



A New Interpretation of Social Needs in Hungarian Law

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ABSTRACT

The Hungarian legislator's approach to means-tested social benefits is complex, often focusing on reducing expenditures. The emergence of new social and family support benefits has somewhat overshadowed these traditional benefits, with substantive changes being rare. However, introducing the social reference base has resulted in a significant shift in Hungarian law. This paper aims to delve into the antecedents and immediately expected effects of this change, which profoundly impact the lives of many in need.

KEYWORDS

social needs, social benefit, poverty, social law

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1 INTRODUCTION

The social reference base as a new basis for social benefits was introduced by the latest amendment to Act III of 1993 on Social Benefits and Administration (hereinafter Act). It has become the new benchmark for many benefits and has replaced (at least nominally) the minimum pension amount. The question is: Has this amendment brought, or will it bring, any change in the lives and circumstances of the beneficiaries? The relevance of this question is highlighted by the fact that these changes affect a significant part of the population. The degree of need cannot be defined uniformly. Some benefits set a higher threshold for means-testing. It appears that there are no uniform principles for defining means-testing. When each benefit is concerned, it now seems somewhat random which rate is set for which benefit. This appears to be so, because they are not systematised along common sorting principles. An excellent example is the inclusion of the Child Care Home Allowance (hereinafter Gyod) in the SST. This paper aims to analyse the impact of these changes on the lives of beneficiaries and provide insights into the antecedents and expected effects of the change.

The change of the regime brought to the fore a responsibility of the state that was not important before. The state used protectionist instruments to shield citizens from the effects of the market. If I may say so, it has swept the problem under the carpet. Everyone had a job on paper, but that was enough to cover the issues. It was a strange form of state care that was out of touch with reality and involved belief in the immutability of the system. That is why it shocked a large part of the population when the eco-

nomic bubble that had kept the socialist market economy going burst (Laki 1993). It was a transition without transition to a capitalist-based market economy, which also operates fundamentally differently. In this economic framework, a completely new sense of responsibility was needed. The problems previously swept under the carpet suddenly came to the fore. The transition period generated a social crisis whose effects are still felt today. The failure to draft a new social law since 1993 is a symptom of this crisis. The law of that time has been and is still being applied with constant amendments, being one of our most amended pieces of legislation. It provides neither legal certainty, nor social security. The crisis of the early 1990s was political, economic and social (Tausz 2017). This has led to a crisis of confidence, typical of the current years, mixed with the nostalgia for the Kádár regime. The nostalgia is based on protectionist policies that shield citizens from the effects of the market (Solymosi-Szekeres 2023). At the same time, many people were disappointed by the regime change because of over-idealistic expectations (Ferge 1996). Everyone expected only positive effects of a previously desired system. This romantic picture did not consider that the new system would also have adverse effects, bringing about elementary changes and a difficult transition period. For most people, this disappointment slowly caused a crisis of confidence. The best example of this is the rapid decline in trade union membership, or the distrust of specific institutions (Bíró-Nagy et al. 2016).

Of course, the confidence was not helped by the fact that problems swept under the carpet by the previous system have come to the surface. At the same time, economic relations with the Soviet

Union collapsed. In the absence of raw materials from Soviet imports, large, heavy industry plants closed down. With the closures, those employed yet without a job within the factory gates were also brought to the surface. Colleagues who lived in workers' hostels and had no other housing were also exposed. Many people were left on the street after leaving the shacks had closed (Nagy 2009). The social problems previously bottled up in the socialist market economy, have been released.

The social crisis was dealt with in several stages; the first was the adoption of Act IV of 1991 on the Promotion of Employment and Unemployment Benefits, and the next was the adoption of labour law. This was followed in 1993 by adopting Act III of 1993 on Social Administration and Social Benefits. The benefits set out in the Act were adapted to the needs of the time. However, these ideas were formulated at a time which coincided with the need for economic austerity.

