

NATIONAL UNIVERSITY OF PUBLIC SERVICE
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**Thesis Booklet of the PhD Dissertation – titled as The Syndicate Contract –
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Krisztina Nagy Barna: The syndicate contract

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1. The academic controversy concerning the syndicate contract and the composition of research aims

According to the Legal Lexicon the syndicate contract has three different meanings in practice: it is a synonym for cartel and consortium, it is a voting agreement between shareholders, and lately it is used as a letter of intent for establishing a business association. This definition emphasizes that the syndicate contract is a civil law contract, which can be filled with different contents, and it is usually connected to company law, but it can also carry public law features. However, the Legal Lexicon does not mention every area in which syndicate contracts are regularly used, this means that the syndicate contract is constantly evolving, it is “not yet finished”, nevertheless since we have several information about this contract, these shall be introduced in a synthetic essay.

The syndicate contract is a civil law contract, which is closely connected to company law, so the interpretation of the contract and the applicability of civil law regulation is only possible in a close connection with company law, prioritizing the rules of the latter.¹ As a result of the strong cohabitation between civil law and company law, the question arises whether the breach of a syndicate contract can cause legal consequences in company law as well, i.e. for example in case of a breach the rules of exclusion of a member could be applied or not. Since there is a lack of agreement or a common theory, this question is still undecided. The syndicate contract is basically a cooperational (collaborational) contract, in which the members of a business association regulate their relationship, their collaboration and their expectations toward each other,² and as a result of this, the contract shall be upheld only until the company is existing, since if it ceases to exist, there is no frame in which the committed activity could be practiced.³ This topic provides another addition to the indefinability of the contract, since the identity of the contracting parties is not clear, and there are also a lot of doubtfulness in case of the termination of a membership, the entry of a new company member, the dissolution of the company and also, the exact content of the contract is a matter of question itself. Regarding the syndicate contract we shall note that it is an independent,⁴ atypical contract, which generates commitments regarding the law of obligations,⁵ however it is concluded with respect to the articles of association and it contains extra commitments compared to the articles of association.⁶ With respect to the previously mentioned facts, the relationship between the articles of association and the collateral, however solely interpretable agreement shall be clarified. Another special feature of the syndicate contract is, that it is not regulated by the law, which causes the necessity to examine that how is this contract interpreted in the legal

¹ BH 1998. 89.

² Mária Balásházy: A szindikátusi szerződés a társasági és a polgári jog határán, *Gazdaság és Jog*, 1993/5., 16.

³ Tekla Papp: A szindikátusi szerződés, in: Tekla Papp: *Atipikus szerződések*, Opten, Budapest, 2015., 224.

⁴ Vb 1997/1.

⁵ BDT 2007. 160.

⁶ József Juhász: Szerződések ütközése Kft.-ken belül avagy felesleges duplicitás?, *Magyar Jog*, 1991/12., 731.

regulation of other European countries, and whether are there any means to codify this contract or not. During my research regarding the international aspects, it became clear that the complex comparative examination of similar agreements to syndicate contracts existing in each and every country can not be carried out in the frame of this thesis, since usually these agreements are not regulated in acts, they are confidential but often used contracts, which makes it hard to create a common criteria system for analysis, according to which every agreement used in these countries could be introduced and compared. Another hurdle is – similarly to the Hungarian case – to find each and every relevant court decision regarding the topic. With respect to the previously mentioned facts, I came to the conclusion to only take a stand on the case of the highly disputed codification of the contract by examining the legal regulation of the often-similar company law type syndicate contracts in several European countries. In my opinion, the comparative research between syndicate agreements in one or more countries would have implicated the preparation of another dissertation, because of the differences in the regulation in civil law and company law, and also the different antecedents regarding legal history. The facts gained during the research and the interpretation of the international legal literature and the outcomes of the Hungarian legislation in the field of civil law – with a special regard to the new Hungarian Civil Code – implied the necessity to analyze their effect on the contractual content, concerning the syndicate contract. Among this, I find it worthy to examine the relevance of syndicate agreements regarding family businesses and their transmissions. In my view, the topic of family businesses and their internal relationships and their transmissions would make it necessary to draft another dissertation – either examining them from the view of syndicate contracts or from another point of view -, and as a result of this, during the processing of the outcomes of my research I aimed to keep the close connection with the topic of the dissertation. During the analysis of international aspects, my research experiences incited me to briefly describe the contract from the view of corporate governance, since in case of several company forms, the rules of corporate governance could limit the thwarting of syndicate agreements, which are caused mostly by the background agreement feature of the contract.

Regarding that the syndicate contract regulates the cooperational relationship between the members of the business association, it was proved to be necessary to analyze the acquisition of a qualifying holding, which is a special type of cooperation between the members. Business associations are legal persons, in which the members carry out business operations jointly, which requires financial contribution and with respect to this, each member has a right to a share of profit and an obligation to participate in the covering of losses. The emphasis lays on the joint business operation, since the word joint assumes the existence of a privity between the members, so a cooperation for the purposes and interests of the company. The institution of the acquisition of a qualifying holding could override this special feature of business enterprises, since in that case, one member has a determining control over the decision-making of the company, which breaks the privity of the members and instead of the interests of the business association the interests of the member with the qualifying holding are dominating. The break of privity, the damnification of creditors' and minority owners' interests, so the acquisition of a qualifying holding could also take place by the way of a syndicate agreement as well. From this view, it can be clarified that the syndicate agreement (and the voting agreement) is disputed in the Hungarian company law practice for a reason, since it is a tool to break one of the main

features of business associations, which is the privity of the members. The aim of the chapter is to introduce the rules of the acquisition of a qualifying holding from the view of the syndicate contract – which is a deficiency in the Hungarian legal literature -, and also to analyze the topic of golden shares and state-owned enterprises, which is justified because of their special features.

