University Doctoral (PhD) Dissertation Abstract

COMPARATIVE ANALYSIS OF THE FORMS AND RULES OF CONVENTIONAL REPRESENTATION IN HUNGARIAN AND ROMANIAN CIVIL LAW

Előd Bartis

Supervisor: Prof. Dr. Emőd Veress, D.Sc.

university professor

UNIVERSITY OF DEBRECEN
Marton Géza Doctoral School of Legal Studies

Debrecen
2026

1. The antecedents and the objectives of the doctoral dissertation

1.1. Topic designation and justification for topic choice

The institution of representation is fundamental in both Hungarian and Romanian civil law, as modern economic and social life would be inconceivable without this legal institution. Representation enables legal entities to participate effectively and flexibly in legal transactions without compromising legal certainty or the protection of third parties. In most legal systems, representation occupies a key position, as it is an extremely complex institution linked to numerous legal institutions, with aspects relating to procedural law, law of persons, property law, contract law, inheritance law, and corporate law.[1]

Although the development of Hungarian and Romanian civil law differs in many respects from both a historical and a dogmatic perspective, similar historical, economic, and social influences nevertheless make them suitable for comparative research. The development of modern Hungarian private law was primarily strongly influenced by German pandect law, while Romanian civil law was fundamentally formed under the influence of the French legal tradition. However, the reform processes of recent decades have placed civil law regulation on a new footing in both countries. The comparison of the Hungarian Civil Code,[2] in force since 2014 (abbreviated as: Ptk.) and the Romanian Civil Code,[3] in force since 2011 (abbreviated as: RPtk.) is particularly relevant, which were adopted at around the same time, but were shaped by different underlying principles in their current regulations on representation. Grosschmid's observation that the fundamental principles of civil law in developed countries are like "eggs to eggs" [4] appears to hold true in the area of transnational representation as well: there are far more similarities than differences between the detailed provisions of the two legal systems. This does not, however, mean that a scientific examination is unnecessary, since comparative law does not simply mean juxtaposing legal provisions, but also seeks to discover the principles underlying the existing similarities and to gain a fundamental understanding of legal institutions.

---

[1] See HAMZA Gábor, *Az ügyleti képviselet,* Akadémiai Kiadó, Budapest, 1982, 7.

[2] Act No. V of 2013 on the Civil Code, published in the Hungarian Gazette, No. 31, February 26, 2013.

[3] Act No. 287 of 2009 on the Civil Code ("Legea nr. 287/2009 privind Codul civil"), published in the Official Gazette of Romania, June 24, 2009, No. 511. The Civil Code was significantly amended by Law No. 71 of 2011 on the entry into force of the Civil Code, and its text was therefore republished in the Official Gazette of Romania, No. 409, July 10, 2011.

[4] Cited in VÉKÁS Lajos, *Mennyiben szuverén egy EU-tagállam jogalkotása?*, Mindentudás Egyeteme, 2, Kossuth Kiadó, Budapest, 2004, 13. The conditions of economic life create similar problems, and legal systems develop similar legal solutions to solve them. The fundamental institutions of private law are not primarily the result of national characteristics, but rather of general economic and social needs. A conclusion similar to Grosschmid's has also been expressed in modern comparative law literature, pointing out that in the so-called "apolitical" areas of private law (property law, contract law, and tort law), it can be presumed that "developed nations solve their emerging regulatory needs in the same or very similar ways." ZWEIGERT, Konrad; KÖTZ, Hein, *Introduction to Comparative Law,* Clarendon Press, Oxford, 1992, 40, cited in FEKETE Balázs, *A modern jogösszehasonlítás paradigmái,* Gondolat Kiadó, Budapest, 2011, 141.

The actuality of the choice of topic is also given by the fact that economic, commercial, and personal ties between the two countries – particularly within the European Union – are gradually strengthening, so the practical significance of legal issues concerning representation is also growing. The results of this comparative analysis may contribute to a mutual understanding of the compared legal systems, while also helping practicing lawyers to properly resolve legal issues related to representation.

The topic is also relevant from an academic perspective, as a comparative analysis of the legal institution of representation provides an opportunity to identify common principles and differences, as well as to examine the mutual influence of the two legal systems on legal development. Furthermore, the dissertation is expected to contribute to a more comprehensive theoretical foundation for civil law representation, and the *de lege ferenda* proposals formulated therein may also provide guidance for the further development of the relevant regulations. Given that, as of the date of completion of the manuscript, no scientific work has been published that comprehensively examines Hungarian and Romanian conventional representation using a comparative method,[5] this research—if successful—could provide new results for both legal systems.

1.2. Choosing the legal systems to be examined

For the geographical scope of this research, I have selected two Central and Eastern European countries whose civil law traditions have developed under different influences. Until the mid-20th century, Hungarian private law was the result of an organic, customary law-based development that, even without codified law, satisfied the practical needs for a long time. Then, with the start of the codification process, German pandect law had a significant influence on it. In contrast, Romanian law had been influenced fundamentally by foreign models (primarily Byzantine) since the Middle Ages, and then, from the second half of the 19th century, in the spirit of a conscious turn toward the West, French norms began to be adopted with almost no adaptation, resulting in the codification of civil law as early as 1864.[6]

[5] From the perspective of previous research results, Claudia Roșu's work titled „*Contractul de mandat în dreptul privat intern"* (ROȘU, Claudia, *Contractul de mandat în dreptul privat intern*, C.H. Beck, București, 2008), which discusses the institution of representation in Romanian law, is worth mentioning. In this work, the author also refers to solutions applied in other countries, including Hungarian law. Roșu's research is limited to the forms of civil and commercial mandates, primarily in accordance with the provisions of the 1864 Romanian Civil Code and the 1887 Romanian Commercial Code.

[6] It should be noted that the Principality of Moldavia had already adopted an Austrian-inspired civil code in 1817.

