consciousness and certain external factors – such as a consensus building personal character or an inclination to think in principles instead of casual assessments – may inspire the formation of such a personal identity that reject legal alienation to some extent,

(iii.) any kind of previous experience with law, from reading some legal provisions to participating at court hearings, has a positive influence on legal attitudes and this may make people less alienated from law as such,

(iv.) the impact of political preferences cannot be disregarded in the Hungarian case as Hungary society is deeply divided by politics. A general political support for the actual government may imply a higher level trust in the functioning of the legal order, with special regard to the judiciary and *vice versa*.

⁹⁰ See: E Tárkány Szücs, *Magyar jogi népszokások* (Budapest, Akadémiai Kiadó, 2003).

5. The relevance for CITIZENS LAW

The above discussed findings of Hungarian socio-legal scholars may be relevant for the CITIZENS LAW project from various perspectives. Many components of their outcomes and conclusions seem to be fit into the bigger puzzle of CITIZENS LAW and the CITIZENS LAW project framework also enables us to study all these findings in a very different context. To show, how do all these Hungarian socio-legal findings are relevant, their relevance for three project research sub-questions will be discussed first, then it will also be analysed how do they can contribute to a better understanding of those underlying mechanism that shape and explain people's perception of law.

5.1. Relevance for project research sub-questions except the underlying mechanisms

The conceptual paper of the project divides the main research question⁹¹ into four sub-questions. This first one is: “How do people in the Netherlands, Denmark and Hungary experience the law in their everyday life?” A brief look at the previous Hungarian results can convince the reader that these findings have a lot to say about this question. First of all, almost all the pieces show to the same direction as for legal alienation. Although scholars tried to observe and measure it with the help of various methodologies and in the frame of diverse research designs it is clear that the Hungarian citizens are rather alienated from the law as formal set of compulsory rules.⁹² In addition, a certain level of distrust toward the institutional background of the law is also detectable, although its precise level is debated as some authors argue that the level of institutional trust is higher than it is expected in the region,⁹³ while other put more emphasis on the pessimism that surrounds the institutions, with special regard to judiciary.⁹⁴ Lastly, it has to be mentioned that for a great part of the population law is not simply about providing a fair setting and procedure to settle personal and business affairs, but they also need the existence of tangible consequences, with special regard to punishment and sanctions.⁹⁵ Thus, people's experience with law seem to be centered around the feeling of being alienated, a higher level of institutional distrust, and a demand for stronger and visible consequences, especially sanctions.

⁹¹ *How do citizens' everyday experience of law in the Netherlands, Denmark and Hungary shape the level of public support for the legal foundations of the rule of law; and how can we incorporate these findings into a new governance toolkit to strengthen the rule of law in Europe?* M Hertogh and B Fekete, CITIZENS LAW Project Initiation Document: Analytical Framework 4.

⁹² Fekete and Róbert (n 27), Gajduschek (n 36), Fleck et al. (n 80).

⁹³ Boda (n 44).

⁹⁴ Róbert and Fekete (n 51).

⁹⁵ Gajduschek (n 76), Hollán and Venczel (n 58).

The third research sub-question exposes the problem “how do the social foundations support or undermine the legal foundations of the rule of law?” I think, Hungarian socio-legal studies have a lot to say as for this issue. Broadly speaking, one may even argue that Hungarian experiences during the last thirty years can serve as a laboratory for scrutinizing this issue. The first point is obvious if checking relevant Hungarian findings, social foundations – whatever this term may mean precisely – do play a crucial role in the proper functioning of rule of law. Certain studies supports the position that social stratification may have a role in shaping attitudes towards rule of law in a positive way, with special regard to the level of education and income,⁹⁶ while other studies suggest that social marginalization, in the broadest sense, contributes to a serious alienation from the law and legal institutions, and this obviously hamper the realization of the advantages of rule of law in social terms.⁹⁷ Another point where some studies converge is that the personal experience with the law may play a role in the formation of a less alienated, and more legally oriented attitude set.⁹⁸ That is, the popularization of basic legal ideas – such as formal equality, rights, or rule of law – via various channels of media, including the social media platforms, the accessibility of the otherwise very closed institutions, most importantly, the courts, and the broadening of *pro bono* legal assistance, they all may contribute to the formation of such a social climate that can contribute to the strengthening of the social foundations of rule of law.