Concluding a syndicate contract is not limited only to the members of the company, moreover the member(s) of the company can cooperate with a third party/third parties as well. The chapters on silent companies and venture capital investments are describing the latter cases. With respect to the company law type syndicate agreements it seemed necessary to examine silent companies. Since the new Civil Code entered into force, because of the dispositive regulation of the Third Book and the acceptance of the fact that civil law partnerships can carry out common business activities as well, the commentaries on the new Act and other legal literatures started wondering, whether it is allowed to found a silent company or not. The provisions of Act V of 1930 concerning silent companies were put out of force by the legislative decree 11 of 1960., so when Act IV of 1959 (the old Civil Code) entered into force on the 1st of May in 1960, it was forbidden to create a silent company. “It seems, that the need for silent companies is still not over, however the lawmaker intentionally stated that it does not wish to support the pursuit that somebody, who is completely hidden and hides even the existence of a membership as well, could become a member (even if it is an insider membership) of a company.”⁷ Connected to the institution of silent companies, I thought it is necessary to introduce syndicate agreements concluded during venture capital investments and also to introduce those silent companies, which carry an investment purpose. It is also justifiable since silent companies could be interpreted as mixed contractual concepts, and according to this, it shall be answered whether the syndicate agreement could be categorized other than an atypical contract, based on the contents of the contract.

In the Hungarian legal literature – based on the categorization made by Ulpianus – we classify the laws into two groups: public law rules and private law rules.⁸ This categorization rather serves didactic purposes, since the strict delimitation of laws is outdated. A lively example to prove this point was written by Béni Grosschmid, who stated that the borderline between private and public law is hackly,⁹ and also Tamás Lábady raised awareness in his work titled The general rules of private law that the private law is highly affected by the public law,¹⁰ public and private law are merging into one another and they mutually influence one another, so the classical dichotomy seems to be breaking and the private law has more and more elements from the public law and vice versa, which shows a close bond between the two fields.¹¹ In his essay about the relationship between private law and public law, Tibor Nochta asks the question: what is the main reason of the delimitation. In his opinion, there is no definite answer, however he

⁷ András Kisfaludi: Típuskényszer és a csendestársaság, in: András Kisfaludi – Marianna Szabó (szerk.): A gazdasági társaságok nagy kézikönyve, Complex, Budapest, 2008., 43.

⁸ Károly Szladits: Magyar magánjog I., Grill Kiadó, Budapest, 1938, 11-22.

⁹ Béni Grosschmid: Magánjogi előadások, Jogszabálytan, Athenaeum, Budapest, 1905, 10.

¹⁰ Tamás Lábady: A magánjog általános tana, Szent István Társulat, Budapest, 2017, 10-22.

¹¹ Tibor Nochta: A közjog és a magánjog viszonyáról az új Ptk. alapján, Jogtudományi Közlöny, 2016/10., 481.

agrees that the usefulness of certain delimitation of the two fields can be pointed out during the evolution of law.¹²

If we examine certain provisions of the Civil Code – for example the rules of estate records, the public law limits of ownership, the rules of public service contracts, etc. – or the orders of the Constitutional Court regarding the breach of privacy rights, we evoke the doctrine of contractual freedom in connection with the elements of market economy and with the interpretation of the constitution, carried out by the Constitution Court. These examples show the undisputable interactions between private law and public law. I wish to point out these tendencies in those chapters, which contain the introduction of public law bases.

This approach appears in the monography written by Tekla Papp on the atypical contracts, which states that there are contracts, which are heavily under the “influence of public law”,¹³ so they are considered mixed contracts by the author, because they stand on the borderline between private and public law.¹⁴ I consider this classification approach – because of the common effect of private and public law – as the base of the dissertation regarding the examination of syndicate agreements outside the scope of company law. During the analysis of the legal practice and the literature I noted, that syndicate contracts are not only connected to the field of civil law and corporate law, but they also appear in other branches of law, such as competition law, public procurement law and sports law as mixed branches of law, so the question arises, whether an atypical contract can be labeled as a mixed contract from the view of the legal system or from the view of a branch of law. In connection with syndicate agreements outside the scope of company law, our starting point is that the syndicate contract is a civil law contract, however the content of the contract can receive different – partly even public law - features in case if the parties are not members of a business association and the content does not concern corporate law. Accordingly, and as a result of the antecedents in legal history, the examination of the consortium and the aspects of competition law, public procurement law and sports law seemed necessary. Regarding the previously mentioned definition of the Legal Lexicon, in practice the words consortium and syndicate are used as synonyms, so the connection between the two contracts shall be analyzed, and also their relationship with the civil law partnership shall be examined, since the consortium is often judged by the latter; also competition law is the field of law in which cooperation is not forbidden, however it is strictly regulated. Regarding the antecedents in legal history, the synonym relationship between the cartel and the syndicate and the syndicate aspects of merger control, I decided that the clarification of the competition law aspects of syndicate contracts is necessary. The appearance of syndicate agreements in the fields of sports law, regarding especially the after-growth training is a new tendency, which implicates the necessity of its legal analysis and also its placement in the system of syndicate contracts. The basic connection point between each chapter is the thought that syndicate contract is a civil law contract, which carries several private law features as a result of its close connection with company law, however because its

¹² Tibor Nochta: A közjog és a magánjog viszonyáról az új Ptk. alapján, Jogtudományi Közlöny, 2016/10., 482.

¹³ The term was used by Dr. Miklós Imre during the workshop discussion of the dissertation. We wish to say thank you for the supporting comments.