2 CHANGES IN THE LEVEL OF PUBLIC LIABILITY

The starting point of social rights is to be found in the care of people with low incomes, while the source of economic rights is the demand for decent working conditions (Balogh and Balogh-Békési 2020). The state cannot be indifferent to the issue in any way. One priority area of the state's social responsibility is social assistance. This does not mean that the individual's responsibility should not be discussed. However, it is also necessary to see that the limit to individual responsibility is the action limit, which is linked to a constantly deteriorating social status. The big question, however, is whether the individuals affected by these

processes can stand up for their rights. Can they correctly assert their rights? Do they even have the capacity to do so? There are many open questions, some of which have a known answer. Many people cannot use the rights enshrined in the Fundamental Law, either because they lack knowledge, or because they are hindered by poverty as a barrier to action. These people are pushed to the other side of the Rubicon, or as Júlia Szalai puts it (Szalai 2002) they are relegated to the lower social strata, from which there is no turning back.

How the state sees its role in this issue is essential to slowing down and stopping these processes. The principles of the State's role as set out in the Statute reflect subsidiarity. However, Can subsidiarity mean shifting responsibility to the individual, local government, civil and church organisations? The State determines the amount of the envelope in the redistribution process by the principle of solidarity. From this point of view, it is in the State's interest to keep aid at a low level. However, this in no way correlates with the principles and action plans set out in the National Social Policy Concept of the previous period. The problem, however, is not the total failure of this document but the lack of legislative ambition. The conceptual changes laid down in the document were not reflected in the parallel legislative amendments. There has been a reduction in benefits from 2011 onwards, culminating in a significant amendment that came into force on 1 March 2015 (Mózer, Tausz and Varga, 2015). This also means that the most recent change has occurred in this area. This change still defines the options available to those in need and shows precisely how the state approaches the issue. The state has transferred a significant part of cash

benefits from the municipal level to the level of the district offices (Mózer, Tausz and Varga, 2015). On the one hand, this could also be seen as an increased sense of responsibility. However, the fact is that there has been more of a structural change, which has meant that a significant proportion of benefits have been delivered further away from those in need. Moreover, distance also brings with it the risk of inaccessibility. To counter this, the system of municipal assistants was devised. However, they cannot connect to the central IT system during the outreach hours, so they cannot conduct substantive administration on the spot.

The other direction of change is the removal of *sui generis* equity-based benefits from the system. This is not unique to assistance benefits, but the recipients of such benefits have been most affected by this change. In addition to people in need, it has also put municipalities in a difficult situation, as it has incorporated the abolished *sui generis* equity-based benefits into the benefit known as the municipal allowance, which is provided by the municipality without being given any specific funding. This benefit must be financed by the city from business tax revenue. The state appears to have taken a big step backwards in 2015. The state contributed significantly to the benefits previously provided at the municipal level. Following the change, municipalities are left to decide which elements of the increased municipal subsidy they can offer and how much actual funding they can allocate to this. Moreover, the limitation of state responsibility has put many municipalities in a difficult situation. Municipalities in difficulty cannot provide the same level of care as they previously could with the backing of the state. This situation is made

more difficult by the series of provisions adopted during the pandemic, which have diverted a significant proportion of municipalities' tax revenues from the treasury (Kovács 2020).

For a long time, it seemed that the state would not back down after the 2015 amendment. Instead, the recent amendments have required minimal adjustments to the means-test levels. The next major step was the introduction of the childcare home fee. From the moment of its introduction, it has been the highest cash benefit. Here, it seemed the state just wanted to take on more responsibility. This seemed to be the case even if it could be said that the benefit was part of the Government's flagship family policy. However, the complete picture must include the large disproportionalities that have arisen in the benefits system due to the introduction of this legal instrument. The current discrepancy is between a share of the social reference base (28.500 HUF) and the minimum wage amount. Therefore, the disproportionality affects the whole system and not only the care allowance, which is the parent institution of the Gyod. It is not the amount of the Gyod per se that is the problem, but that the amounts of other benefits have not changed for a decade. Greater responsibility on the part of the state is not applied proportionally and equally everywhere, but only in the priority areas with relevance to it.

