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**THE REGULATORY ISSUES OF THE MARKET SUPERVISION
PROCEDURE OF THE NATIONAL BANK OF HUNGARY**

Theses of the PhD dissertation

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1. The subject and aim of the dissertation

The subject of my scientific dissertation is a comprehensive analysis and presentation of the market supervision activities of the Hungarian National Bank (hereinafter: MNB, Central Bank or Supervisory Authority). Prior to my doctoral dissertation, I had already dealt with the economics and financial market issues of banking supervision during my previous studies. It was then that I became more interested in domestic market supervision, which turned out to be an extremely diverse field.

The processes taking place in the world in recent years and the exponential acceleration of technical development justify the dynamic shaping of the legal environment to the changed economic and social arrangements. In its everyday work, the Supervisory Authority must be able to face the new challenges caused by the changes in the performance of its market supervision activities. Therefore, my goal was to conduct a comprehensive scientific examination of this area, which has not been done so far. The dissertation contains legal history, theory, constitutional law, administrative law and, of course, financial law issues, interesting legal cases from the practice of the Authority and the courts, the thoughts of authors familiar with the subject, and my opinion based on my own research.

The legal history chapter presents the history of supervisory development in a linear timeline, and confronts the opinions of famous politicians, renowned legal scholars and economists – such as Emil Dessewffy, András Fáy, Elemér Hantos – on the subject of supervision of financial institutions. The basic theoretical debate concerned the question whether internal or external control is more efficient and appropriate in relation to the operation of financial institutions, and in the case of the latter, supervision by a state body set up specifically for this purpose or by an autonomous body consisting of representatives of financial institutions is more suitable.

In my scientific dissertation, I analyzed the legal status, tasks and role of the MNB as the apex body of the domestic banking system. The starting point for this was always the fundamentals of our legal system, but in order to carry out a precise normative analysis, I also used the contents of other legal acts and the findings of scientific works in addition to the provisions of the Chapter on Public Finances of the Fundamental Law and the Central Bank Act.

Moving from the area of constitutional law to the area of administrative law, it is generally important to highlight that the MNB applies a preventive approach in its administrative

procedures, and accordingly, the aim of its market supervision procedures is not to sanction violations ex post, but to prevent and manage the development of potential future market supervision risks. The special procedural legal institutions of the market supervision procedure have been given a separate sub-chapter (for example, client, on-site research, available data), as these determine the exempted status of the procedure.

Since I did not encounter the concept of market surveillance procedure during my research, in the fourth chapter of my scientific dissertation I created a general concept for this special supervisory authority procedure, which is sufficiently comprehensive, concise, and includes the substantial elements of this conception.

In addition to the administrative sanctions of the market surveillance procedure, it is of paramount importance that compliance with the provisions on the prevention of capital market abuse could also be ensured with the tools available to criminal law. This also means a sequence from a certain point of view, since, on the one hand, the administrative and criminal law sanction systems have the possibility of providing different legal disadvantages, and on the other hand, due to the ultima ratio nature of criminal law, the state's criminal law action is only possible in the case of the most serious unlawful conduct. Accordingly, the last substantive chapter of my scientific dissertation examined the relationship between market surveillance and criminal law from both a substantive and procedural perspective.

My goal in writing this dissertation was to create a comprehensive work on market surveillance procedure that would contain new findings and proposals that would unify legal practice, not only for theory but also for practice. I trust that anyone who takes my work into their hands will also come to this conclusion.

2. Structure of the dissertation

The complexity of the field gives it its beauty as well as its difficulty due to the following. The most characteristic feature of market surveillance activity within the field of financial law is its transversal nature. By this I mean that in addition to presenting the historical development of law, the examination of market surveillance activity also requires the analysis of constitutional law, administrative law, financial law and criminal law norms, as it shows strong connections with them from both a substantive and procedural point of view. This statement is also confirmed by the structural build-up of the dissertation.

The dissertation consists of a total of nine chapters, which, in addition to the five substantive chapters, have an introduction, a summary, an English summary, and a bibliography. In addition to the normative analysis of the substantive legal material related to the given area of law, I seek scientifically supported answers to the research hypotheses raised at the beginning of each chapter. In accordance with the objective, in the first chapter I define the subject of the dissertation, determine the methodology used in each chapter, and set up the research hypotheses that I examine by placing them at the center of the dissertation.