Following World War II, both states came under Soviet influence. This was accompanied by the elimination of political pluralism and the establishment of a Soviet-style legal, economic, and social system. Paradoxically, in Hungary this led to the adoption of the first Civil Code (1959), while in Romania it resulted in the abrogation of the book on persons in the Civil Code, the adoption of a new Family Code, and the limited application of legislation concerning private property. Finally, the transition to a market economy, European integration, and the complete recodification of civil codes all took place during a historically similar period. For this reason, it can be assumed that the external influences affecting the two states are largely similar.

Although the two states selected as case studies have different socio-cultural traditions[7] and, consequently, legal cultures, they have been influenced by many common historical factors and can be classified within the same legal family. Consequently, we can examine how these influences manifest themselves in the distinct legal traditions mentioned above with regard to a specific legal institution – conventional representation. As has been pointed out in the comparative literature, when choosing the legal systems to be included in the comparison, common values and a similar economic and cultural environment are considered to be more important guiding criteria than legal families.[8]

According to the general principle of comparative law, "only what is comparable can be compared"[9] which presupposes that both similarities and differences must be identifiable between the legal systems used as a basis for comparison. The most ideal context for this is the examination of legal systems whose constitutional, economic, cultural, and social characteristics are sufficiently similar to allow them to be compared along a given comparative principle, yet which offer substantially different solutions to similar problems.

1.3. Concept clarification. Legal provisions examined

Regardless of the legal system, in civil substantive law, "*representation*" traditionally refers to a situation in which, on behalf of a person – whether a natural person or a legal entity – a legal declaration is made by another person in such a way that the legal effects of the declaration are binding on the person on whose behalf the declaration was made, i.e., the represented party. Representation in the wider sense includes cases of legal, administrative, corporate and conventional

[7] VARGA Csaba, *Comparative Legal Cultures,* Szent István Társulat, Budapest, 2012, 50–51.
[8] KADNER GRAZIANO, Thomas; BÓKA János, *Összehasonlító szerződési jog*, Komplex Kiadó Jogi és Üzleti Kiadó, Budapest, 2010, 59.
[9] KECSKÉS László, *A polgári jog fejlődése a kontinentális Európa nagy jogrendszereiben*, HVG ORAC, Budapest, 2013, 24.

representation, based on private autonomy (legal conventions). In short, representation is nothing more than substitution in the making of legal declarations.[10]

"*Conventional representation*" is a type of representation in which the right of representation is based on an agreement between the represented party and the representative. This may take the form of a power of attorney (a unilateral legal act) or a contract under which one person may act on behalf of another. The difference between a "*mandate contract*" and a "*power of attorney*" is that, while a mandate is a contract between the parties governing the internal legal relationship between the represented party and the representative, a power of attorney is a unilateral declaration by the represented party addressed to third parties, by which the represented party acknowledges that the representative's actions are binding on him.[11]

The scope of this dissertation is limited to conventional representation, the rules governing other forms of representation, such as legal and administrative representation, will not be discussed. I discuss corporate representation, as far as it is necessary for the purposes of this topic. The reason for this limitation is, on the one hand, conceptual, since in most legal systems, the legal entity and its representative are linked by a mixed legal relationship – one defined both by convention and by law. For example, in both current Hungarian and Romanian law, the relationship between the representatives of economic companies and the company is governed simultaneously by the contract between them (which may be either a mandate or an employment contract) as well as the statutory provisions – primarily mandatory ones – applicable to representatives. Since in this dissertation I intend to focus only on representative relationships based on the parties' private autonomy, corporate representation "falls outside" this concept in that many of its elements are determined by provisions from which the parties cannot derogate. A secondary reason for the delimitation is its scope, as extending the analysis to cases of corporate representation would exceed the length constraints of the thesis.

With regard to the legal effects arising from representation, continental law traditionally distinguishes between two types of representation: direct and indirect representation. In the case of "*direct representation*" the representative acts explicitly in the name and on behalf of the represented party, with the result that any rights and obligations arising from the legal transaction accrue directly to the represented party. Thus, the represented party becomes the immediate subject of the rights and obligations stemming from the representative's actions. When the representative enters into a contract, it is regarded as being formed directly between the represented party and the third party

[10] VÉKÁS Lajos, *Szerződési jog. Általános rész*, ELTE Eötvös Kiadó, Budapest, 2019, 57; FÖLDI András, HAMZA Gábor, *A római jog története és institúciói*, Nemzeti Tankönyvkiadó, Budapest, 1996, 402.
[11] FÖLDI, HAMZA, *cited work* 403.

involved. In the case of "*indirect representation*," the representative makes a legal declaration in their own name but for the account of the represented party. In this case, the legal effects arise in the person of the representative, and the contract is concluded between them and the third party. The representative acquires the rights under the contract and subsequently transfers them to the represented party through a separate legal act. Similarly, the obligations will also bind the representative, and he must perform the contract toward the third party. In the case of indirect representation, no legal relationship arises between the represented party and the third party. Although in cases of indirect representation we cannot speak of representation in the classical sense – since the representative does not disclose that he/she is acting on behalf of and in the interest of another – I nonetheless consider it justified, for the reasons set out below, that forms of indirect representation should also form part of this study, which aims to provide a comprehensive analysis of conventional representation.