¹⁴ Tekla Papp: Vegyes jogági megállapodások: szerződések a köz- és a magánjog határán, Tekla Papp (szerk.): Atipikus szerződések, Opten Kiadó, Budapest, 2015, 459-561.

connection with competition law, public procurement law and sports law it lays on the borderline between private law and public law, and additionally, because of the different contractual contents its classification as a mixed contract from the view of branches of law and also as a materially mixed contract shall be considered as well. Another connecting point is that the acquisition of a qualifying holding as a legal institute in company law can become relevant during venture capital investments, since the occasional control of institutional investors can affect the competition, so the private law agreement will have some public law features as well.

Because of its lack of legal regulation – as a starting point for the classification of the contract – the syndicate contract shall be placed in the system of contracts. However, the newly emerging, overly detailed, self-regulating agreements can not be judged by the regular aspects of classification because of their diverse content. With respect to this, new groups of contracts were formed by the European contract law literature, by categorizing the unique and connecting agreements: these are the contractual chains, which are connected by the sameness of their direct and indirect object; the network contracts,¹⁵ these are long term agreements in which the parties keep their economic independence but coordinate their economic activity; umbrella/framework contracts,¹⁶ which provide a frame for contractual decisions; and linked contracts, in which contract group the parties and the contractual content is (at least partly) identical.¹⁷ If contracts are connected by any regard, they are titled as group of contracts. The modern society is filled with connecting contracts, which shall be considered as several independent contracts, but they are concluded with a special regard to each other. However, the contract law still focuses mainly to the traditional contractual relationships between (only) two parties.¹⁸ The connection between contracts (contractual nexus) can be formed in several ways, and their names can be titled with different attributes, so the above-mentioned groups and their names can be found as synonyms as well.¹⁹ Another aim of the dissertation is that the previously mentioned types of syndicate contracts could be categorized by the mentioned points of view.

2. The methodology used

The basic purpose of the essay is processing the outcomes of previous research and based on this to introduce the current picture of the syndicate agreement. During the preparation of this dissertation, we constantly reviewed the national legislation and its outcomes which indirectly might have an effect of syndicate contracts, and also we examined the available legal literature and the current the judicial practice as well. The synthesis of the previously mentioned sources build the base of the dissertation, and also the comprehensive monography written by Tekla Papp in this subject.²⁰ We used her approach and her system as starting points for preparing our systematic approach, which consists all aspects of syndicate agreements, and also contains

¹⁵ Storme, Matthias E.: A Civilian Perspective on Network Contracts and Privity, *George Washington Law Review*, 2017/6., 1739-1776.; Teubner, Gunther: *Networks as Connected Contracts*, Bloomsbury Publishing, 2011

¹⁶ Albano, Gian Luigi – Nicholas, Caroline: *The Law and Economics of Framework Agreements*, Cambridge University Press, 2016

¹⁷ Tekla Papp: *Szerződéstípusok*, in: Tekla Papp: *Atipikus szerződések*, Opten, Budapest, 2015, 22-23.; Tekla Papp *nagydoktori értekezésének kézirat*: A) rész VI. *Komplex szerződési képződmények* cím alatt.

¹⁸ Lásd még: Samoy, Ilse – Loos, Marco: *Linked Contracts*, Intersentia, 2012

¹⁹ Például: *interlinked contracts, linked contracts, network of contracts, network contracts*; Grundmann, Stefan – Cafaggi, Fabrizio: *The Organizational Contract*, Routledge, 2016, 319. alapján.

²⁰ Tekla Papp: *Atipikus szerződések*, Opten Kiadó, Budapest, 2015.

individual legal approaches and conclusions. The purpose of this work was in one hand to pay respect to the work of my supervisor, and on the other hand to increase the research achievements regarding the syndicate contract.

During the research we constantly kept in mind the necessity to place our research outcomes in the context of historical development and to reflect to the legal practice as well. As a result of this, we used interdisciplinary, comparative, historical, logical, grammatical, and dogmatical methodologies, we also used teleological interpretation, extrapolation, created and used terminology, we analyzed, interpreted, categorized, compared and separated legal texts, and we also expressed our proposals *de lege lata* and *de lege ferenda*.

We not only processed the printed sources, we used several online databases as well, and we also carried out some primary data collection. The latter was carried out with a special regard to the topic of syndicate contracts, we sought to collect and process the data coming from our own order. During the data collection we discovered facts, opinions and habits in deep interviews, and we also examined the legal practice regarding the syndicate agreements.

3. Concluding remarks

None of the available legal literature published previously to this dissertation examined thoroughly the historical aspects of syndicate contracts, so with a special regard to this, the first chapter is a short summary of the history of the syndicate contract. This chapter enlightens that the roots of syndicate can be traced back to the word “*syndicus*”, which is no longer used in the Hungarian language, however there is no connection between the meaning of the two words. The term syndicate was used in the common language from the 17th and 18th centuries and they are used for describing criminal organizations, advocacy groups, financial cooperations and for consortiums and cartels, too. The legal antecedents trace back until the Commercial Code, when legal literature named those occasional cooperations syndicates, which were not considered trading companies. Occasional cooperations were suitable for forming cooperations, whose activity would be considered as distorting to the competition nowadays, which explains why the syndicate could be understood as a synonym for cartel. These historical points are the bases – in one hand – of the parts of the dissertation concerning competition law and consortium. On the other hand, it gives an explanation to the rebirth of the syndicate contract in Hungary, since it introduces the so-called joint venture companies, which were founded by agreements made by nationals and foreigners at the same time from the 1960s. From this time other national laws have a strong effect on the development of syndicate contracts. As a result of this, that feature of syndicate agreement was formed, according to which in a syndicate contract the parties agree to create a business association and they clarify their cooperation regarding the matters of the company. Syndicate contracts have been material parts of the Hungarian legal practice for a long time now, which indicated the examination of competition law aspects (cartel and merger), the consortium (public procurement and competition law relevance) and the aspects of the company law type syndicate contract (classical contractual rights and obligations, new applicable ways, venture capital investments, silent company, acquisition of a qualifying holding) as well. It is also important to note that the analyzed contract is continuously developing and changing, since it is fitting to the new requirements stated by the contracting

parties, and as a result of this, it seemed essential to examine the occurrence of syndicate agreements in the biggest possible scope, which led to the opportunity to introduce syndicate contracts in the field of sports law.