After the partial step forward, came another major general step backwards: the state's amendment to the law, which came into force in January 2023, makes explicit what has hitherto been only implied. The individual's responsibility for his/her social security is first and foremost his/her own, then that of his/her family, then that of the municipality,

the church and only then the state. This first version of the text has caused quite a stir. The State has, therefore, revised its position somewhat and refined the rule. The revised proposal removed social security from the first sentence, reducing the individual's responsibility to a general one. The responsibility of close relatives, and hence of the family, is now limited to removing the concept of fault from the text. The most significant change is that the state has been relegated to the penultimate place. Lastly, it mentions NGOs, with which the State and local authorities cooperate. At the same time, a social reference fund was introduced. Previously, the means-testing basis was the minimum amount of the old-age pension. The most recent amendment to the law renamed this concept to social reference base, but the amount has remained unchanged.

The state has increasingly withdrawn as far as possible from the aid field within its framework. One might legitimately ask whether there are any external constraints or commitments that would limit the state's disengagement. Regarding social security benefits, there are some constraints under the social security conventions concluded by the European Union and other international organisations. Among the most essential EU provisions are the Coordination Regulation and the Charter of Fundamental Rights, which set out the framework for access to benefits. In this context, the Council of Europe's case law on Article 12 of the European Social Charter can be cited as an example. This is also where the prohibition of regression is enshrined. In a broader sense, insurance-based social security benefits are one of the pillars of social protection. These benefits are subject to international control. The other pillar of social

protection is social assistance. Here, we are talking about national solutions that are so different that they cannot be coordinated even to the extent of social security (Ashiagbor 2023). That is why we will not find EU rules in this area; international conventions only declare the protection of these rights. In the field of social benefits, there is no such marked limit as in the case of insurance-based benefits. The state can step back more courageously in these areas and shift responsibility to other societal actors, including people in need. This process can be very clearly traced, first disguised as structural reform and later, without any disguise, as an open means of discharging responsibility. Changes to the benefits system cannot be dissociated from the social system. As mentioned above, the benefits system can be seen as a subsidiary instrument that acts as a last-resort safety net. It comes to the fore when the person concerned can no longer benefit from other solidarity funds. Assistance can take several forms, the extent and actual level of which varies from country to country. There is one fixed point, and that is the basis of means-tested need. Who is considered a person in need depends significantly on the country's traditions. That is why we believe it is important not to focus only on the spectacular backward step, but also the simultaneous exodus that the introduction of the social reference base has represented.

3 THE SOCIAL REFERENCE BASE

Introducing a social reference base is a logical step, as it would provide an opportunity to rethink the means test for individual social benefits. This would better define the framework for public responsibility. It would have made it

possible to redefine the assumption of responsibility for each benefit and the general assumption of responsibility formulated in the previous section. Indeed, in our reading, there are two strands of state responsibility in the present case. The first is the general social responsibility set out in the previous section, and the second is the responsibility for each group of persons needing each means-tested benefit. The social reference base had the potential for this to happen. However, the legislator quickly stated its intention not to do so. The amount of the social reference base was set at 28,500 HUF, equal to the minimum amount of the old-age pension previously applicable (hereinafter the minimum pension). This decision raises several questions. Firstly, why the legal institution of the minimum pension was not replaced for all benefits? What is the point of renaming if the amount does not change? Can its application be interpreted as discriminatory?

The answer to the first question is not easy to find because it introduces a new element into an already fragmented system. The old-age pension remains linked to the minimum pension, the basis for health and childcare allowances remains 90% of the net public employment wage, the care allowance is related to the essential amounts set in the Finance Act, and the childcare allowance at home is equal to the minimum wage. The social reference base has been included as a new element. Why was an additional indicator necessary? Why was it not good to link it to pensions? Much criticism boils down to the link to the minimum pension no longer being sufficient because of the excessive inflation. It was a unique solution to link the means-testing threshold for means-tested benefits to a social security benefit. This had its rele-

vance in the early days, but inflation has not stopped. Over the last decade, it has reached such proportions that the minimum pension framework is well above the minimum living wage threshold set (Ferge 1996). The aim is, therefore, to keep these benefits at a low level, with a framework that does not allow them to keep pace with general social changes. It is also interesting bearing in mind that the amount previously set was also well below the subsistence threshold. On top of this, it also takes a rather demagogic stance that you have to work for benefits. Of course, the structure of social benefits cannot and should not be separated from labour market issues. In the context of the ever-increasing labour shortage, we must also talk about the situation of the working-age population, who are considered to need social benefits. The problem of the people concerned is that they are tied to a particular situation, preventing them from seeking employment. Public employment and, for the time being, social employment through social cooperatives, have not been able to break this deadlock. However, the problem is not alleviated by the mass import of workers from third countries.