The continental doctrine of indirect representation developed in 19th-century german pandectist jurisprudence and was closely linked to the issue of distinguishing between the internal legal relationship (mandate) between the represented and the representative and the external legal relationship (power of attorney) between the representative and a third party. The foundation for this was laid by Rudolf von Jhering in his 1857 study[12], in which he stated that power of attorney must be distinguished from the underlying mandate relationship. This theory was further developed by Paul Laband,[13] who emphasized the complete dogmatic separation mandate and power of attorney, thereby laying the foundations for the modern system of representation. As a consequence of the pandectist approach, the classic continental doctrine emerged, according to which, in the case of indirect representation, no direct legal relationship is established between the represented party and the third party, since the representative acts in his own name, and the legal effects of the contract arise directly in his person. This approach was also reflected in the system of representation under the German Civil Code (hereinafter BGB) and exerted a decisive influence on the legal doctrine of representation in subsequent continental codifications.[14]

Even contemporary German legal literature pointed out that the concept of "indirect representation" is problematic, as it contains a fundamental contradiction. Laband linked the concept of representation to the conclusion of a contract in another's name and the direct arising of legal effects. Therefore, he denied that it were possible to speak of representation in the case of a

[12] JHERING, Rudolf, *Mitwirkung für fremde Rechtsgeschäfte*. In: *Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts*, Herausgegeben von: K.F. von Gerber und R. Jhering, Jena, 1857, 273-280.
[13] Laband, Paul, *Die Stellvertretung bei dem Abschluss von Rechtsgeschäften nach dem allgem. Deutsch. Handelsgesetzbuch.* In: *Zeitschrift für das gesammte Handelsrecht*. 10. Band. 1866.
[14] See NEMESSÁNYI Zoltán, *Közvetett képviselet – közvetlen kapcsolatok*, PhD értekezés, Pécs, 2009, 32-39.

representative acting under his own name. Joseph Unger referred to the term "indirect representation" as a "*contradictio in adjecto*" meaning a conceptual contradiction, since in such a construction no direct legal relationship arises between the represented party and the third party.[15] The connection between acting on behalf of another and the institution of representation can primarily be explained by the fact that, in practice, indirect representation usually arises in connection with a mandate (comission) legal relationship. Legal scholarship, therefore – rather than recognizing in this situation a separate and general legal institution independent of mandate – has instead treated it as an exceptional construct relative to the system of representation and interpreted it as a specific, limited form of mandate. Consequently, indirect representation was long regarded merely as a less effective, somewhat imperfect version of direct representation, given that the acquisition of rights by the represented party typically requires the interposition of an additional legal convention of transfer.[16]

The principle that, in the case of indirect representation, no legal relationship arises between the represented party and the representative has consistently persisted at the theoretical level in the continental legal systems of Europe, just as it is the fact that representation in the classical sense (which presupposes acting on behalf of another and the direct legal effects arising in the person of the represented party) is realized only through direct representation.[17] It would therefore follow that the concept of " conventional representation" encompasses only those mechanisms through which effective representation is realized, while forms of indirect representation are separate institutions that are merely similar in name. This position, however, is overly formalistic and simplistic; despite the fundamental dogmatic arguments, the sharp distinction between indirect and direct forms of representation appears to be blurred in modern continental legal systems.[18]

According to Gábor Hamza, a tendency to blur the line between direct and indirect representation – and a corresponding decline in the use of indirect representation – can be observed both in theory and in practice.[19] In his article titled "Formal-Logical Aspects of the Doctrine of Representation," Sándor Kornél Túry pointed out that the intermediary, just like the direct representative, does not act in his own interest but in the interest of another; a legal transaction concluded with a third party also aims to serve the interests of the represented party, so the actual lord of the case is, in this instance as well, the represented party. In his view, when considering the

[15] NEMESSÁNYI Zoltán, *Közvetett képviselet…, cited work* 37.
[16] NEMESSÁNYI Zoltán, *Közvetett képviselet…, cited work* 34.
[17] See SZLADITS Károly, *Magánjogi tényállások.* In: SZLADITS Károly (szerk.), *Magyar magánjog. Általános rész. Személyi jog.* I. kötet, Grill Károly Könyvkiadóvállalata, Budapest, 1941, 324.
[18] BONELL, Michael Joachim, *The 1983 Geneva Convention on Agency in the International Sale of Goods*, The American Journal of Comparative Law, 1984/4. szám, 737.
[19] See HAMZA *cited work* 32-34.

legal effects of indirect representation, these aspects of the relationship of interests must also be taken into account, we cannot simply consider the "external aspect" and treat the matter as if the represented party had nothing to do with the legal transaction concluded by the intermediary.[20] In his examination of indirect representation under German, Hungarian, and English law, Zoltán Nemessányi concluded that legal systems are increasingly allowing for direct relationships between the principal and a third party, even when the intermediary acted in their own name. A direct relationship does not necessarily manifest itself solely in the form of direct enforcement of a claim, [21] as there are numerous other intermediate forms of interaction between internal and external legal relationships, such as compensation, counterclaims, and tortious liability, which are increasingly recognised in a wider range of contexts, thereby tempering the categorical (formalistic) position that the dogmatic principle of the separation of external and internal legal relationships must continue to be strictly upheld.[22] "The traditional dogma of indirect representation, based on the indisputable separation of external and internal legal relationships, is thus starting to show more and more cracks; it no longer stands on as solid a foundation as it did during the era of the great codifications of the 19th century." [23]

In light of all this, I believe that a comprehensive analysis of conventional representation cannot be limited exclusively to cases that constitute direct representation. Although in cases of indirect representation, in a formal sense, there is no legal effect of representation between the represented party and the third party, in these cases as well, the interests of the represented party prevail; the representative acts at the request of the represented party and primarily for the latter's benefit, and under certain conditions, this may also lead to the establishment of direct legal relationships between the represented party and the third party.

Among the contracts that establish direct representation, the contract of mandate is of particular significance, as it is considered the classic and most typical form of conventional representation. Accordingly, it receives special attention in this dissertation. The most important form of indirect representation – which can only exist within a contractual context – is the

[20] As an example, he cites the 1875 Hungarian Commercial Code and the provisions of the German Commercial Code regarding commission, according to which claims arising from legal transactions entered into by the commissioner are considered claims of the comitent from the time of their acquisition – both against the commissioner and his creditors – regardless of whether the commissioner has assigned them to the comitent. In his opinion, however, even this is only a partial solution, as the rule applies only to the internal relationship between the comitent and the commissioner, as well as to the commissioner's creditors. The third party may, notwithstanding this, enforce its rights against the comissioner, even if it was aware that the comissioner was acting on behalf of another party. TÚRY Sándor Kornél, *Formál-logikai szempontok a képviselet tanában*, Grill Károly Könyvkiadóvállalata, Budapest, 1939, 31-33.

