‘BRIDES’ IN THE COURTROOM – REFLECTIONS ON THE HUNGARIAN RESPONSE TO RELATIONSHIPS OF CONVENIENCE*

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The image evoked by the title ‘brides’ in the courtroom captures more than a symbolic scene – it reflects the tension between criminal law’s aspiration to address complex phenomena and its limited capacity to do so effectively. The offence of abuse by establishing family relationships embodies this dilemma: a provision that raises a number of dogmatic questions, intended to deter relationships of convenience, yet producing only a handful of cases and primarily affecting those in vulnerable situations who enter such arrangements for modest material gain. The low number of proceedings and the inconsistencies in judicial interpretation all suggest that criminalisation may not be the most appropriate instrument in this context. Rather than ensuring genuine prevention, the provision risks extending the reach of criminal law beyond what its fundamental principles would justify.

Framing the analysis from a broader perspective, the main challenge in legislating criminal law provisions on irregular migration[2] *is the extent to which a state invokes substantive and procedural criminal law instruments and institutions as a solution to sanction illegal acts. The use of instruments of criminal law as the ‘sanctioning keystone’*[3] *of the legal system as a whole is justified only when other legal instruments no longer seem sufficient to eliminate or prevent the infringing condition; therefore, it is necessary to be careful not to reduce criminal law into a ‘basic stone’ (Tóth 2014, 451). In this context, Mihály Tóth also points out, in connection with the application of the ultima ratio principle, that overcrowding the Criminal Code with administrative norms is extremely dangerous, as, in this way, the effectiveness of criminal law is inevitably undermined and loses its authority even where it would be indispensable (Tóth 2011, 440).*

Within this conceptual framework, the present paper turns to the Hungarian legal response to relationships of convenience, arguing that criminalisation is not necessarily the most appropriate or effective remedy and that overreliance on a penal solution risks placing vulnerable individuals – most often women – in the position of perpetrators,

* DOI 10.21868/PGnG.2023.2.7.

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SUPPORTED BY THE ÚNKP-22-4 NEW NATIONAL EXCELLENCE PROGRAM OF THE MINISTRY FOR CULTURE AND INNOVATION FROM THE SOURCE OF THE NATIONAL RESEARCH, DEVELOPMENT AND INNOVATION FUND.

[2] In view of the fact that the European Union has recently preferred the term ‘*regular*’ and ‘*irregular*’, we will also use these terms in our explanation. Jeney 2016.

[3] *András Szabó* coined the now-classic expression in his minority report to the Decision 23/1990. (X. 31.) AB (Constitutional Court) on the abolition of the death penalty.

rather than addressing the underlying structural and socio-economic factors behind the phenomenon.

Keywords
relationships of convenience, marriage, abuse by establishing family relationships, criminal law, criminal offence

Introduction

In Hungary, the criminal offence of abuse by establishing family relationships, which is one of the crimes against public administration, was introduced by Section 355 of Act C of 2012 on the Criminal Code (hereinafter the Criminal Code), which entered into force on 1 July 2013. This criminal act is the first that criminalises marriage of convenience and also the establishment of other false family relationships. It is stated that a person who has attained the age of eighteen years, for the purpose of obtaining material gain, establishes a family relationship or consents to a declaration of paternity with full effect, solely for the purpose of the issuance of a residence permit is guilty of a misdemeanour and shall be punished by imprisonment for up to two years, unless a criminal offence of greater gravity is established.

The present paper aims to investigate the issues surrounding the aforementioned criminal offence, as well as explore further possibilities for action concerning relationships of convenience. Our discussion concludes with observations that underline the importance of choosing the means of responding to a complex phenomenon.