During the introduction of the company law type syndicate agreement, our starting point was the statement, according to which the syndicate contract is an atypical agreement, it is a special cooperation contract, which serves as an addition to the multi-leveled legal relation created by the articles of association, however several legal questions arise regarding the applicability of the contract. One of these questions is the possible confrontation between the articles of association and the syndicate contract, in this regard one of the acceptable legal opinion states that for the company and for its members the provisions of the articles of association are firstly applicable, however those members, who take part in the syndicate contract, shall act in accordance with the provisions of the syndicate agreement as well. It is also important to note that the legal effect of the syndicate contract can not be applied to those members, who are not contracting parties to it, since they often do not even know about its existence. This results that the legal literature is still divided, whether in case of breach of the syndicate contract shall the civil law and company law consequences be applied at the same time or not. The dissertation states that the breach of the syndicate agreement can only result civil law consequences, but not company law ones (extortion of a member, overturning the decision of the supreme body, etc.), on the other hand, to avoid situations like the mentioned it is important to apply proper cautions. The dissertation analyzes the question whether the insecurities arising in connection with the syndicate agreement could be terminated by the codification of the contract. In this aspect, after carefully reviewing the international practices, the essay undoubtedly states that this cooperation could not be codified in the contractual system applied by the Civil Code, however it has several features, which are nearly similar to the civil law partnerships, so it could be regulated as one of its sub-types. It could also appear in the Civil Code, if an exemplary contractual type would be regulated, or if Section 3:4 of the Civil Code would acknowledge independent agreements. However, in my opinion, it is very hard to define this contract and it appears in several different forms and in connection with several legal relations, so it is impossible to regulate every single aspect of this agreement, and according to this, it is not advised to do so.

Concerning the syndicate cooperation, those contractual contents are introduced, which are essential for the understanding of later chapters (voting agreement), and they also reflect to the lately occurring contractual contents (family businesses, purpose of transmission). Concerning the parts connected to the law of succession, it is important to note that syndicate contracts filled with elements of succession law mean that in case of death of one of the members, the other members shall regulate their relationships inside the business association. However, it does not mean that the agreement as to succession, which is a typical contract becomes atypical, but the syndicate agreement contains provisions that in case of death for example who shall be named as manager or how to modify the articles of association in order to exclude that one of the heirs or a third party would become a member of the company. In this case the syndicate agreement serves as a guide to other members, it is an effective commitment and in case of

breach of this commitment, the consequences listed in the syndicate agreement shall be applied (damages, penalty, forfeiture clause, etc.).

The third chapter introduces the case of acquisition of a qualifying holding in business associations by the way of a syndicate agreement. The reason behind drafting this chapter was that the syndicate agreement has never been examined in this aspect previously, there are only a few accidental references that the control in a company can be created with a syndicate contract as well. One of the methods for this is the voting agreement, which points out the real purpose of the voting agreement, which is a very popular form of the classical company law type syndicate contracts. Additionally, the chapter raises awareness that in case of state-owned enterprises gaining control, it can be supported with the tools of law of obligation.

The chapters depicting the relationships between the silent company, the venture capital investments and the syndicate agreement were supported by those theories, according to which with the new Civil Code entering into force, creating silent companies for investment purposes will become legally allowed again. As to the conclusion stated in the chapter, the silent company shall be categorized as a mixed agreement: it contains both the features of the loan agreement and the civil law partnership, so the fundamentally atypical contract turns into a mixed, type combinational agreement. According to the previously mentioned facts, it can be stated that the syndicate contract is an atypical contract, which can serve as a type combinational, mixed contract based on its diverse content.

As it was mentioned in the introductory part, some contracts are heavily affected by the public law next to their private law features, so they shall be interpreted as legally mixed contracts, since they lay on the borderline between private law and public law. I consider this aspect of categorizing an essential part of the dissertation, regarding syndicate agreements occurring outside the field of company law, since the syndicate agreement does not only have private law and company law relevance, but it can occur in other fields of law, such as competition law, public procurement law, sports law as mixed branches of law. This fact strengthens the opinion, according to which the syndicate agreement shall be listed as a mixed contract regarding its diverse content. It means that the syndicate contract – although it is an atypical agreement – concerning its content shall be categorized as a mixed contract from the view of the legal system or the branches of law (competition law, public procurement law, sports law) and from the view of contractual types (silent company, acquisition of a qualifying holding by the way of a syndicate agreement) as well. Those contracts shall be interpreted as mixed from the view of the legal system, which equally contain elements from private law and from public law. Another addition is, that in case of acquisition of a qualifying holding by the way of a syndicate agreement, the institutional investor has the opportunity to gain control in the target company, which can have competition law relevance as well, and additionally, if he gains control in several companies, which are competitors of one another, the case can become relevant in the aspect of competition law again, regarding the possibility of cartelling.²¹ In the latter case the

²¹ Anita Nyeső: Intézményi befektetők, mint versenytársak közös tulajdonosai – avagy kell-e aggódnunk a kisebbségi részvényesek miatt, *Versenytükör*, 2018/2., 31-39.

syndicate contract considered a mixed contract from the view of contractual types becomes a mixed contract from the view of the legal system or branches of law at the same time as well.