[21] The possibility of direct enforcement – and thus the "breaking of legal relationships" – is generally recognized by initiatives aimed at harmonizing the law, subject to certain conditions. See, for example, Articles 3:302–3:303 of the Principles of European Contract Law.

[22] NEMESSÁNYI Zoltán, *Közvetett képviselet…, cited work* 204-205.Vö

[23] NEMESSÁNYI Zoltán, *Közvetett képviselet…, cited work* 204.

commission contract, as well as the contract types that evolved from it and eventually became independent (particularly the consignment contract and the freight forwarding contract), and various intermediary contracts.

Since the primary objective of this research is to provide a comprehensive overview of the trends in the legal development of the institution of conventional representation, I have not limited the scope of this study to a specific period of time. This decision is also justified by the fact that no work has yet been published in either Hungarian or Romanian law that would have outlined the development of the institution of representation from its earliest beginnings.[24] In my analysis, I went back as far as medieval Hungarian and Romanian legal sources, and the end point of the time period is the law in force at the time of the completion of this dissertation. By "private law norms," I mean both civil law and commercial law rules, since indirect representation is mainly (though not necessarily) related to commercial relationships.

I examine the nature of conventional representation across different historical periods based on the following key criteria: whether the regulation provides for direct or indirect representation, the acts that may be performed by the representative, the legal capacity of the represented and the representative, defects in the contractual intention and the evaluation of good faith, conflicts of interest between the represented and the representative, requirements of formality, the relationship between the instrument proving the right of representation and the legal transaction, the legal effects of the convention serving as the basis for the representation (rights and obligations of the parties), the effects of a legal transaction concluded by a representative acting without the right of representation or exceeding its limits, and the termination of representation.

1.4. The objective and hypotheses of the dissertation

The objective of this dissertation is to present the development of conventional representation using comparative and historical methods within the two legal systems selected as examples, while

[24] György Csanádi, in his 1959 monograph entitled „*A megbízási jogviszony*", places primary emphasis on the legal institution of mandate. Gábor Hamza's 1982 monograph, „*Az ügyleti képviselet*", compares the concept of representation in ancient legal systems with that of continental legal systems, as well as with the traditions of common law. György Bíró's 2001 monograph, „*A megbízási szerződés*", provides a detailed analysis of the contract of mandate – which is the most significant form of legal representation – however, it focuses primarily on the law in force after the political transition and does not address the historical legal aspects of the contract. Romanian-language monographs published on the subject of representation or mandate either focus solely on the law in force at the time of their publication and do not deal with the legal-historical antecedents of the institution (Claudia Roșu, *Contractul de mandat în dreptul privat intern*, 2008; Adrian-Silviu Banu, *Contract de mandat*, 2008;), or, although they contain a legal-historical section, they examine only the roots in Roman law and the historical developments of French law (Cristina Popa Nistorescu, *Reprezentarea și mandatul în dreptul privat*, 2004). The works mentioned in the footnote will be provided with their full bibliographic details at their first specific citation.

also highlighting the social and historical contexts that have influenced them. After reviewing the relevant legislation, literature, and case law, I formulated the following working hypotheses, which will serve as a guide for dissertation.

According to the *first hypothesis*, the civil law traditions of the legal systems chosen as examples originate from different roots, and their historical development also differs, which is reflected in the systematic regulation of conventional representation from age to age.

According to the *second hypothesis*, the system of conventional representation in the first modern Hungarian and Romanian civil law codifications reflected the main characteristics of the legal systems serving as models, and these characteristics continue to be felt in the most recent codifications that entered into force in 2014 and 2011, respectively.

According to the *third hypothesis*, both Hungarian and Romanian law currently in force separate the internal and external aspects of representation, i.e., they distinguish the power of attorney from the relationship on which it is based. Accordingly, the civil law codifications of both legal systems contain a general section on representation and regulate, among specific contracts, those that implement representation (direct or indirect representation). From a legal application perspective, this regulatory approach is more advantageous than the (former French) model linking representation to a mandate.

According to the *fourth hypothesis*, the monistic regulation of civil law has not substantially altered the forms of conventional representation in either Hungarian or Romanian law, and its rules have not been disadvantageous to either natural persons or participants in economic life.

According to the *fifth hypothesis*, despite their different origins, the rules governing conventional representation in the two countries apply similar solutions to most fundamental issues. This is primarily due to the fact that the institution of representation fulfils a similar function in both legal systems, the problems it raises are also similar, and thus the responses to these – given the similar economic and social structures – are largely convergent. Given this convergence, legal harmonization appears to be a realistic possibility in the case of certain forms of conventional representation.

1.5. The methodology and the structure of the research

To achieve the objectives outlined above and to examine the hypotheses formulated, I apply several methods of legal research: primarily the methods of comparative law and comparative legal history, as well as the descriptive-analytical method to explore the meaning of legal provisions.

The thesis follows the methodology of *functional legal comparison*, which is not limited to a formal comparison of normative texts, but also takes into account the socio-economic background of the regulations, as well as the roles and functions of legal institutions in society. [25] Although certain conceptual issues in comparative law remain open to this day, understanding the development of other legal systems and comparing the responses of legislators and judicial authorities to similar social expectations can yield useful results.[26] Accordingly, in this dissertation, I aim to highlight how conventional representation is implemented in the civil law systems of the two countries, what role it plays in the contract formation process, and how the liability and legal relationship between the representative and the represented party are structured.

Another key method applied in this thesis is *comparative legal-history*, which is essential for understanding the current status of Romanian and Hungarian legislation. Both legal systems have been influenced by the Roman legal tradition and by modern European codifications, particularly the French Civil Code, the German Civil Code, and the Austrian Civil Code. The aim of the historical analysis is to explore how these influences shaped the dogmatic structure of conventional representation and what differences emerged in the regulations of the two countries over time. Indeed, a deeper understanding of the law requires an examination of how the same legislative solutions or norms function in different historical periods or social contexts.