1. The criminal offence of abuse by establishing family relationships

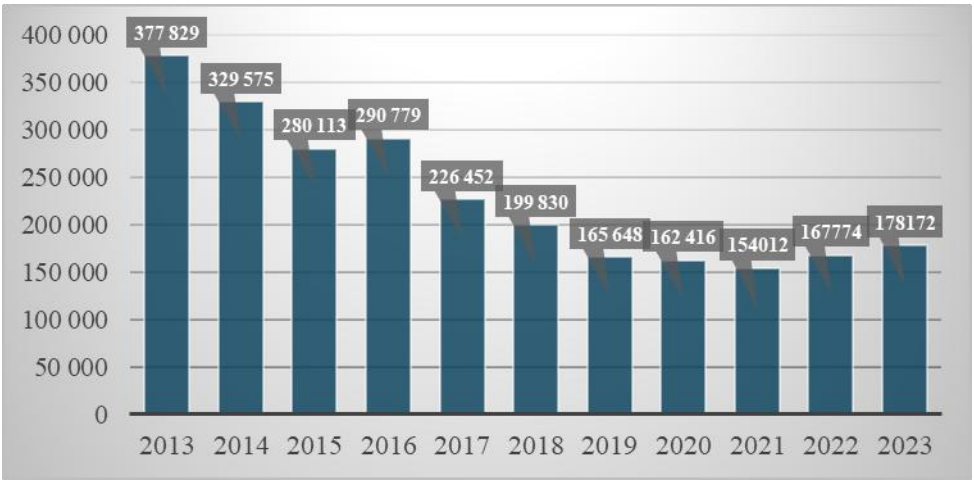
The abuse by establishing family relationships constitutes a distinct criminal offence in nature compared to the 'classic' response to irregular migration, given that it is an adequately extended form of the crimes traditionally associated with the phenomenon, such as smuggling and human trafficking. Additionally, certain criminal offences – particularly those related to the border fence – have been created specifically for addressing the phenomenon, the abuse by establishing family relationships falls into the third 'category' of the instruments set up in Hungary in relation to the criminalisation of irregular migration forms part of the criminal acts sanctioning actions facilitating illegal stay as well as third persons involved (Kanyuk 2019, 99).

As the *Ministerial Reasoning* to Section 355 of the Criminal Code points out, the criminalisation has indeed been made in line with the above, due to the proliferation of the conducts covered by the criminal offence, which is also associated with an increased security risk, given that foreigners may travel more freely, often without controls, to other Member States of the European Union with the entitlements acquired in the ways described in the criminal act, and *effective action* against such abuses *is expected to be taken through the instruments of criminal law* (Ministerial Reasoning 2012).

Similarly, the authors of the literature on the subject had hoped that the possibility of criminal sanctions would act as an effective deterrent from establishing relationships of convenience (Bojcsev 2012a, 348; Töttős 2016, 322), but it must be noted that their *hopes* in this respect – at least in this form – *have not been fulfilled*. Looking at the

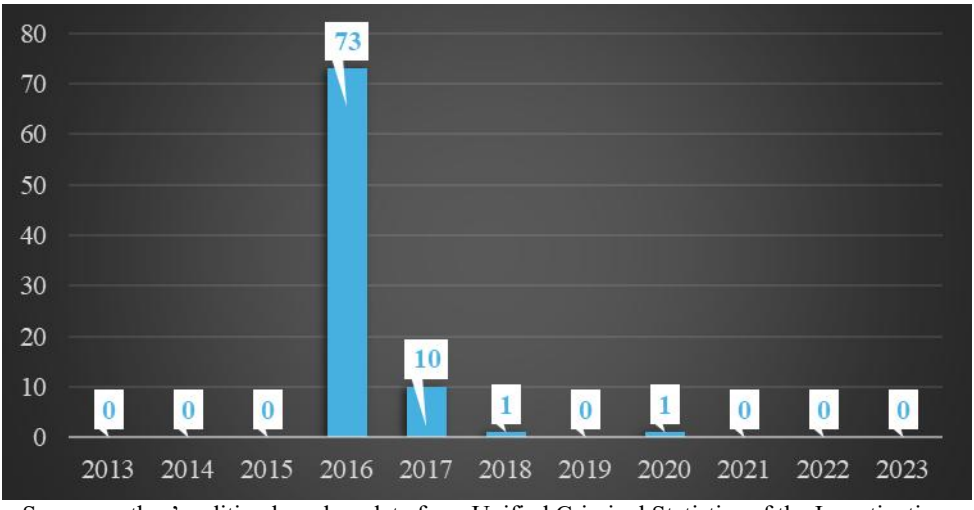
statistics of the criminal offence, it must be concluded that its emergence fell below expectations, even though the number of registered crimes has been showing a downward trend (see Figure 1). A total of eighty-five criminal acts of abuse by establishing family relationships have been registered so far (see Figure 2).

Figure 1: Registered criminal offences in total (2013–2023)



Source: author's edition based on data from Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service, registered criminal offences in total

Figure 2: Registered abuse by establishing family relationships (2013–2023)



Source: author's edition based on data from Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service, registered criminal offences in total

However, the low level of practical relevance cannot be considered exceptional for the states that have introduced a similar criminal offence. This is well exemplified by the case of *Latvia*, where the criminalisation of the discussed phenomenon was also introduced in 2013, and, similar to Hungary, there were numerous difficulties in the application of the criminal act. Surveys reported very few cases, and there were also significant differences in the penalties imposed. In addition, there was an additional judicial problem when part of the criminal act was not committed in Latvia or when the act was merely an attempt (Eurojust 2018, 41).

