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HOW SHOULD ELECTRIC SCOOTERS BE REGULATED? AN OVERVIEW OF HUNGARIAN LEGISLATION, WITH A POLISH OUTLOOK

Abstract

This study focuses on the legal regulation of urban transport vehicles, especially electric scooters, but also other similar devices (e.g. Segways), which have become very popular since the 2010s, from the perspective of Hungarian traffic and criminal law. Thus, it reviews what kind of means of transport can be considered as such in the absence of separate, comprehensive regulation, and what their criminal law assessment may be if criminal offences occur. It also presents some local Hungarian examples of regulation, pointing out their often contradictory nature. The paper concludes with a brief outlook on the recent Polish legislation. In the author's opinion, a comprehensive regulation of the issue is urgently needed.

KEYWORDS

criminal law, *de lege ferenda*, electric scooter, Segway, traffic law

SŁOWA KLUCZOWE

prawo karne, *de lege ferenda*, elektryczna hulajnoga, Segway, prawo o ruchu drogowym

Transport, and especially its (metropolitan) forms, is undergoing a major transformation. It is of course still true today that the purpose of transport is to move people and objects safely and quickly from one place to another. At the same time, the range of transport modes available to this group has expanded significantly over the last two decades due to urbanisation, but also for reasons of sustainability, environmental and climate protection, tourism and recreation. In many ways, this creates a new situation. The key word is micromobility, which can be described as the use of relatively low-speed means of transport for individual travel within the city.

Technological developments in the 21st century, in response to societal needs, have created new means of transport to alleviate the transport difficulties of the metropolitan environment (congestion, narrow one-way streets, pedestrianized streets, etc.). They can also replace classic vehicles (cars, motorcycles, etc.) and make the use of often overcrowded public transport unnecessary. Moreover, they are generally already electrically powered and therefore have a much lower environmental impact than combustion engines.

Such devices typically include electric scooters (and skateboards), Segways, electric bicycles and hoverboards. The possibilities are almost endless, so it is easy to imagine that even as I write this, new devices are emerging around the world. However, by the end of the 2010s and the beginning of the 2020s, electric scooters (and also Segways) in particular were becoming widespread in many cities, most recently in Budapest, Hungary, thanks to the availability of community rental services via a phone app, in addition to the benefits already mentioned¹.

At the same time, the more widespread an innovation becomes, the more it is a prerequisite – and a public obligation – to promote transport safety, while ensuring its efficient and rapid use. However, such devices, which are mostly used in narrow streets in city centres and, unfortunately, are often left in the doorway, on the pavement and generally in the way of others, are a major accident hazard. In addition, they can be hired from the service provider on a per-minute basis usually, so the quicker one gets to one's destination, the less one has to pay. It follows automatically that these vehicles usually travel at speeds close to their top speed,

¹ For an overview before the COVID-19 pandemic in Hungary see I. Ambrus, N. Orosz, *Száguldó elektromos rollerek és segway-ek nyomában – a 21. századi közlekedési eszközök egyes szabályozási problémái*, 'Magyar Jog' 2020, No. 1., pp. 1–12. Also see I. Ambrus, *Digitalizáció és büntetőjog*, Budapest 2021, pp. 197–221.

which also increases the likelihood of accidents. Legislation and enforcement must therefore react immediately to the new situation created by these devices in order to promote safe transport.

This reaction can take place on two levels. On the one hand, the authorities responsible for transport safety can take measures to ensure that this requirement is met in practice (in physical form), by deciding to modernise or modify roads, to allow the use of new means of transport, etc. On the other hand, there may be a clear need for the decision-maker to respond appropriately to emerging problems by clarifying and supplementing the relevant legislative framework and, if necessary, by developing substantially different rules. This need for modification concerns, above all, traffic law in the strict sense of the term. At the same time, however, in order to prevent and deal with unexpected incidents (accidents) and other criminal acts in the field of vehicle traffic, we may also need to rethink the relevant legislation in the area of criminal law.