The fourth research sub-question is seemingly future-oriented as it asks “how can we incorporate these findings into a new governance toolkit to strengthen the rule of law in Europe?” At this stage of the project no one can give a definite answer to this question, but the Hungarian findings allow to formulate a preliminary point. Irrespectively of the precise nature of this ‘governance toolkit’ one ‘thing’ seems to be rather sure, Hungarian experiences teach us that basic legal education and a broad popularization of elementary legal ideas can contribute to the formation of such a popular attitude set that can strengthen the social foundations of rule of law.

5.2. Underlying mechanisms explaining people’s perceptions of law and the Hungarian findings

The second sub-question focuses on those “underlying mechanisms that explain positive and negative perceptions of law”. Later these mechanisms are specified and four of them are mentioned explicitly: (i.) substantive justice, (ii.) procedural justice, (iii.) punitiveness, and (iv.) responsiveness.⁹⁹ The Hungarian findings may also show how some of these ‘underlying mechanisms’ function in a specific national context.

⁹⁶ Fekete and Róbert (n 27).

⁹⁷ Fleck et al. (n 80).

⁹⁸ Fekete et al (n 53), Fekete (n 83), Gajduschek (n 36).

⁹⁹ Hertogh and Fekete (n 91) 20–25.

Punitiveness. A common point of all those studies that touched upon criminal law that the level of punitiveness is relatively high in the Hungarian society.¹⁰⁰ It seems that Hungarian citizens expect an efficient ‘answer’ from the legal order if something is done that breach a criminal law provision. Although the Hungarian Criminal Code was changed in order to make it possible to punish wrongdoers younger than 14 years in some specific and rather serious cases, the respondents would broaden this provision to embrace even those who committed not as serious petty crimes, too.¹⁰¹ Moreover, a considerable segment of the Hungarian society – a bit less than the majority – still supports the reintroduction of capital punishment into the corpus of Hungarian criminal law,¹⁰² although it would be a breach of international law obligations. In addition, as the existence of sanctions also plays a considerable role in complying with legal provisions, so procedural fairness claims seems to have less relevance in Hungary, this may also strengthen indirectly that the Hungarian society has a general punitive attitude.

Responsiveness. There were no specific studies on responsiveness carried out in Hungary, however some findings may contribute some insights to this issue, too. Some studies touching upon the issue of legal mobilization pointed out that people are generally reluctant to bring their cases to the court. They may be generally pessimist about their chances to win a case, even if they think they are right,¹⁰³ or they may see rather negatively the functioning of the judiciary from the aspects of either the length of procedures or the high costs of procedures,¹⁰⁴ and – through the lenses of responsiveness – these may all imply that, to some extent, the legal order cannot adequately respond to their needs and demands. Because they find hopeless to start a case, or they find a procedure to be too costly.¹⁰⁵

Procedural justice. Western scholarly literature regards procedural fairness as major precondition of the proper functioning of the legal order. Further, the phenomenon of procedural fairness is deeply related to institutional trust, as institutional trust can only develop if legal institutions meet procedural fairness expectations.¹⁰⁶ However, the Hungarian findings point out that procedural fairness expectations, although they certainly have an impact on the people’s attitudes towards law,¹⁰⁷ do not have a comparable influence on legal attitudes. In Hungary, and perhaps in Central Europe, sanction and

¹⁰⁰ H. Szilágyi and Gajduscek (n 31), Hollán and Venczel (n 58), H. Szilágyi et al. (n 63).

¹⁰¹ Hollán and Venczel (n 58).

¹⁰² H. Szilágyi et al. (n 63).