In this regard, it is worth noting that it might lead to inaccurate results and overly exaggerated conclusions if we were to attribute any kind of decisive – or even fate-determining – significance to the relatively minor statistical presence of the criminal offence in question. Nevertheless, it is also important to note the results of the *file research*,[4] which show that the eighty-five criminal offences of abuse by establishing family relationships registered to date actually involve five cases of varying scope. Moreover, the legal facts, by establishing the 'brides' as the primary figures in the cases as perpetrators and by determining the objective as the pursuit of material gain, have effectively rendered it impossible to hold the 'husbands' accountable. This is indicative of an inability to devise an effective solution in view of the extensive phenomenon of conflicts of interest, which is growing in novel ways, at least when assessing the elements of the legal facts.

In this context, it is necessary to note that, according to the latest report on the analysis completed by the European Union Agency for Criminal Justice Cooperation (hereinafter Eurojust) in 2020 (Eurojust 2021), regarding the criminal offence of abuse by establishing family relationships, Hungary is among the less than 50% of the EU Member States where the establishment of relationships of convenience is criminalised at all, although previous surveys also indicate that some Member States in this category criminalise the phenomenon in different ways, focusing on organisers when appropriate.[5]

2. Issues and remarks regarding Hungarian 'brides'

When considering the potential actions in Hungary, first of all, it is essential to highlight that the strong Hungarian presence in this phenomenon presents a significantly different scenario compared to neighbouring countries in the West and East, as well as more distant states. Typically, Hungarian citizens are not the organisers, nor are they the applicants for residence permits, and even the territory of Hungary is not the place where the acts are committed.

It is the *'brides'* who typically represent the 'Hungarian element' in the formula, and while it is undeniable that these cases cover other crimes such as the abovementioned human trafficking (Europol 2014), it is particularly relevant to our topic that, unfortunately, Hungarian ladies are also at the forefront regarding the 'classic' – therefore not the form of migration-related, as outlined above – relationships of

[4] The file research covered all criminal cases pending in Hungary for the criminal offence of abuse by establishing family relationships from the date of entry into force of the Criminal Code until the date of submission of the relevant research request, 19 January 2023.

[5] This may be seen, for example, from the French reply below: European Migration Network (2014).

convenience. For example, according to the UK's statistics from 2012, Hungarian citizens were the second most involved in cases of suspected marriage of convenience after British citizens (UK Home Office 2013, 45). The tendency is reported to continue (BBC 2016; Bury Times 2014), and the future does not look any brighter, with the European Union Agency for Law Enforcement Cooperation (hereinafter Europol) predicting an increasing number of relationships of convenience.

As for the examined question regarding the criminal offence of abuse by establishing family relationships, it must be highlighted that, contrary to the original purpose of the criminal act, it lays the foundation for the accountability of a typically *vulnerable group of persons* – as perpetrators – who are actually the 'targets' of the phenomenon and do not consider the legal consequences and is therefore not well suited to its function in its current form. Furthermore, by making the 'brides' the central actors in the cases and by making it impossible to prosecute the 'husbands', determined by the purpose of obtaining material gain, the criminal offence under discussion does not have an effective 'answer' to the phenomenon of relationships of convenience, which is, along the lines established above, very widespread.

In our view, in order to effectively deal with this phenomenon, it would be advisable to combat the problem at an early stage by raising the awareness of the authorities involved in the establishment of relationships of convenience, especially marriage officials. This is the so-called *'destructive strategy'*, which has been applied, for example, in Lithuania, in agreement with the Eurojust and several Member States, and which has had a positive impact (Eurojust 2018). Nevertheless, a similar, well-established procedure is the specific *signalling* role and powers of the civil registry authorities towards the competent authorities, as in the United Kingdom or Austria, combined with applying the necessary immigration policing and administrative and criminal sanctions (Bojcsev 2012b, 132). This would be of particular importance in the case of Hungary because, the fact that neither the registrar nor anyone else examines the intentions of the persons appearing before them at the time of the marriage is a typical problem concerning marriages of convenience, and, from a civil law point of view, the marriage of kind referred to is not a ground which affects the existence – or even the validity – of a marriage (Curia 2013, 80).

In addition to the above, it would also be of paramount importance to *raise awareness* of this *group of offenders,* warning typical 'targets' of the dangers assessed by the law and beyond. Moreover, the lack of information is not only a problem for the perpetrators of the criminal cases described. These assumptions may be reinforced, for example, by examining, after brief online browsing, the threads seeking advice from the Internet community on the issue of marriages of convenience and the responses to them.[6] It is also noteworthy that for certain types of marriage of convenience, other

[6] First, as an example, the opening of the thread 'The risks of the marriage of convenience?' is cited, which describes a case when someone would marry a Turkish university student who *'...has some problems with his visa...'*, on the advice of his lawyer – *'...should marry a European girl and his problem is solved...'* –, and in return would receive five hundred euros until the future divorce. Among the respondents some criticise partly the size of the promised amount, partly the civil law problems (the difficulty of the divorce) and the complications of the expected checks (such as: *'There is a risk that you can be easily caught during an interview when you receive questions about all the details of your*

Member States of the European Union already have a special society and website to help 'brides-to-be'. A great example of this may be seen in France, for citizens involved in so-called grey marriages (Marriage gris).