In addition, it is important to identify what types of solutions the law offers for different types of conflicts. This analysis can reveal the objectives underlying the legislation and provide a better understanding of the social impacts of laws and their interpretation. Furthermore, historical and comparative (as well as sociological) approaches allow researchers to explore differences in the interpretation of legal texts in different social contexts and to highlight the role of judicial practice in shaping the law. Legal history and comparative law research can thus help uncover the social contexts of law and provide an explanation for the present.[27]

In this thesis, I examine Romanian and Hungarian law by focusing on the key aspects of conventional representation, with particular attention to:

- the concept of representation and its place within the legal system;
- the forms through which conventional representation is carried out;
- the rules governing the legal capacity of the represented and the representative;

[25] FEKETE *cited work* 131-132.
[26] MENYHÁRD Attila, *A polgári jog tudománya Magyarországon.* In: JAKAB András, MENYHÁRD Attila (szerk.) *A jog tudománya. Tudománytörténeti és tudományelméleti írások, gyakorlati tanácsokkal*, HVG-ORAC, Budapest, 2015, 258.
[27] JAKAB András, MENYHÁRD Attila, *A magyar jogtudomány helyzete és kilátásai*. In: JAKAB András, MENYHÁRD Attila (szerk.) *A jog tudománya. Tudománytörténeti és tudományelméleti írások, gyakorlati tanácsokkal*, HVG-ORAC, Budapest, 2015, 41.

- the effect of the representative's legal declaration, with a particular focus on whether it constitutes direct or indirect representation;
- the rights and obligations of the representative, the represented, and third parties;
- the validity and formal requirements of legal transactions granting the right of representation;
- cases of conflict of interest between the representative and the represented party and their consequences;
- the effects of exceeding the limits of the right of representation and of legal transactions concluded without the right of representation;
- cases of termination of the right of representation.

In the first part of this dissertation, I examine the historical development of conventional representation from its earliest origins through to the adoption of the current civil codes, and I compare the development trends in the two countries. In the second half of the dissertation, I compare the current Hungarian and Romanian legislation using the comparative law method. At the end of each major period of legal history, I will draw partial conclusions regarding the legal development of representation in the respective country. I will then compare the developmental trajectories of the two countries for the given periods.

In analysing the legislative provisions currently in force, I not only refer to national legal norms, legal literature, and judicial practice, but also take into account the findings of international and European comparative legal research – such as the UNIDROIT Principles, the Principles of European Contract Law (PECL) and the Draft Common Frame of Reference (DCFR) – as these have influenced the development of current legislation.

2. New scientific results of the doctoral thesis

The results of hypothesis examination

The objective of this thesis is to present the development of conventional representation in the two legal systems selected as examples, using comparative and historical methods, in order to explore the theoretical and dogmatic principles underlying this institution. Based on the analysis presented in the dissertation, I formulated the following conclusions regarding the research hypotheses that provide the framework and guiding thread of the thesis.

According to the first hypothesis, the civil law traditions of the legal systems chosen as examples originate from different roots, and their historical development also differs, which is reflected in the systematic regulation of conventional representation from age to age.

Until the early 20th century, Hungarian civil law operated and developed in a quite unique manner, based on customary law. The institution of representation and direct representation had already gained recognition during the Árpád era, yet for a long time it was applied without written legislation. In the Middle Ages, the theoretical framework of representation had not yet been developed, but its practical advantages were nevertheless utilized. Laws concerning representation, which appeared as early as the first half of the 15th century, sought to resolve specific acute problems. The initial development of the institution of representation was closely linked to the institution of legal representation in litigation. After the division of the Kingdom of Hungary into three parts, the private law of the Principality of Transylvania followed a separate path. With regard to representation, this manifested itself in rules that differed somewhat from those of Hungary, but here too, the regulation of the institution was characterized by a pointed approach focused on acute problems.

The first turning point in the history of Hungarian representation law – as indeed in the history of Hungarian private law in general – was the introduction of the Austrian Civil Code (abbreviated as ABGB) in 1852 (and 1853 in Transylvania). Although it was not organically linked to the development of Hungarian law, the ABGB, with all the advantages of codified law and a contract law system more advanced than that of Hungary, left a deep mark on Hungarian private law and judicial practice. This code also provided the first comprehensive regulation of representation in Hungarian territory. Drawing itself from the French *Code Civil*, the code regulated only mandate contract within the scope of representation, and its rules applied to all other forms of representation. Despite all this, the ABGB did not leave a deep mark on the Hungarian regulation of conventional representation.

The influence of German law was all the more noticeable, as it "seeped" into civil law through the provisions of the 1875 Commercial Law (abbreviated as Kt.) and determined the direction of the further development of representation. At this point, we cannot yet speak of codified law; the development of certain institutions was closely linked to judicial practice, which became part of the law in force on the basis of customary law. Even in the absence of codified private law, Hungarian legal scholarship and practice were well familiar with and applied the most important rules and forms of conventional representation – mandate and power of attorney – while comission, considered the primary form of indirect representation, was codified in the Commercial Law.

The second turning point in the history of Hungarian private law and the regulation of representation is linked to the drafting of the 20th-century civil code proposals. Legal scholars of that era created regulations that took into account national traditions while also incorporating the findings

of modern, primarily German, legal scholarship. The conceptual foundations of the institution of representation were developed during this process. The Private Law Code-proposal (abbreviated as Mtj. – to mention only the latest draft) strictly separated, following the model of the German Civil Code (BGB), the internal relationship between the represented and the representative from the external relationship regarding to the third parties. This was reflected in the general rules on representation and in the regulation of the mandate contract as a specifically named contract. Also as a result of German influence, the mandate was conceived as a service contract, which took on a subsidiary character with regard to its subject matter: it could cover any act that did not qualify as an employment contract or a contract for services. The Mtj. regulated the purely civil law aspects of representation and left the indirect representation constructions used in economic life to the Commercial Law.