The purpose of the dissertation was to systematically categorize the different types of syndicate contracts in order to help the orientation among the different types of syndicate agreements. The categorization was carried out by different approaches: firstly, according to the concerned field of law and branch of law (a), secondly, according to their mixed nature (b), and thirdly, according the categories of connecting contracts, which became popular in the modern contract law (c).

a. The concerned field of law and branch of law

The starting point of the categorization according to the concerned field and branch of law is that the syndicate contract is fundamentally a civil law contract, which can serve as a foundation for creating a consortium or a civil law partnership, and those other contracts connect to this agreement, which carry elements of company law, family law, succession law, etc. and they stay in the field of private law. As it occurs from time to time, certain elements from other branches of law can connect to the civil law type syndicate agreement and as a result of this, the contract might contain elements from public law as well, for example in cases of competition law agreements, public procurement law agreements, sports law agreements, etc.

b. The mixed nature

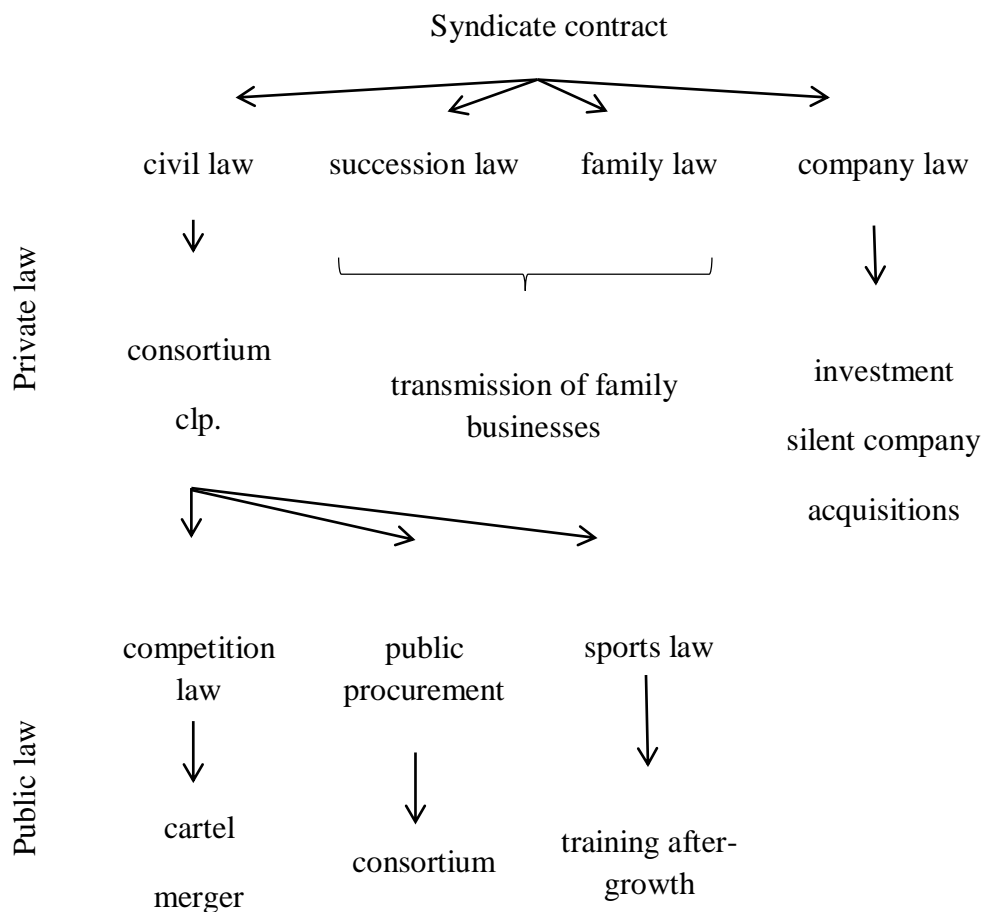
From the view of the mixed nature we shall differentiate between contracts mixed from the view of the legal system or from a branch of law and between contracts mixed from the view of contractual types. Those contracts shall be considered mixed from the view of the legal system, which carry private law and public law elements equally, which in relation to the syndicate contracts results that the fundamentally civil law agreement contains elements from competition law, public procurement law, sports law, labor law, so elements from public law. Syndicate contracts considered mixed from the view of branches of law occur, if the agreements contain elements from a different branch of law, so the fundamentally civil law agreement contain elements from family law, succession law, company law, competition law, public procurement law, labor law, etc. If the connecting branch of law carries elements from public law, it shall be considered a mixed contract laying on the borderline between private and public law at the same time.²² From the view of contractual types those agreements shall be considered mixed, which combines elements of contracts with a certain name. We can mention the syndicate contract aiming for the creation of a silent company or the contract aiming to provide a contorted/syndicated loan: in this case the same document contains the agreement on the cooperation of the banks providing the loan and the agreement on the crediting (agreements concerning the internal and external relations).

c. The category of the connecting contracts

²² It can be interpreted as a mixed contract and as an atypical contract as well. Tamás Jasztrabszki: A szindikátusi szerződés, *Cég és Jog*, 2000/7-8., 6.