László Viski, one of the most significant researchers of traffic criminal law in Hungary, rightly writes that “[w]e must therefore seek to find the criteria by which we can incorporate violations of the rules into the framework of traditional criminal law”. In his view, “[t]he starting point should be the search for complex methods of correct and effective judgement, and the system of sanctions should not be adapted to the Procrustean bed of criminal law, but to the needs of life and it should be developed in a way that promises results”².

With this in mind, in order to ensure legal certainty and the principles of legality, it is essential to create a clear and accessible regulatory environment, so that users of new means of transport can be aware of the conditions and rules of lawful use, as well as the consequences of any unlawful use.

In this work, I will therefore focus on issues raised by electric scooters, primarily through the lens of criminal law. After defining this device, describing its characteristics and detecting the current possible legal status, as well as evaluating the different interpretations that arise in this context, I will present some examples of the possibilities of domestic – so far local – regulation, followed by an outlook on the recent Polish regulation. The article concludes with suggestions for the future legislation.

THE ELECTRIC SCOOTER IN TRAFFIC LAW

According to the Hungarian Dictionary of Languages, a scooter is “a toy consisting of two small wheels mounted on a board and a handlebar that steers the

² L. Viski, *Közlekedési büntetőjog*, Budapest 1974, p. 267.

front wheel”³. However, this definition is now somewhat outdated, as the purpose and appearance of scooters has changed considerably, especially with the spread of electric versions. In my opinion, the electric scooter is no longer a toy (only) in terms of its function, but rather a real means of transport. A general definition would say that an electric scooter is a device (means of transport) consisting of a handlebar, a board and two wheels, driven by an electric motor, but also by human power. Since the types and technical characteristics of electric scooters cover a very wide spectrum – i.e. different models have different dimensions, weights and power – it is not possible to give a more specific definition than the one provided above.

As far as the related domestic (comprehensive) transport legislation is concerned, it is incomplete. In addition to the definition of the general vehicle concept in point (a) of Appendix 1, point II of Joint Decree 1/1975 (II. 5.) of the CPM-RM on the Rules of the Road Traffic (hereinafter: KRESZ), point II of Appendix 1 defines several *sui generis* vehicle categories. However, the range of means of transport (vehicles) cannot, of course, be defined in a closed manner, but is instead presented as a list that can be extended to meet the needs of life.

According to Appendix 1, point II/a of the KRESZ, a vehicle is defined as “any means of transport or towing on the road, including self-propelled or towed machinery”. This provision also seeks to provide the legislator with a negative basis for interpreting the concept of vehicle by specifying, in addition to the general definition, the means which cannot be considered to be vehicles. These include wheelchairs, prams and pushchairs. There is therefore no explicit exclusion rule for electric scooters (and similar vehicles) in the KRESZ. However, relevant literature stipulates that a special situation is created by a number of unique transport devices and toys, such as scooters, skateboards and sledges, which are not really comparable to other transport devices. These devices do not appear in the specific vehicle categories of the KRESZ and are therefore not considered vehicles on the basis of a strict grammatical interpretation. As a consequence, their users would only be able to participate in traffic as pedestrians (Article 21 of the KRESZ)⁴.

However, if we were to accept this theory, the electric scooter – regardless of its technical characteristics – would not be considered a vehicle, since it is in fact a subtype of scooter, and a scooter is, as we have seen, a toy and not a vehicle according to this interpretation of the KRESZ. However, this approach is, in my view, problematic, and a more flexible argumentation might be justified rather

³ G. Bárczi – L. Ország (eds), *A magyar nyelv értelmező szótára*, <https://www.arcanum.hu/hu/online-kiadvanyok/Lexikonok-a-magyar-nyelv-ertelmezo-szotara-1BE8B/r-46B74/roller-482F3/?list=eyJmaWx0ZXJzIjogeyJNVSI6IFsiTkZPX0xFWF9MZXhpa29ub2tfMUJ-FOEliXX0sICJxdWVyeSI6ICJyb2xsZXIifQ> (accessed 11.11.2022).