The 1959 Civil Code was based on the concept of representation set forth in the Mtj., which it "purified" of "bourgeois" elements and introduced extremely concise, abstract regulations in the area of representation. It maintained the general part on representation and, among the the mandate contract, regulated commission, and freight forwarding, although the practical application of these was significantly curtailed under socialist economic conditions.

The Civil Code entered into force in 2014 did not intend to bring about radical changes to Hungarian private law. With regard to the rules of representation, the guiding principle was to preserve the previous regulations wherever possible. Accordingly, the specific rules in the general section on representation have changed only slightly: they have only been moved from the chapter on contracts to the general rules of contract law. However, several new provisions have been introduced among the contracts governing conventional representation. In line with a monistic regulatory approach and adapted to the needs of the economy, new types of contracts have been included in the Civil Code alongside of mandate, commission, and freight forwarding. Both the intermediation contract and the trust management contract have been classified as mandate-type contracts. The regulation of the intermediation contract can be seen as a result of efforts toward European legal harmonization; however, the classification of trust management as a mandate contract is, in my opinion, not the most fortunate option.

The history of Romanian private law was fundamentally shaped by the fact that, for a long time, the Romanian-speaking region was not a unified state but consisted of two independent principalities. Both principalities were under Byzantine influence from the moment of their establishment, a fact that also had an impact on the field of law-making. For a long time, the practice of Romanian law was based on Byzantine and Greek legal compilations, which represented the

adaptation and further development of Roman law. The institution of representation, similar to medieval Hungarian private law, took on a fundamentally public law (litigation law) character, often involving criminal sanctions.

The first turning point in the history of Romanian private law was the adoption of the Calimach Code. Ordered and promulgated by the Phanariot ruler, the code appeared remarkably modern given the social conditions of the time. It provided the first comprehensive regulation of the institution of representation, which reflected the strong influence of the ABGB. Among the forms of conventional representation, it regulated only mandate contract and also contained a few different provisions regarding commercial mandate.

The second turning point was the wave of codification that occurred around and following the union of the two Romanian principalities. At that time, Romanian policymakers consciously turned to Western models, particularly French law, and in this spirit they adopted the 1840 Commercial Code, followed by the 1864 Civil Code, and then the 1887 Commercial Code, modeled on the Italian system. The rules on representation – based on the French model – did not sharply distinguish between mandate and power of attorney. A fundamentally dualistic conception of representation thus took shape in Romanian law, in both civil and commercial law (mandate with representation, mandate without representation). In connection with the 1864 Civil Code, the fundamental practice emerged that a mandate may relate exclusively to the conclusion of a legal transaction. This concept continues to define the subject matter of the mandate and its distinction from other contracts.

A third turning point can be identified in the history of Romanian private law, at least with regard to the regulation of conventional representation: the adoption of the new Civil Code in 2011. The new code carried out a systematic reorganization in the area of representation: it created a general section on representation, which was placed among the general rules of contracts (thus even preceding the French legal system), and regulated contracts implementing representation in a monist spirit. The mandate remained true to its roots, continuing to apply only to the conclusion of legal transactions, a principle somewhat relativized by the newly introduced guardianship mandate. The regulation also preserved the dualistic structure of the mandate (mandates with and without representation). Among the contracts that implement conventional representation, it also regulates the commission and its subtypes (sales commission, freight forwarding), as well as intermediation contracts.

Comparing the current rules of representation in the two legal systems, it can be said that, from a systematic perspective, they are currently the closest to each other; however, significant conceptual differences can still be observed, particularly in the area of mandate contract.

According to the second hypothesis, the system of conventional representation in the first modern Hungarian and Romanian civil law codifications reflected the main characteristics of the legal systems serving as models, and these characteristics continue to be felt in the most recent codifications that entered into force in 2014 and 2011, respectively.

As I pointed out above, the concept of representation in Hungarian law was based on the draft civil codes of the early 20th century, which clearly reflected the influence of German Pandect law. Both the 1959 Civil Code and the current Civil Code retained the structure of the regulations on representation and likewise preserved the dogmatic foundations of the forms of conventional representation, according to which direct representation is realized through a mandate, while indirect representation is realized through a commission and its subtypes.

Continuity is not as clear-cut in Romanian law as it is in Hungarian law. This is mainly due to the fact that the current Civil Code has, from a codification perspective, separated the internal and external aspects of representation. However, if we note that the mandate applies only to the conclusion of legal transactions, that the *prêt-nom* contract is used in the same way, and that the distinction between mandates with representation and those without representation remains the same, it is undeniable that current Romanian legislation still draws heavily on French traditions, all the more so because, at the time of its creation, it was also largely inspired by the Quebec Civil Code, itself inspired by French law.

According to the third hypothesis, both Hungarian and Romanian law currently in force separate the internal and external aspects of representation, i.e., they distinguish the power of attorney from the relationship on which it is based. Accordingly, the civil law codifications of both legal systems contain a general section on representation and regulate, among specific contracts, those that implement representation (direct or indirect representation). From a legal application perspective, this regulatory approach is more advantageous than the (former French) model linking representation to a mandate.

Representation is both a simple and complex legal institution. A person does not need to have legal knowledge to enjoy its benefits or to act on behalf of another as a representative. In detail, however, it is a highly complex institution, as it may involve aspects of procedural law, personal law, property law, contract law, inheritance law, and corporate law. Therefore, it is important that the legal system regulate this area with transparent and understandable legal provisions.