Among the lately often occurring and connecting contracts we shall mention the contractual chains, which are connected by the sameness of their direct and indirect object; the network contracts; which cover interrelated legal relations, whose parties protect their legal and economic independence; the umbrella/framework contracts, which provide a formal frame for those contractual decisions and the preparation of those contractual terms, which serve a common purpose; and the linked contracts, which became popular during the harmonization of the European private law systems. The investment type syndicate contract can be categorized under the latter. The fact of venture capital investment and other relevant terms and securities are stated in the syndicate contract. Accordingly, in order to strengthen or carry out the provisions of the syndicate contract, other agreements can be concluded: license agreement for the utilization of an intellectual product, an agreement containing the rules of providing capital or loan provided by a member and its payback, or the parties stipulate that if the term of the investment ceases, the investor sells his share, which supposes a contract of sale as well. Contracts concluded during privatization and during liquidation proceedings shall also be categorized here, such as agreements connecting to the consortium in case of financing, for example the contract of sale or loan agreements. In these cases, the agreement on the consortium and the connecting contract(s) also form a group of contracts. The same can be stated in case of a contorted/syndicated loan, if the providers of the loan agree on the cooperation (agreement regarding the internal relations, syndicate contract or consortium contract) and later they contract with the client (agreement regarding the external relations). In this case the syndicate agreement and the other contracts shall be interpreted as linked contracts, regarding these contracts are connected to each other, since the parties are partially identical and there are connections between the contents of the agreements; additionally on a broader sense the syndicate agreement and the connecting contracts form a group of contracts, in which the contracts in the group are independent without any hierarchy between one another.²³

²³ Tekla Papp: Komplex szerződések és a biztosítási kontraktus, XXIV. POT Konferencián elhangzott előadás és annak kézírata alapján, 5., valamint Tekla Papp: Atipikus szerződések, Opten, Budapest, 2015., 20., 22-23. alapján.



1. figure: system of the syndicate contract. Source: edited by the author.

In our opinion it is not recommended to codify the syndicate agreement regarding its diversity, although the above-drafted system and the opportunity to establish a system creates a possibility to support the cause, since it could be used as guidance in case of codification of the syndicate agreement. According to the figure, the civil law partnership can be named as the smallest common multiple. It means that for example the voting agreement, the types of consortium or the cartel are certain cooperations, which makes syndicate contract identifiable with the civil law partnership. However, certain contractual contents (for example content regarding the law of succession or arbitrability clause in case of a legal dispute, etc.) do not cause this kind of identifiability. Thirdly, in certain cases syndicate contracts can result in mixed contracts with the civil law partnerships, for example in case of foundation of a silent company. From this aspect, syndicate agreements with sports law features are special, since they show some similarities with the cluster. Cluster means a group or a pile, a type of cooperation, in which the attending parties have the opportunity to gain competitive advantage by concentrating their

assets and knowledge,²⁴ and also by the exploitation of local competitive advantages economic growth and sustainability can be reached.²⁵ This concentration can occur in the form of a business association or with a contract, regarding the latter case for example in a syndicate agreement.²⁶ There is not an applicable general definition for clusters, they can be characterized with three words: competition, cooperation, association. The contracting parties in sports law type syndicate agreements usually cooperate in order to transfer their knowledge and experience gained in the field of after-growth training and by this to improve their competitiveness, and also to train the most talented after-growth possible. These cooperations shall be judged by the rules of civil law partnerships,²⁷ although depending on the type of contract which contains the rules of the transfer of knowledge and players and other issues arising in connection with the cooperation, these contracts and the syndicate agreement can create a group of contracts.

²⁴ Géza Károlyi: Klaszter, mint a köz- és versenyszféra együttműködési formájának sajátossága, in: Acta Conventus de Iure Civili Tomus X., SZTE-ÁJTK Polgári Jogi és Polgári Eljárásjogi Tanszéke, Lectum Kiadó, Szeged, 2009., 177.

²⁵ László Salgó: A klaszterek sajátosságai, különös tekintettel kartelljogi jellemzőikre, Versenyűkör, 2009/3-4., 34-35.; Miklós Szanyi: Versenyképesség javítása együttműködéssel: regionális klaszterek, Napvilág Kiadó, Budapest, 2008, 14-15.; Veronika Hegedüs: Klaszterek elméleti megközelítése és alkalmazott klaszterpolitikák, Fejlesztés és Finanszírozás, 2008/2., 79.

²⁶ Géza Károlyi: Klaszter, mint a köz- és versenyszféra együttműködési formájának sajátossága, in: Acta Conventus de Iure Civili Tomus X., SZTE-ÁJTK Polgári Jogi és Polgári Eljárásjogi Tanszéke, Lectum Kiadó, Szeged, 2009., 179.

²⁷ Géza Károlyi: Klaszter, mint a köz- és versenyszféra együttműködési formájának sajátossága, in: Acta Conventus de Iure Civili Tomus X., SZTE-ÁJTK Polgári Jogi és Polgári Eljárásjogi Tanszéke, Lectum Kiadó, Szeged, 2009., 180.