⁴ Á. Fülöp, N. Fülöp, R. Major, *A KRESZ értelmezése a joggyakorlatban*, Budapest 2014, p. 54.

than a strict grammatical interpretation. It is true that the electric scooter has not yet been designated as a *sui generis* vehicle category in the KRESZ. However, the reason for this is obviously that, in view of the recent widespread popularity of these devices, the legislator has not yet been able to react by amending the law. However, in my opinion, the electric scooter can be included in the general definition of a vehicle in the KRESZ given its purpose and certain external mechanical characteristics, as it can be regarded as a *de facto* means of road transport. Consequently, its classification as a vehicle for the purposes of *de lege lata* legislation is also justified. A contrary position could lead to the result – which is manifestly absurd and therefore contrary to the method of interpretation of the *argumentum ad absurdum* – that the electric scooter could be used even if the rider is under the influence of a huge amount of alcohol, since it is not forbidden for a pedestrian to walk in such a state. For the above reasons, therefore, the electric scooter can be classified as a vehicle and, accordingly, the person using it should be treated as a driver – and not as a pedestrian – and therefore, by analogy, it may be subject to the rules of the KRESZ that apply to drivers.

In my view, this interpretation does not contradict the relevant EU legislation. Indeed, Article 2(j) of Regulation (EU) No 168/2013 of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles excludes from the scope of this EU instrument vehicles which do not have at least one seating place, which means that, for example, an electric scooter does not fall within the scope of this Regulation. However, it is clear that this is only a minimum rule from which Member State legislation may derogate, provided that it fully complies with the Regulation, by extending the scope of the increased liability to other cases.

De lege ferenda, it would of course be advisable to create a separate category of electric scooter in the KRESZ. However, until this happens, the legal loophole could be temporarily remedied by subsuming the electric scooter under another vehicle category in Appendix 1 with the closest characteristics and thus making the traffic rules for such vehicles binding on electric scooters. The three categories to be considered in this context are bicycles, mopeds and slow-moving vehicles.

However, the definition of a slow-moving vehicle is too general, and in practice it usually covers agricultural machinery. As a consequence, the electric scooter may be more akin to a bicycle or moped, and we will therefore only consider the applicability of the legislation to these two cases.

According to Appendix 1, point II/r/1 of the KRESZ, a bicycle is defined as “a vehicle with at least two wheels, propelled by human power and assisted by a motor with a power of not more than 300 W”. In addition, according to point II/r, a moped is “a two-wheeled vehicle classified in vehicle category L1e, a three-wheeled vehicle classified in vehicle category L2e and a quadricycle or mopedauto classified in vehicle category L6e”.

On the basis of the above definitions, an electric scooter does not substantially differ from the technical characteristics, purpose and use of a bicycle, and therefore, if equipped with an electric motor of a power not exceeding 300 W, the rules applicable to persons using an electric scooter may be those applicable to cyclists. If, on the other hand, an electric scooter is included in the definition of a bicycle, the power-based distinction applicable to bicycles will apply *mutatis mutandis* to electric scooters. Accordingly, an electric scooter with a motor power of more than 300W can be classified as an assisted bicycle instead of a bicycle, in view of the above-mentioned provision of the KRESZ and also of Article 2(13) of Decree No. 5/1990 (IV. 12.) of the Federal Ministry of Transport, Building and Urban Affairs on the technical inspection of road vehicles and of Article I(2) and (3) of Appendix B to this Decree. The distinction between a bicycle and a moped is, as will be discussed, not indifferent from the point of view of participation in traffic, since the use of the latter, for example, unlike a bicycle, is subject to a driving licence pursuant to Annex 2 to Government Decree No 326/2011 (XII. 28.) on road traffic administrative tasks, the issue and withdrawal of road traffic documents.

It is necessary to refer here to the declaration of the Zala County Police Headquarters following an electric scooter accident on 19 September 2019, which is also available on the Internet, according to which “[the] term “driven by human power” used in the term bicycle can be correctly interpreted as meaning that a bicycle can only be considered a device that is driven by a person by operating (driving) the mechanism (drive mechanism) of the device. Taking into account that the term ‘bicycle’ does not include, as an alternative, propulsion by man or by a motor of up to 300W, only a device for the normal use of which the application of human power is indispensable can be considered to be a bicycle”⁵. This view seems to be confirmed by the reply of the Minister of the Interior to a question of a Member of Parliament dated 21 November 2019, BM/17105-4/2019, according to which “[a]n electric scooter can only be classified as a moped under the current legislation, unless otherwise specified. The Police is obliged to act in accordance with the legislation”⁶.