As we can see from the above, it has effectively become obsolete. However, why is the amount the same if it has become obsolete? The short answer to this question is that the state does not want to spend on this segment of social policy, as neither its political nor social interests compel it to do so. The state is self-limiting its role and hiding behind specific economic policy slogans, ignoring people in need, and shifting the responsibility onto those concerned. We have not yet argued that the responsibility of individuals should not be discussed, but this does

not mean that the state's responsibility should be limited in this respect. To solve the problem, the state must go beyond individual responsibility to think of a longer-term solution. Without this, all the dangers raised in the National Social Policy Concept 2011–2020 will be realised. Allowing the situation to escalate is a part of the state's responsibility, making it much more expensive to solve the problem later. Still, in the meantime, it will keep this segment of people in need in an artificial poverty that does not meet the social subsistence threshold. There is a lack of recognition that public employment, especially in areas without a primary labour market with the possibility of moving on, will not be a solution, and unfortunately, even in many cases where there is a primary labour market. In the current situation, many people live within a cycle of public employment and employment support. Based on what has been outlined, the state does not want to take on more responsibility in this area.

Be that as it may, what was the purpose of the amendment then? The framework provided by the previous minimum pension has been exceeded. However, we also see that even if this has been recognised, it is not of real help, since the state does not want to take on more responsibility. The amount of the social reference base is determined by Government Decree 613/2022 (29.12.20).

This change should also be seen in Hungary's commitment to changing its pension legislation to draw down the amount of the Restoration Fund and the amount of the loan (Simonovits 2023). According to press reports, a public consultation was to be launched in the first half of 2024 (Varga 2024). The to change the pension system is beyond

debate. This was also foreshadowed in the 2022 need Discussion Paper of the Hungarian National Bank (hereinafter: MNB) (Matolcsy, Kandrács, and Virág, 2022), but there is also a growing body of academic literature on the subject (Barta 2020; Varga 2022). The scenarios for the near future are increasingly ominous, which is why the new legislation is justified and perhaps not overdue. From this perspective, it is understandable that the basis for means-tested benefits is decoupled from the minimum pension amount. This fits in with what we have said before: the problem is not that the legislator invented the social reference base per se, but how it is used to preserve the status quo. The number of means-tested benefits, and therefore the level of means-testing, will not increase with the minimum pension amount. Nor is it the intention that means-tested and insurance-based benefits should be at the same level. There is also a clear division of responsibilities between them. Social security is the first line of defence, and the social assistance system is the second. However, their roles are not identical, which does not mean they cannot move together. If this does not happen, the gap will be so vast that we believe it will lead to a significant social and societal crisis. However, a trend is clear. Those systems that do not fit the current political course are left to fend for themselves. Similar experiences have been made with the classic family support institutions for the wider population (family allowances, child benefits, child support and maternity allowance). In this case, there is a continuous disintegration of benefits, which cannot fulfil their previous functions and thus do not ensure solidarity regarding social redistribution. The state is, therefore, abdicating its responsibility

and providing apparent assistance to the losers in the market. It continues to provide means-tested benefits, but does nothing to improve them. On the one hand, this stems from the idea of a work-based society, while on the other, every society is based on work, but this is no substitute for social care (Lindner and Reizer 2023), and general responsibility. EU and national policies do not allow the state to abdicate its responsibility in the context of the CSR. This essentially means that corporate responsibility can only be to an extent that cannot replace the role of the state (European Parliament 2013). If we turn it around, this first prescribes the states' self-restraint, which would mean the assignment of tasks to responsible economic actors.