In the second chapter, I conduct a legal historical examination of the development of financial supervision. Due to the specific public law development and situation of our country, we cannot really talk of financial supervision until the 19th century, so this marks the beginning of the period I examined. Starting from the reform era to the current state, I trace the organizational changes of the domestic supervisory system, taking into account the Hungarian public law as it is and the impacts of international events.

After clarifying the legal history and organizational theory foundations, in the third chapter I present the constitutional position of the MNB in the third chapter. In addition to those parts of the Fundamental Law of Hungary (hereinafter: Fundamental Law) which are related to the Hungarian Central Bank, I analyze the sections in the cardinal laws that determine the fundamental tasks and legal status of the MNB. I highlight that the MNB's relationship with the law is twofold, since on the one hand it can create law and on the other hand it applies law, and therefore it is present in two of the three branches of power included in the classical principle of separation of powers, namely the legislative and executive branches. In the chapter I present in detail the legal status, tasks and role of the MNB as the supreme body of the domestic banking system by the provisions of the Fundamental Law.

In the fourth chapter of my scientific dissertation, I focus on the special features of the market surveillance procedure as an administrative procedure. According to the current Hungarian regulations, the market surveillance procedure is considered a so-called “excepted procedure” under the Act CL of 2016 on General Administrative Procedure (hereinafter: *Ákr.*). This means that the Authority is exempted from the application of several provisions of the *Ákr.*, the reasons of which can be traced back to the special nature and task of the market surveillance procedure.

In the fifth chapter, I analyzed in detail the five highlighted cases regulated in the Central Bank Act that give rise to the initiation of market supervision proceedings. Each of these is a financial activity whose prohibition or licensing requirement ensures the transparent, stable and uninfluenced operation of the financial markets. In accordance with the five paragraphs of the Central Bank Act on the initiation of market supervision proceedings, the chapter is divided into five subchapters. Within the first subchapter, those activities have been highlighted as separate sections that have significant supervisory practice and interesting legal cases for both theory and practice.

In the sixth chapter of the dissertation, I analyzed the relationship between market surveillance procedures and criminal law. Taking the distinction between criminal substantive and procedural law as a basis, I present in two subchapters those legal provisions that are directly related to the market surveillance procedure of the Authority. Within this framework, I examined the crimes in Act C of 2012 on the Criminal Code, the signs of the commission of which the Authority most frequently encounters. I also presented the relationship between Act XC of 2017 on Criminal Procedure (hereinafter: *Be.*) and the market surveillance procedure, taking into account the principle of *ne bis in idem*.

3. Methods used in the research and evaluation of related literature

While writing the scientific dissertation, each chapter required different research methods, but I applied comparative legal analysis in almost every chapter.

In preparing the legal history section, I used descriptive and historical methods in order to illuminate the organizational theory of financial supervision from multiple perspectives and place it at the center of my research. There was a fundamental theoretical debate between practitioners and theorists in the early stages of the operation of financial institutions about whether internal or external control is more effective and appropriate. My first research hypothesis is that an external state body established for this purpose by a separate law is the best solution for the supervision of financial institutions (H1).

The third chapter, which discusses constitutional issues, was prepared using the substantive legal and normative descriptive methods. In this chapter, I explored two important hypotheses from the point of view of the dissertation. The second hypothesis was related to the question whether the simultaneous presence of the MNB in two branches of power is appropriate and justifiable, or whether another body could perform its legislative tasks instead (H2). For this, it was necessary to examine the powers of the Hungarian Central Bank derived from the Fundamental Law and other laws, and in addition to its role in lawmaking, the legal normativity and regulatory scope of the laws it can issue.

The other research hypothesis of the third chapter also required an examination of the constitutional position of the MNB using the legal descriptive method. Not only in the historical time frame, but also in other countries today, the organizational structure of the central banking system differs in terms of whether the central bank of a given country is simply a central bank (dualist) or is also the central body of financial supervision (monist). Both solution models have their advantages and disadvantages, but in my opinion, the monist solution, on the whole, carries more advantages than the dualist one (H3). It is important to emphasize that the purpose of this chapter of my dissertation is primarily to present the constitutional position of the Central Bank, and secondly to explore the chain of statutory authorization that allows the MNB to exercise official powers in certain cases – for example, market supervision procedures.