This interpretation is, however, too restrictive and does not take into account the possibility that the same device may be technically capable of both fully human and exclusively electrical operation, according to the choice of its user. The term ‘motor-assisted’ therefore does not only refer to the – not very widespread – range of means of transport that need to be simultaneously driven by foot

⁵ Information of the Traffic Police Department of the Zala County Police Headquarters, Traffic Police Department, pseudo-information No. 20000/66712019 dated 19 September 2019. See: <https://www.zaol.hu/eletstilus/helyi-eletstilus/nem-fogyaszthat-alkoholt-a-vezeto-ha-motort-hasznal-a-haladashoz-3263440/> (accessed 17.11.2022).

⁶ S. Pintér, MP, response to Á. Vadai’s question number K/7930, <https://www.parlament.hu/irom41/07930/07930-0001.pdf> (accessed 22.11.2022).

in addition to motorised operation. Instead, the vehicle is ‘motor assisted’ even if the user decides to switch completely to electric operation instead of mechanical winding. This is also the position taken by the Hungarian Supreme Court in a case in which it stated that “[i]f it cannot be clearly established from the facts of the case that the electrically powered bicycle ridden by the person charged with an offense is a bicycle or moped, in view of its motor power, a driving ban cannot be imposed”⁷.

An electric bicycle can therefore be considered a bicycle for the purposes of the KRESZ even if its user uses it in the electric mode, provided that its power does not exceed the indicated value. This interpretation of electric bicycles can also be applied to e-scooters, because they can be operated in the electric mode without the use of a motor, as they are in fact a version of a conventional scooter with an electric motor to assist manual use.

To summarise the above, in my view there is no obstacle to classifying electric scooters as bicycles, and if their power exceeds 300 W they can now be considered to be mopeds (Article 54 of the KRESZ). However, the motor power of most common brands of e-scooters currently in use in our country is less than 300 W, 250 W to be precise, according to the information on the company’s website. Thus, in practice electric scooters can be considered *de lege lata* mostly as bicycles. This interpretation can therefore be deduced from the current legislative context, but it can be considered somewhat far-fetched in the ordinary sense, as it rather departs from the ontological meaning of the concepts of bicycle and moped. In the light of this, it would be desirable to introduce electric scooters as a separate category in the KRESZ as soon as possible.

INFRINGEMENTS ARISING FROM THE USE OF ELECTRIC SCOOTERS

Naturally, electric scooters may be made to comply with a number of road traffic rules. The answer to the question of exactly which rules they must comply with depends on their classification, as described in the previous paragraphs. We have seen that, if interpreted correctly, e-scooters are not considered to be pedestrians when used for their intended purpose (whether manual or electric), and therefore the provisions for pedestrians, in particular those in Article 21 of the KRESZ, may apply when the user is not scooting but, for example, holding the device, pushing it or carrying it by hand.

Apart from this exception, depending on the performance limit mentioned, an e-scooter may be classified as a bicycle or moped and therefore, when operated

⁷ BH 2013. 144.

normally, Article 54 of the KRESZ must be observed in addition to the rules applicable to all vehicles. Thus, if the device is considered to be a bicycle, it must be used on a cycle path or, among other things, on a road suitable for cycling. Exceptionally, it may also be possible to ride on the pavement within a built-up area, particularly if the road surface is unsuitable for cycles (Article 54(2) of the KRESZ).