¹⁰³ Róbert and Fekete (n 51).

¹⁰⁴ Fekete et al (n 53).

¹⁰⁵ Fekete (n 83).

¹⁰⁶ Boda (n 44).

¹⁰⁷ *ibid.*

punishment, the 'darker side' of law, have more significance in motivating compliance with the law than fairness expectations.¹⁰⁸

Substantive justice. The issue of substantive justice was studied by Berkics explicitly from 2011 to 2013. In the 2011 survey they used four different situations – the dilemma of a teacher, a judge, a football referee, and a CEO – in order to measure if the respondents tend to solve the given situation with help of formal argumentation, rules have to be complied with in any event, or with regard to substantive justice claims, namely the sense of justice. In the cases of the judge and the football referee the respondents tended to follow the rules, while as for the dilemmas of the teacher and the CEO the sense of justice overruled the formal considerations.¹⁰⁹

The findings of Berkics points out at least one relevant conclusion. Substantive justice claims have their own place in the attitude set of citizens, even if people are generally reluctant to make them explicit,¹¹⁰ however their impact seems to be strongly situation dependent. That is, certain circumstances may invoke a stronger influence of these claims and they may even be capable of overruling formal, rule of law rooted considerations.

¹⁰⁸ Gajduschek (n 76).

¹⁰⁹ Berkics (n 16) 149–150.

¹¹⁰ Fekete (n 83).

Summary of Hungarian research on attitudes towards law

Author & Year (of fieldwork)	Method	Participants	Theme	Main findings
Berkics 2011-2013	survey	N=1000x2 N=240	the perception of the legal order	1. no coherent ideas about the law in public opinion 2. political preferences have a clear impact on legal alienation
Róbert-Fekete, 2015	survey	N=1000	the structure of legal attitudes (factor analysis)	1. legal alienation and rule of law play a major law in Hungarian legal attitudes 2. education and income have an impact
H. Szilágyi-Gajdusчек, 2015	survey	N=1000	relation of ideas on breeding to punitiveness	1. ideas on breeding cannot completely explain the high level of punitiveness
Gajdusчек, 2015/2016	(comparative) survey	N=1000 (HU, NL), 1080 (SRB)	mapping main features of Hungarian legal culture in a comparative context	1. differences are determined by “the way the law and the legal system are conceived.” 2. implementation of rule of law is doubtful due to the legal culture

Boda, 2017	survey (ESS 2002-2014)	ESS respondents	the role of procedural fairness in institutional trust	1. the role of trust is overlooked when assessing Hungarian legal culture
Róbert-Fekete, 2015	survey	N=1000	legal mobilization	1. lawsuit pessimism determines Hungarian legal culture 2. a strong positive correlation between institutional trust and the assessment of chances to win
Fekete, Bartha, Gajduschek, Gulya, 2019	(comparative) survey	N=800 (HU, NL, SRB)	rights consciousness	1. both positive and negative incentives to start a claim were perceived with almost the same intensity 2. personal experience with law can have a positive impact
Hollán-Venczel, 2018	survey	N=1200	punitiveness	1. high level of punitiveness 2. knowledge of specific legal provisions is strongly influenced by the respondents' opinion
H. Szilágyi, Kelemen, Hall, (2010), 2018	(longitudinal) survey	N=1000	the Hungarian legal culture	1. high level of punitiveness

				2. legal attitudes correlate to political preferences (gov. vs. opp.)
Gajduschek, 2013	non-representative survey (people around tram or bus stops)	N=517	why do people comply with the rule prohibiting smoking in public transport stops?	1. sanction is the real motivation
Fleck et al, 2016	life-story interviews	N=39	legal consciousness	1. legal alienation determines legal consciousness 2. the 'language of rights' does not exist
Fekete, 2020	(on-line) focus group discussion	N=3x4	rights consciousness	1. turning to law is ultima ratio 2. no linguistic capacity to explain their cases except those, who had a case in front of a court