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1. A kockázati tőkebefektetéshez kapcsolódó szindikátusi szerződés, kitekintéssel a csendes társaság intézményére. In: Jogelméleti Szemle 2018/1. 118-131.
2. Aranyrészvény a szindikátusi szerződés tükrében. In: Keserű Barna Arnold (szerk.): Doktori Műhelytanulmányok 2017. Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, Győr, 2017. 163-182.
3. Robotok: a jogász jövőjének alakulása, avagy Robotok: mint a jövő jogásza? – Opuscula Civilia 2018. március, https://akk.uni-nke.hu/document/akk-uni-nke-hu/Opuscula_Civilia_2018_Nagy_Barna_Krisztina.pdf
4. Csendes társaság a szindikátusi szerződés tükrében – Opuscula Civilia 2017/6., https://akk.uni-nke.hu/document/akk-uni-nke-hu/2017_-evi-6_-szam_opuscula-civilia.original.pdf
5. Dúl János – Nagy Barna Krisztina: Az öröklési szerződés szindikátusi szerződéskénti alkalmazhatósága a társasági jogban, mint népeségmegtartó tényező. In: Államtudományi Műhelytanulmányok 2017/19. szám, A magyar tudomány napja a Délvidéken 83-105. https://www.uni-nke.hu/document/uni-nkehu/WP_2017_19_A%20magyar%20tudom%C3%A1ny%20napja%20a%20D%C3%A9lvid%C3%A9ken.pdf
6. The syndicate agreement in the Hungarian law system – in: European Legal Studies and Research, International Conference of Phd Students in Law, 9th Edition, Timisoara, 2017., 646-655.
7. Különös házasság: a szindikátus és a kartell. – Profectus in Litteris VIII., szerkesztő: P. Szabó Béla, Szemesi Sándor, kiadó: DE Márton Géza Állam- és Jogtudományi Doktori Iskola, Debrecen, 243-262;
8. A letelepedési szabadság, különös tekintettel a közjegyzői hivatásra – Európai Jog, 2017/3. 23-30.;
9. Az állami vállalatokkal kapcsolatos gondolkodás a rendszerváltást követően napjainkig – Államtudományi Műhelytanulmányok, 2017/2., https://www.uni-nke.hu/document/uni-nke-hu/2017_-evi-2_-szam-az-allami-vallalatokkal-kapcsolatos-gondolkodas-a-rendszervaltast-kovetoen-napjainkig_-kitekintessel-a-szindikatusi-szerzodesre_-1.original.pdf
10. Kartell-kérdés a szindikátusi szerződés relációjában. – Pro Publico Bono, 2017/1., 88-107.;
11. A konzorciumi és szindikátusi szerződés a polgári jogi társaság relációjában. – Céghírnök 2016/11. 9-11, 2016/12. 10-12, 2017/1. 4-6.
12. Néhány gondolat a szindikátusi szerződésről jogtörténeti aspektusban. (Opuscula Civilia 2016/5. szám, http://akk.uni-nke.hu/uploads/media_items/2016_-evi-5_-szam_opuscula-civilia.original.pdf);
13. Társasági jogi jogesetek az Európai Bíróság gyakorlatából, különös tekintettel a székhelyáthelyezésre és az aranyrészvényre (in.: Papp Tekla (szerk.): Európai Köz- és Magánjogi Jogesetgyűjtemény, NKE, 2016., Budapest, 151-179. pp.);

14. A szindikátusi szerződés (Debreceni Jogi Műhely, 2015/3-4.)
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16. Közjegyző és közhatalom, avagy állam a magánjogi jogviszonyokban? - Az ELTE ÁJK Polgári Jogi Tanszéke és NKE ÁKK Civilisztikai Intézete „Az állam szerepe magánjogi jogviszonyokban címet viselő közös konferenciáján elhangzott előadások szerkesztett tanulmánykötete, accepted/in press;
17. Társasági jogi lexikon - A corporate governance a köztulajdonú gazdasági társaságoknál elnevezésű Kutatóműhely keretében készülő szaklexikon egyes címszavainak kidolgozása, Dialóg Campus Kiadó gondozásában, expected date of publication: second semester of 2018;
18. Alapítvány – Az államtudományi osztatlan mesterképzés keretében oktatótt Civilisztika I. kurzushoz készülő tankönyv Jogi személyek fejezetének alapítványra vonatkozó szabályanyagának feldolgozása, Dialóg Campus Kiadó gondozásában a várható megjelenés ideje 2018 második félévé; elektronikus formában elérhető: https://akfi-dl.uni-nke.hu/pdf_kiadvanyok/webXS_PDF_ATMA_Civilisztika_I.pdf, 409-423.

Curriculum vitae

Dr. Krisztina Nagy Barna is a student of the Doctoral School of Public Administration Science at the National University of Public Service, she received her university leaving certificate in July 2018 and she is also an assistant lecturer of the Institute of Civilistics at the Faculty of Science of Public Governance and Administration.

The doctoral candidate was born on the 7th of August 1990 in Yugoslavia, she lives in Hungary since the September of 1998. She started her studies in Szeged, she received her law degree in July 2014 at the Law Faculty of the University of Szeged. As a student, she worked as a demonstrator of the Institute of Civil Law and Civil Procedural Law in the 1st and 2nd semesters of the school year 2012/2013. During her studies, she actively carried out several researches: she was a member of a student group analyzing the legal practice regarding non-pecuniary damages, she attended several civil law competitions, her team finished 3rd place in a national civil law activity competition. Moreover, she established an OTDK essay concerning the topic of the syndicate contract, which she successfully defended in the national competition – organized at the National University of Public Service - in 2015. She finished her legal studies with a cum laude degree in 2014, she has two intermediate language exams from English and German languages.