In writing the fourth chapter, I applied normative descriptive and critical analytical methods in order to examine the special status of the market surveillance procedure as a research hypothesis. During the codification of the Code of Administrative Procedure, the reason for the special status of the market surveillance procedure as a special administrative procedure was

that it had a special scope and financial regulatory area, based on which it would have been difficult to insert and conduct it within the rules of the general administrative procedure in the traditional sense. In accordance with the above, the fourth hypothesis of my dissertation is that the special status of the market surveillance procedure is justifiable and necessary (H4). But what would happen if there were no special procedures, or if the legislator suddenly decided to integrate the special procedures into the regular structure of the Code of Administrative Procedure? I aim to justify my hypothesis and answer these questions in this chapter of the dissertation.

In the fifth chapter, I presented the financial activities subject to licensing or prohibited in the current regulations using normative analysis. The fifth hypothesis of my scientific dissertation is that the Supervisory Authority has the legal background to take deterrent action against financial abuses occurring in practice, added to which I also intend to make the MNB practice related to regulated cases the subject of my scientific dissertation (H5). The answer to this hypothesis was finally provided by comparing the normative analysis presenting the regulatory environment in relation to each financial activity with the everyday changes in economic life.

In the sixth chapter, I examined the relationship between criminal law and market surveillance proceedings using normative analytical and comparative legal methods. The reasons for conducting market surveillance proceedings and criminal proceedings one after the other are that they belong to different branches of law, the applicable substantive law norm in the given proceedings is different, and the sanctions that can be established in them have different functions. In this context, it is important to draw attention to the fact that market surveillance proceedings do not always result in criminal action by the state, and criminal proceedings may also take place in the event of such unlawful financial conduct, even if they are not preceded by a market surveillance procedure.

The sixth hypothesis of my scientific dissertation is that the parallelism of market surveillance proceedings and criminal proceedings does not conflict with the principle of *ne bis in idem* (H6). As a result of my analysis, I concluded that due to the differences in the legal field, such as the legal nature of the proceedings, participating actors, ascertainable legal consequences, etc., the prohibition of double proceedings is not violated by the conduct of market surveillance proceedings and criminal proceedings against the same person.

4. Summary of the research results and its utilization

In accordance with the above research hypotheses, I analyzed the market supervision procedure of the MNB in five substantive chapters of my scientific dissertation, using the ideas of authors dealing with the topic, the conclusions of practicing lawyers, and the findings and decisions of law enforcement bodies.

My first hypothesis examined the effectiveness of the internal or external control of financial institutions, with the external being divided into two options: the control by an autonomous or state body. In my opinion, considering the possible alternatives, objective findings made by a body with independent legal personality, founded by the state, subject only to laws, and completely independent of the legal entity under control, represent the greatest guarantee for the financial markets and the banking sector.

The other theoretical part of the legal history chapter compared the advantages and disadvantages of the single-tier and two-tier banking system models. In this case, the principle of “tertium non datur” applies, i.e. the banking system of a given country can be either single-tier or two-tier. In the latter case, there is a buffer level below the central bank, the level of commercial banks and financial institutions, whose task is to provide financial services to the population and market participants. The model used in Hungary was two-tier between 1924 and 1947, then single-tier until 1987, and since then two-tier again.

After analyzing the legal history and organizational theory issues, in the third chapter I examined the constitutional position of the MNB using substantive legal and normative descriptive methods. In this chapter of the dissertation, I explored two important hypotheses. The first hypothesis examined the justification of the legislative authority of the MNB. To do this, I looked at the tasks and powers of the Central Bank derived from the Fundamental Law and other laws, as well as its role in lawmaking, and the legal normativity and regulatory scope of the laws it can issue.

Among other things, the MNB presidential decree determines the current central bank base rate, the denomination, issue and withdrawal of banknotes and coins, and the processing of payment transactions. I examined the theoretical possibility that in these cases the Minister of National Economy would regulate by decree instead of the MNB President. Since the Minister of National Economy is a member of the government, he is a senior political leader with an interest in the running of the economy, whose goals – by virtue of his position – are

not always in line with the central bank missions. Consequently, he would not be able to be independent, so this is not a real alternative. In light of above, the research hypothesis can be justified, that the President of the Central Bank should have the power to issue decrees, and this role cannot be adequately performed by another constitutional body.

The second research hypothesis of the third chapter of my scientific dissertation also necessitated the examination of the constitutional position of the MNB. Examining the countries of the world, it can be stated that the organizational structure of the central banking system still varies today depending on whether the central bank of a given country is simply a central bank or the central body of financial supervision at the same time. Taking into account the social, economic, geographical and historical differences between individual countries, each determines its central banking system according to the structure that best suits its own conditions.