Substantially different rules may apply to electric scooters with a power of over 300W, which are considered to be mopeds for traffic law purposes. As already mentioned, the latter requires that the rider should have a driving licence – type ‘M’ – and wear a helmet when using the latter (KRESZ § 48 (9)). Finally, a provision relevant to the use of e-scooters is that the use of mopeds on cycle lanes in residential areas is prohibited (KRESZ § 54 (8)(a)). Violation of these rules may – depending on the circumstances – be subject to a traffic fine pursuant to Government Decree No. 156/2009 (VII. 29.) on the amount of fines for violations of certain provisions relating to road transport, passenger transport and road traffic and on the responsibilities of the authorities related to the imposition of fines, or to a traffic fine pursuant to the provisions of the Regulatory Offences Act (II Act of 2012). The offence may be a traffic fine or a major offence under Chapter XXVII of the Act (e.g. driving without a licence under Section 220 of the Act). Failing this, a minor infringement of road traffic rules, as provided for in Section 224(1) of the Road Traffic Act, may be treated as a regulatory offence.

The legal qualification of consumption of alcohol prior to (or possibly accompanying) the use of an electric scooter is also a typical violation. In this context, the offence of driving under the influence of alcohol, which is committed, *inter alia*, by a person who drives a motor vehicle while intoxicated on a public road (or on a private road not closed to public traffic), is worthy of attention, first of all, under Article 236(1) of the Criminal Code (Act C of 2012). According to a commentary to the Criminal Code, “a motor vehicle, a motorcycle, a motor vehicle other than a motor vehicle, such as an agricultural tractor, a slow-moving vehicle, a moped or an electric bicycle, if it is not operated by human power, is a power-driven road vehicle”. Judicial practice is also consistent in classifying electric motor bicycles, when used in such a mode, as mechanically propelled vehicles⁸. In the light of this, if it is operated in the electric mode by its user, the electric scooter must also be considered a mechanically propelled vehicle, so that driving it while intoxicated may constitute an offence under Article 236 of the Criminal Code, including the predicate offence under paragraph 1. Drunkenness under criminal law occurs where the offender has alcohol in his or her body following consumption of alcohol with blood alcohol concentration of more than 0.50 grams per litre or 0.25 milligram per litre in exhaled air (Article 240(3) of the Criminal Code). For readings below this level, but where the result of the breathalyser test

⁸ BH 2006. 138.

is positive, fixed fines set out in Annex 11/D of the above-mentioned Government Decree No 156/2009 (29 July 2009) may apply.

It is important to point out again that electric scooters may be operated by human power without mechanical propulsion. If it is used in this way, it is not – for the time being – considered to be a mechanically propelled vehicle. In this case, the exception rule in Section 4(4) of the KRESZ may apply, whereby the otherwise general prohibition on consuming alcohol before driving (Section 4(1)(c) of the KRESZ) does not apply if the cyclist is otherwise fit to drive the vehicle safely (Section 4(1)(b) of the KRESZ). This means that alcohol may be consumed when the electric scooter is not operated by electricity, provided that the user is not under the influence of alcohol. According to existing case-law, the latter occurs in the case of a person who, on the basis of a combined assessment of the degree of alcohol concentration in his body and the clinical symptoms, is no longer capable of driving safely as a result of the consumption of alcohol⁹. However, bicycles are essentially excluded from the scope of the offences subject to the fine by Annex 11/D, point 3 of Government Decree No 156/2009 (29 July), which therefore cannot be applied in this case to e-rollers under 300W. However, a scooter driver is still in breach of Article 4(1)(b) of the Highway Code for driving in an unsafe driving condition. In such a case, the above-mentioned minor infringement of road traffic rules under Section 224(1) of the Regulatory Offences Act, which is of a subsidiary nature, may be established. In essence, this provision sanctions as an offence any infringement of road traffic regulations which is classified as a so-called major offence under Sections 217-222 of the KRESZ and, subject to Section 2(4) of the Regulatory Offences Act, does not constitute a criminal offence or an infringement subject to a fine in administrative proceedings.

However, it may still be possible to establish a criminal offence despite manual operation. Indeed, if the e-roller user causes at least serious bodily harm during the act, he is liable for the offence of driving under the influence of alcohol in the same way as if he was using the e-roller in the electric mode at the time of the accident, subject to the extension provision in Section 236(3) of the Criminal Code.

The aforementioned may apply to the offence of driving while intoxicated under Section 237 of the Criminal Code, with the modification that the offence under paragraph (1) may also be established in the case of consumption of drugs, medicines, etc., if the offender is driving under the influence of a substance that impairs driving ability.