Since, in addition to the represented party and the representative, the existence of a representation relationship also requires the involvement of a third party, who, however, has limited information about the legal relationship between the former two or is completely unaware of it. The

fundamental interests of a *bona fide* third party would be endangered if the validity of a contract concluded with them were to be called into question because the representative did not have the authority to act on behalf of the represented party or exceeded their powers of representation. In modern legal systems, it is now a fundamental legal principle that, for the validity of the representative's actions, it is not the agreement between the represented and the representative that is decisive (internal relationship), but rather the power of attorney that is also known to third parties (external relationship). Both legal systems under examination implement this fundamental principle at the regulatory level. Regarding Romanian law, the principle of a sharp distinction between internal and external relationships is perhaps nuanced by the fact that the legislature requires compliance with the formalities applicable to the specific legal transaction even in the case of a mandate, whereas from the perspective of formality, only the formality of the power of attorney is relevant.

Legal systems that distinguish between the internal and external aspects of representation generally also establish abstract legal provisions governing representation, which they place within the general rules of obligations or contracts. This is the case under both Hungarian and Romanian law. The obvious advantage of this approach is that the law establishes common provisions for all situations involving representation within the framework of general rules, thereby eliminating the need to repeat the relevant specific provisions for every form of representation. For example, there is no need to regulate conflicts of interest, self-contracting, false representation, or cases of termination separately for every contract; it is sufficient to address these within the general rules of representation. It is no coincidence that this method of regulating representation has now spread to almost every modern legal system.

According to the fourth hypothesis, the monistic regulation of civil law has not substantially altered the forms of conventional representation in either Hungarian or Romanian law, and its rules have not been disadvantageous to either natural persons or participants in economic life.

The monistic approach of civil codes has essentially brought no substantive change with regard to forms of representation. They still include forms of direct representation (power of attorney, mandate, organizational representation, and, in certain cases, agency) as well as forms of indirect representation (consignment, freight forwarding, intermediation contracts, and, in Romanian law, the prêt-nom contract).

At the same time, in both legal systems – though more pronounced in Hungarian law – there is a trend toward modelling contracts on professional relationships, reducing the element of trust, and increasing the requirements imposed on legal entities (for example, fiduciary asset management may

only be performed by entities licensed for this purpose). However, this does not mean that consumers' interests are harmed, as our legal relationships are fundamentally becoming more commercialized, and where necessary, the legislature can intervene with consumer protection rules.

According to the fifth hypothesis, despite their different origins, the rules governing conventional representation in the two countries apply similar solutions to most fundamental issues. This is primarily due to the fact that the institution of representation fulfils a similar function in both legal systems, the problems it raises are also similar, and thus the responses to these – given the similar economic and social structures – are largely convergent. Given this convergence, legal harmonization appears to be a realistic possibility in the case of certain forms of conventional representation.

A closer examination of the rules governing agency in Hungarian and Romanian law reveals that, despite their historical and doctrinal differences, the two legal systems apply similar solutions to most problematic situations: currently, both legal systems contain a general section on representation which, despite some differences in detail, resolves issues in the same way at the level of legal principles (conflict of interest, self-contracting, power of attorney, duty to inform, false representation, reasons for termination, etc.), and both legal systems include the fundamental key institutions of conventional representation: power of attorney, contract of mandate, commission contract, freight forwarding, intermediation contract, and both legal systems regulate civil law from a monist perspective.

With the adoption of Directive 86/653/EEC, legal harmonization was achieved at the EU level regarding the regulation of intermediary/permanent agency contracts, which both Hungary and Romania have implemented in their respective legal systems. Although structural differences can be identified between the implementation of the two legal systems (permanent and ad hoc intermediation in Hungarian law; two separately named contracts in Romanian law: agency and intermediary contracts), they perform the same functions and resolve most substantive issues in the same manner.

The source of these significantly converging legal provisions lies primarily in the specific function of representation: in any society, representation serves the purpose of acting on behalf of another in making declarations. In legal systems with similar economic and social structures, issues related to representation are generally similar, and legislators provide essentially identical responses to them. Applying this fundamental conclusion to private law, Károly Szladits also stated, following Béni Grosschmid:

> "One of the most important lessons of comparative law is that, at a given time, the same conflicts of interest are resolved on a case-by-case basis in the application of the law everywhere, albeit through different means, but with similar results. If we examine the newer problems of private law today – whether in German case law, the new Polish law of obligations, or the Hungarian draft – we generally find, without regard to the details, largely the same principled decisions. This is evidence that justice, though through different legal constructs within the framework of various codes, is making its way. This, however, points to the fact that the truth which drives the delivery of justice in the various legal systems belonging to the same civilization is not something specifically French or German, Polish, or Hungarian, but rather a general human ethic that is largely independent of national belonging."[28]

In the new codifications, the boundaries between legal systems and legal families appear to be blurring, and the rules and forms of conventional representation are becoming increasingly convergent, even in the legislation of states with such different traditions. Initiatives aimed at the harmonisation of private law naturally play a decisive role in this regard. The Romanian legislature, for example, has based certain provisions on the rules of the UNIDROIT Principles or the Principles of European Contract Law (PECL). Legislation is no longer purely national. In most countries, legislative work is preceded by comparative research, thus bringing the "soft harmonization" of European private law into increasing focus.

However, legal harmonization is not necessary or advisable in every area of law, as the law is closely linked to the historical, cultural, and economic characteristics of a given society. At the same time, legal harmonization can be particularly beneficial when it comes to legal transactions related to commercial relations. International trade, cross-border contracts, and the functioning of the digital economy require a predictable, transparent, and mutually compatible legal environment. If there is a social and/or market demand for unified regulation in these matters, and a professional consensus emerges regarding the correctness of a given legal solution, legal harmonization can indeed advance the development of private law. However, legal harmonization cannot be an objective itself in the context of conventional representation either. It is always merely a means: it is justified where there is an actual need and consensus, and where it is capable of creating added value.

[28] SZLADITS Károly, *Grosschmid és a magyar kötelmi jog*, Magyar Jogászegyleti értekezések és egyéb tanulmányok, 1936/13-14. szám)1936/1-2. szám, 15-16, own translation.