Until the autumn of 2013, Hungary had a dualist system, as the PSZÁF performed financial supervision tasks. Thanks to the monist banking system, not only the number of necessary resources was reduced, but their use was also more efficient, and thus the number of functional areas was also smaller. In the case of our country, it can be clearly stated that the advantages provided by the monist system enable more effective financial supervision than the dualist model.

In the fourth chapter of my scientific dissertation, I examined the administrative procedural nature of the market surveillance procedure. My research hypothesis in relation to this chapter was that the status of the market surveillance procedure excluded from the Act on the Protection of the Rights of Persons with Disabilities can be justified and explained. I justified this, among other things, with the help of certain special legal institutions (the concept of client) and procedural acts (on-site investigation). Given that a market surveillance procedure cannot be initiated at the request of the client, instead of the term client, the term “natural or legal person subject to the procedure” would better describe the procedural nature of the market surveillance procedure, given its high percentage of outcomes, which are nothing other than the imposition of a fine and the initiation of criminal proceedings.

In my opinion, one of the most important reasons for the exempted status is to be found in the legal consequences that can be established in the market supervision procedure. In the course of the market supervision procedure, the Supervision has had the possibility to apply legal consequences against the “natural person who contributed to the merits” during the procedure initiated against the legal entity client since the summer of 2015. The reason for this is that the persons who suffered financial damage were often not able to name the legal entity

client itself in the market supervision procedures, but only the natural person acting in their interest, who carried out unauthorized financial activities for several legal entities at the same time.

In the fifth chapter, I analyzed the cases regulated in the Central Bank Act that give reason to the initiation of market supervision proceedings. In addition to presenting the legal environment of these financial activities, I analyzed the market supervision procedures conducted by the Supervision Authority in each case in order to provide a more comprehensive picture of the topic besides the theory, as well as the practice carried out by the law enforcement authorities.

In the sixth chapter of the dissertation, I analyzed the crimes and procedural acts and legal institutions that occur in the market surveillance procedure. The research hypothesis of this chapter is the examination of the *ne bis in idem* principle in relation to the *Ákr.* and *Be.* with regard to the market surveillance procedure. According to my research hypothesis, the market surveillance procedure and the criminal procedure do not conflict with the *ne bis in idem* principle, since they belong to different branches of law, the applicable substantive law norm in the given procedure is different, and their sanction system also has a different set of tools.

As the Constitutional Court has stated in several decisions, the Fundamental Law does not prohibit, in itself, the conduct of several proceedings, belonging to different branches of law, with different functions, against someone for the same unlawful act and the application of legal consequences as a result of these proceedings. The current Hungarian legislation should move in the direction where the legal consequences applicable in the course of proceedings belonging to different branches of law, together and complementary to each other, are proportionate to the gravity of the liability for the unlawful act. In my opinion, the sequential or parallel conduct of criminal proceedings and administrative proceedings is justified in certain cases and is not contrary to the principle of *ne bis in idem*, but at the same time, it is necessary to regulate at the legislative level the principle of “taking into account sanctions imposed in other proceedings”, which is already applied by the courts in many cases.

Based on the above research hypotheses, I examined the market supervision procedure of the MNB in six chapters of my scientific dissertation. In my opinion, the current regulations create a stable system that has sufficient tools to ensure the proper functioning of financial markets.

5. List of publications related to the dissertation

1. Sereg Péter: Az Európai Unió pénzügyi felügyeleti rendszerének szervezeti felépítése, in: Miskolci Jogi Szemle, 14. évfolyam, 2. szám, Miskolc, 2019.
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3. Sereg Péter: A Magyar Nemzeti Bank piacfelügyeleti eljárása mint hatósági eljárás, in: Gazdaság és Pénzügy, 9. évfolyam, 3. szám, 2022. szeptember
4. Sereg Péter: Market surveillance by the National Bank Hungary as administrative procedure, in: Economy and Finance: english language edition of Gazdaság és Pénzügy, 9. volume, 3. issue, 2022.
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11. Sereg Péter: A pénzkölcsönnyújtás fogalmának pénzügyi jogi megítélése, in: Gazdaság és Jog, XXXII. évfolyam, 3–4. szám, 2024. március–április.