She continued her professional career in Budapest, where she started working as a notary candidate under the mentorship of dr. Katalin Walkshőfer notary public. Following a successful admission process, she has been a student of the Doctoral School of Public Administration Science at the National University of Public Service since the autumn of 2015, her supervisor is Prof. Dr. Tekla Papp and her research topic is the syndicate contract. At the same time she started working as an assistant lecturer at the Institute of European Private and Public Law of the Faculty of International and European Studies. Her lecturing activity consisted the following subjects: lectures on the subject Basic Legal Knowledge for full-time students, seminars on the subject The public law bases of the European Union for full-time students, lectures and seminars on the subjects of The basics of international business law and seminars on the subject of Legal harmonisation in the European Union for full-time and correspondence course students. She also coordinated the operation of the Institute's scientific student group, her task was to carry out every organizational and coordinational duty and also to make sure that the plan for the actual semester was carried out perfectly. From February 2016 she started working for nearly two years at the Institute for Research and Development on State and Governance, during this period she worked as a science organizer: she participated in the editing of the online working paper titled *Államtudományi Műhelytanulmányok* and she was a professional editor of the book series titled „A magyar közigazgatás és közigazgatási jog általános tanai”, the editor in chief of the latter was Prof. Dr. András Patyi. From the autumn of 2016 she works as an assistant lecturer at the Institute of Civilistics of the Faculty of Science of Public Governance and Administration, she is the lecturer responsible for the Institute's scientific student group and she also participates as a lecturer concerning the talent management activities of the Institute. She holds lectures on the subjects of Civilistics I. and II. for BA students and on the subject of The basics of commercial law for MA students, both full-time and correspondence course. She also teaches seminars on the subjects of Civilistics II. and III. and lectures on the

subjects of Civilistics I. and II. for students participating in the undivided public governance major studies. Among other relevant teaching activities, she was a panel member in the 4th section of the annual conference of the New National Excellence Program; she was a member and the chair of the selection committee for the undivided public governance major studies; she also participated in committees carrying out motivational conversions with attendings to the public administration major. She participated in the KÖFOP-2.1.2.-VEKOP-15-2016-00001 project titled „Public Service Development Establishing Good Governance” and in this regard she participated in a research group which aimed to analyze the teaching methodologies of civil law, the sub-project which implicated this activity was titled as “A jó kormányzást célzó tényalapú közszolgálat-fejlesztés hatásvizsgálati és kutatási megalapozása”; she also aimed to form a cooperation with the Budapesti Közjegyzői Kamara, and also with the Magyar Iparjogvédelmi és Szerzői Jogi Egyesület.

The main characteristic features of her academic work shall be described with her activities, which contain: participation on conferences, constant publicational activity and also participation in research projects. Her published works mostly concern the syndicate contract in Hungarian and English language as well, although she elaborated other subjects, too.

List of conference lectures in national and international conferences in Hungarian and English language:

16 June 2018. – Conference lecture titled as “Venture capital investment in the frame of the syndicate contract” at a conference organized jointly by Kecskemét Megyei Jogú Város Önkormányzata, the Faculty of Economic Sciences of Neumann János University and the Városi Alapkezelő Zrt.

18 May 2018. – Conference lecture titled as “The system of the syndicate contract” at a conference organized by the Marton Géza Doctoral School for Law and Political Sciences, University of Debrecen.

20 April 2018. – Conference lecture titled as “Law and culture: the syndicate contract and sport” at a conference organized by the Doctoral School of the Faculty of Law of University of Szeged.

11 December 2017. – Conference lecture titled as “Recent aspects of syndicate contract” at a conference titled as “The Peculiarity of Jurisprudence” and organized by the Postgradual Doctoral School of Law and Political Sciences of Deák Ferenc Faculty of Law and Political Sciences.

5 October 2017. – Conference lecture titled as “Notary public and public power, or the state in the private law relationships?” at a conference jointly organized by ELTE ÁJK Institute of Private Law and NUPS Institute of Civilistics.

9 June 2017. – Conference lecture titled as “The syndicate agreement in the Hungarian law system” at an international conference organized by the Doctoral School of Universitatea de Vest din Timisoara Facultatea de Drept, in English.

2 June 2017. – Conference lecture titled as “The syndicate contract” at a conference organized by the Márton Géza Doctoral School for Law and Political Sciences, University of Debrecen.

24 March 2017. – Workshop lecture titled as „The Hungarian court system regarding to the permissive legislation” at an international workshop, organized in Vienna, in English.

16 December 2016. – Conference lecture titled as “Mysteries of an atypical contract: the syndicate contract” at a conference organized by the Postgradual Doctoral School of Law and Political Sciences of Deák Ferenc Faculty of Law and Political Sciences.

19 November 2016. – Conference lecture titled as “The applicability of the agreement as to succession as a syndicate contract in company law, as a population retention factor” at a conference organized by the Vajdasági Magyar Tudományos Társaság in Novi Sad, jointly with Dr. János Dúl.

9 June 2016. – Summer school lecture titled as “Mysteries of an atypical contract” organized jointly by the Bethlen Gábor Alapkezelő Zrt., the Kisebbségi Jogvédő Intézet, and the Réti, Antall és Társai Ügyvédi Iroda in Budapest.

20 May 2016. – Conference lecture titled as “The syndicate contract. Still?” at the annual conference organized by the MOE – Magánjogot Oktatók Egyesülete, in Budapest.

26 May 2016. – Conference lecture titled as “Strange marriage: the syndicate and the cartel” at a conference for doctoral students, organized by the University of Debrecen.

14 November 2015. – Conference lecture titled as “The freedom of establishment, with a special regard to the notary public” at a conference titled as “Vajdasági Magyar Tudományos Diákköri Konferencia”, I received a special award for my lecture.

Research projects:

Carrying out research titled as “The public law aspects of the syndicate agreement” in the frame of the NUPS Concha Gyöző Doctoral Program since December of 2016. The research has been carried out in project titled as KÖFOP-2.1.2.-VEKOP-15-2016-00001 „A jó kormányzást megalapozó közszolgálat-fejlesztés”, in the frame of the sub-project titled as “A jó kormányzást célzó tény-alapú közszolgálat-fejlesztés hatásvizsgálati és kutatási megalapozása”.

Within the similar framework: carrying out research since January of 2017 as a member of a Ludovika Workshop, titled as “Corporate governance of state-owned enterprises”.