UNIVERSITY AND NATIONAL LIBRARY
UNIVERSITY OF DEBRECEN
H-4002 Egyetem tér 1, Debrecen
Phone: +3652/410-443, email: publikaciok@lib.unideb.hu

Registry number: DEENK/188/2026.PL
Subject: PhD Publication List

Candidate: Előd Bartis
Doctoral School: Géza Marton Doctoral School of Legal Studies
MTMT ID: 10069014

List of publications related to the dissertation

Articles, studies (8)

1. **Bartis, E.**: Ügyleti képviselet a román fejedelemségek jogában = Conventional Representation in the Law of the Romanian Principalities.
   Erdélyi Jogélet. 1, 101-119, 2025. ISSN: 2734-6226.
   DOI: http://dx.doi.org/10.47745/ERJOG.2025.01.08

   HAS Committee on Legal and Political Science: B

2. **Bartis, E.**: Ügyleti képviselet a XX. század eleji magyar polgári törvénykönyvtervezetekben = Conventional Representation in the Drafts of Hungarian Civil Code of the Early 20th Century.
   Erdélyi Jogélet. 1, 139-160, 2024. ISSN: 2734-6226.
   DOI: http://dx.doi.org/10.47745/ERJOG.2024.01.09

   HAS Committee on Legal and Political Science: B

3. **Bartis, E.**: A gondnoki megbízás = The Guardianship Mandate.
   Erdélyi Jogélet. 3, 79-96, 2023. ISSN: 2734-6226.
   DOI: http://dx.doi.org/10.47745/ERJOG.2023.03.07

   HAS Committee on Legal and Political Science: B

4. **Bartis, E.**: A megbízási szerződés egyes időbeli kérdései a román jogban = Some temporal issues of the mandate contract in Romanian law.
   Erdélyi Jogélet. 3, 71-84, 2022. ISSN: 2734-6226.
   DOI: http://dx.doi.org/10.47745/ERJOG.2022.03.05

   HAS Committee on Legal and Political Science: B

5. **Bartis, E.**: A Nemzetközi Kereskedelmi Szerződések Alapelveinek hatása a képviselet magyar és román szabályozására = The Effect of the Principles of International Commercial Contracts on the Hungarian and Romanian Regulations of Representation.
   Erdélyi Jogélet. 3 (1), 7-16, 2022. ISSN: 2734-6226.
   DOI: http://dx.doi.org/10.47745/ERJOG.2022.01.01

   HAS Committee on Legal and Political Science: B

6. **Bartis, E.**: Az álképviselet szabályozása a román Polgári törvénykönyvben = The regulation of the unauthorized agency in the Romanian Civil Code.
Erdélyi Jogélet. 2 (2), 119-130, 2021. ISSN: 2734-6226.
DOI: http://dx.doi.org/10.47745/ERJOG.2021.02.07

   HAS Committee on Legal and Political Science: B

7. **Bartis, E.**: A megbízási szerződés szabályozásának történeti vázlata Romániában = A Historical Outline of the Rules Governing the Contract of Mandate in Romania.
Erdélyi Jogélet. 1 (1), 5-22, 2020. ISSN: 2734-6226.
DOI: http://dx.doi.org/10.47745/ERJOG.2020.01.01

   HAS Committee on Legal and Political Science: B

8. **Bartis, E.**: Contractul de mandat: Capitolul IV.
In: Contracte speciale. Curs selectiv pentru licență / (szerk.) Emőd Veress; János Székely; Zsolt Fegyveresi; Előd Bartis; Előd Pál, Forum Iuris, Cluj-Napoca, 205-236, 2020. ISBN: 9786069061183

List of other publications

Articles, studies (5)

9. **Bartis, E.**, Veress, E.: A vadászat szabályozása Romániában, különös tekintettel a vadászható állatok által okozott károkért való felelősségre és a vadgazdálkodásra.
In: A vadkár, a vadászható állat által okozott kár és a vadgazdálkodás összefüggései nemzetközi kitekintéssel / Barta Judit (szerk.), Patrocinium, Budapest, 95-123, 2022. ISBN: 9789634133483

10. **Bartis, E.**: Szerződési jog Kelet-Közép-Európában.
Erdélyi Jogélet. 4, 159-161, 2022. ISSN: 2734-6226.
DOI: http://dx.doi.org/10.47745/ERJOG.2022.04.10

    HAS Committee on Legal and Political Science: B

11. **Bartis, E.**: Admitted exceptions of unconstitutionality regarding to the provisions of the Romanian Civil Code: The case law of the Romanian Constitutional Court.
Jogelméleti Szemle. 4, 113-124, 2021. EISSN: 1588-080X.
DOI: http://dx.doi.org/10.59558/jesz.2021.4.113

    HAS Committee on Legal and Political Science: B

UNIVERSITY AND NATIONAL LIBRARY
UNIVERSITY OF DEBRECEN
H-4002 Egyetem tér 1, Debrecen
Phone: +3652/410-443, email: publikaciok@lib.unideb.hu

12. **Bartis, E.**: Ügyleti képviselet a magyarországi és romániai közigazgatási eljárásjogban. *Miskolci jogi szemle. 16* (4), 137-156, 2021. ISSN: 1788-0386. DOI: http://dx.doi.org/10.32980/MJSz.2021.4.1262

    HAS Committee on Legal and Political Science: A

13. **Bartis, E.**: Nemzetbiztonság vs. jogbiztonság: Hogyan sérülhetnek Romániában az alapvető emberi jogok a nemzetbiztonság fenntartására való hivatkozással. *Kisebbségvédelem. 2*, 8-26, 2020. ISSN: 2676-8992.

By the directives of HAS Committee on Legal and Political Sciences:
Publications in periodicals level „A": 1, related to the dissertation: 0.
Publications in periodicals level „B": 9, related to the dissertation: 7.

The Candidate's publication data submitted to the Tudóstér have been validated by DEENK on the basis of the Journal Citation Report (Impact Factor) database.

16 April, 2026