3. Issues and remarks regarding the Hungarian regulation

It is important to emphasise, as already discussed above, that the basic principle that criminal law, without over- or underestimating its role, should be a subsidiary, ultima ratio in the system of legal liability (Nagy 2008, 71). Its social function is to require the legislator to resort to criminalisation only in cases supported by empirical data, when other means of action, i.e., a more moderate intervention such as administrative sanctions, are not sufficient to protect the interests of society.

In the present case, when examining the elements of the phenomenon being considered, it is highly doubtful that the *issues primarily related to immigration policing* should or could be solved through criminal law since, although the range of evidence that may be used in this way is broadened and, of course, more significant operational tools are available, overcoming difficulties that are otherwise 'commonplace' in the field of immigration policing is *not easier in criminal proceedings either.* This finding is further underlined by the fact that the criminal offence under discussion, in its present form, is *not very well suited to its purpose* since the legislator intended to punish primarily a specific category of abuses linked to the issue of residence permits. Furthermore, as already stated above, by 'classifying' these people, who are tempted to carry out complex transactions for a small amount of money, which in most cases means survival for them, as perpetrators, these vulnerable, exploited people are also threatened with criminal sanctions.

The danger to society of the acts committed by perpetrators, the magnitude of the benefits they obtained and the risk of becoming entangled in the labyrinths of legal consequences, the dogmatic characteristics of the criminal act of abuse by establishing family relationships – it should be mentioned for instance, the consequences of dual purpose, including the specific examination of the purpose to obtain material gain and the resulting divergent case law, which seeks to resolve the dilemmas of the criminal offence in practice, or the assessment of the elements of the criminal conduct (Kanyuk 2019, 110) – all point to the fact that the creation of a criminal act is *not necessarily justified* in this case, or at least that it would require a radical overhaul in its present form, in its structure and its elements. Moreover, its brevity and the lack of aggravated forms also suggest that – also on the basis of the commitment to the legal consequences of criminal law – it would have seemed sufficient to add a new Subsection to the criminal offence of *facilitation of unauthorised residence* (Section 354 of the Criminal Code), which is similar to the criminal act under consideration in many respects, and therefore the creation of a *sui generis delict* is not considered necessary from the point of view of the *placement and drafting* of the provision neither.

However, when examining the issue of being criminalised, it is reasonable to assume that it is not the deterrent effect of a criminal act that would be of sufficient importance

private lives before they give you the papers.') The risks of the marriage of convenience? (see Gyakori kérdések 2018).

in this area, but rather, for example, an *infraction*, if it could be combined with sufficient investigative power and, by expanding the possibilities of the prosecuting authority, would increase the provability of the acts.

Closing remarks

The examination of the Hungarian response to relationships of convenience brings into focus a broader dilemma concerning the appropriate reach and role of criminal law. The image of *'brides' in the courtroom,* as evoked in the title, thus reflects not merely individual stories of modest material gain, but the tension inherent in addressing a complex phenomenon through a criminal law approach. As the analysis has demonstrated, the offence of abuse by establishing family relationships, in its current form, raises significant dogmatic and practical concerns. Its limited application and uncertain interpretative framework suggest that criminalisation may not provide an adequate or proportionate response. The Hungarian experience therefore underscores the need for a more refined, multidisciplinary approach.

While the creation of this sui generis offence was intended to extend the range of criminal law instruments available to *combat irregular migration and related abuses*, its implementation reveals the risk of overextending criminal law into areas that might be more effectively addressed through preventive or administrative mechanisms. The principle of *ultima ratio* reminds us that criminal law should serve only as a final safeguard, applied where other legal instruments have proved insufficient. Excessive reliance on punitive responses in this field may not only fail to deter offenders but also risk burdening those whose vulnerability the law should instead protect.

Consequently, the Hungarian example highlights the importance of adopting a multidisciplinary and cooperative approach. The phenomenon of relationships of convenience, characterised by its complexity and interwoven legal dimensions, can only be effectively addressed through enhanced coordination between criminal, civil, and immigration law frameworks, and through genuine cooperation among the authorities of Member States. As EU experts aptly summarise, *'Legal aid is not enough; we need to work with immigration agencies and police in other EU countries to find solutions.'* (Europa.eu 2020). This recognition points to the direction in which future responses should evolve – beyond purely punitive measures, towards integrated, preventive, and proportionate solutions that reflect the true complexity of the phenomenon.

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