4 SUMMARY

To summarise, we see a trend where the state does not feel responsible for developing the non-insurance-based benefits inherited from previous systems. This is particularly noticeable in the case of means-tested social benefits. Recent legislative changes have all aimed to reduce or significantly limit the overall responsibility. Although the picture is more varied as regards the assumption of responsibility for individual benefits, following the introduction of the childcare allowance, there is still an overall

sense of a continuing need to limit responsibility. The childcare allowance has become the highest social benefit. The amount is the same as the minimum wage now in force. However, this benefit fits in with the political course. At the same time, the other benefits are steadily losing value because the high inflation has devalued these benefits, the value of which was not very high in the first place. The legislator had the chance to change this at any time. The most recent such moment would have been the introduction of the social reference base. This has already been described as not being a bad or good thing. In this case, it is used to preserve the status quo. So its only function, while increases in pensions may be considered, is for the social reference base to artificially keep the benefit low, presuming that people will move towards the labour market, forcing passive people into work. Here again, however, coercion alone is not enough. Just because the state refuses to acknowledge that there are poor people, this does not mean that they don't exist, and a basic level of responsibility and assistance is needed to deal with the problem effectively. It is in the state's long-term interest to do this, because if the number of people in need would increase and the state ignore a growing mass of people, it will affect its future and survival.

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Nova interpretacija socijalnih potreba u mađarskom pravu

PROŠIRENI SAŽETAK

U mađarskom socijalnom pravu, sistem socijalne pomoći predstavlja sekundarni oblik zaštite. Ova davanja čine osnovu socijalne pomoći u okviru mađarskog zakonodavstva. Ipak, jasno je da se radi o pomoći koja se dodeljuje na osnovu imovinskog cenzusa i da je reč o nižem stepenu podrške. Ona ne pripada sistemu socijalnog osiguranja, iako su neka od tih davanja bila vezana za minimalni iznos penzije. Međutim, u poslednje vreme došlo je do značajne promene u načinu utvrđivanja imovinskog cenzusa.

S jedne strane, država je pokušala da umanjí sopstvenu odgovornost. Razlog za to leži u činjenici da se tokom protekle decenije postepeno povlačila iz ove oblasti. Čini se da država više ne smatra da davanja namenjena socijalno ugroženima predstavljaju deo društvene solidarnosti. Značajna promena dogodila se već 2015. godine, kada je broj socijalnih davanja znatno smanjen.

Najnovijom izmenom uvedena je nova referentna osnovica za procenu imovinskog stanja. Pri likom njenog uvođenja postojala je izvesna nada da će se, posle gotovo 20 godina, ne samo promeniti naziv fonda na osnovu kojeg se vrši obračun, već i sam iznos pomoći. Ipak, visina te osnovice ostala je 28.500 forinti, što na dan pisanja ovog sažetka (29.06.2025) iznosi 71,36 evra. Ta vrednost ostala je nepromenjena i nakon zakonske izmene, ali sada nosi naziv socijalna referentna osnovica.

Ovo otvara pitanje odgovornosti države. Država ima dvostruki režim odgovornosti – opštu društvenu odgovornost i odgovornost vezanu za konkretne oblike staranja. Primarna funkcija socijalne referentne osnovice jeste da se visina socijalnih davanja veštački održi na niskom nivou, polazeći od pretpostavke da će time osobe iz pasivne kategorije biti primorane da se uključe na tržište rada. Ipak, ni prisila nije dovoljna. Samo zato što država odbija da prizna postojanje siromašnih, ne znači da oni ne postoje – osnovna odgovornost i pomoć su i dalje neophodni da bi se ovaj problem rešavao na delotvoran način.

U dugoročnom interesu same države jeste da se time bavi, jer ukoliko bi broj socijalno ugroženih nastavio da raste, a država nastavila da ignoriše to rastuće stanovništvo, to bi imalo negativne posledice po njenu budućnost i stabilnost. Cilj ovog rada jeste da pokaže na koji način mađarski zakonodavac redefiniše pojam siromaštva i kako istovremeno smanjuje sopstvenu odgovornost.

KLJUČNE REČI

socijalne potrebe, socijalna davanja, siromaštvo, socijalno pravo