The disqualification from driving provided for in Article 55(2) of the Criminal Code shall, in principle, also apply to driving an electric scooter under the influence of alcohol, except in cases of special consideration. Since, like a bicycle

⁹ BH 1998. 163.

(whether electric or with a combustion motor), an e-scooter is not a licensed vehicle with a power of less than 300 W, the driving disqualification is only applicable under the Criminal Code. § 55(2) of the Criminal Code is treated as a separate ground for disqualification, and not § 55(1)(a)¹⁰. In such a case, this penalty could only be applied to a category of vehicles subject to a licence or to driving a vehicle on the road in general, but not to the e-scooter itself. Finally, in the case of bicycles with a combustion motor, the recent decision of the Supreme Court that “[bicycles] with a combustion motor are not included as a type of vehicle subject to authorisation and therefore do not require a driving licence to drive. Therefore, even if the other legal conditions for driving disqualification are met, there can be no prohibition on driving such vehicles”¹¹.

LOCAL REGULATIONS

In Hungary, the problems arising from the use of new means of transport have not yet been solved at national level, either by law or by other legislation with nationwide scope. Despite the lack of comprehensive legislation, some metropolitan districts, towns and, in some specific areas, the government have recognised the need for a new regulation and have sought to outline the framework for legal use by means of municipal ordinances. More recently, a government decree has also addressed these instruments. In this section, the relevant partial provisions will be reviewed and assessed, followed by arguments in favour of a comprehensive regulation.

Pursuant to Article 23/A(1) Decree of District I of Budapest, it is prohibited to use electric or other mechanically propelled means of transport, sports, leisure or tourist transport (e.g. segways, electric scooters, hoverboards, electric skateboards, etc.) on public footpaths and pedestrian zones in public areas owned by the Budavár Municipality of Budapest District I. Transport devices may be used while dismounted and pushed or hand-held while walking. A rental or letting agent with a business premises in the administrative area of District I must inform users of means of transport of the areas affected by the ban and post the information in the business premises in a place clearly visible to the tenants. Furthermore, it is prohibited to rent or hire out vehicles in public areas.

The Municipal Decree 3/2019 (II. 01.) of the Representative Body of District V (Belváros-Lipótváros) on the Basic Rules of Community Life and the Legal Consequences of Non-compliance with them (hereinafter: District V Decree), also deals with the issue in a relatively strict manner from 1 February 2019.

¹⁰ BH 1996. 569. and BH 2006. 138.

¹¹ Supreme Court of Hungary, Bfv.460/2018/5.

Pursuant to Article 4(1)(a) of the District V Regulation, within the administrative territory of District V, on public footpaths and in pedestrian zones (zones) – in areas marked by signs – it is prohibited to use electric or other mechanically driven means of transport, sports, leisure or tourist equipment, which may only be used while pushing or holding them in hand. The District V Regulation also imposes an obligation on rental or hire firms with a business premises or a regular meeting point in the administrative area. They are required to inform users of the equipment covered by the Regulation of the areas affected by the ban and the lender or lessor with the premises within such an area must post relevant information in their premises in a place clearly visible to customers or lessees.

In the country, Balatonfüred City Municipality's Representative Body on the Use of Electric Transport Vehicles, Municipal Decree 18/2018 (VII. 9.) (hereinafter: Balatonfüred Decree) on the use of electric transport vehicles 2. § applies. According to the regulation, self-balancing vehicles, electric or other mechanically driven means of transport, sports or leisure (e.g. hoverboards, electric skateboards, electric scooters) are considered electric transport vehicles, excluding bicycles according to Appendix 1, point II r/1 of the Highway Code.

Given the illustrative list, the Balatonfüred Regulation takes into account the fact that the enumeration of electric means of transport may be extended, so that by creating a general definition future means of transport may also be covered by the Regulation, even in the absence of a specific amendment.

In fact, the Balatonfüred Regulation delimits the area of use of the means of transport covered. Under Article 3, anyone who drives a vehicle as defined in Article 2 on a footpath, cycle path, cycle lane, park, public park, other landscaped area or public area temporarily or permanently closed to motor vehicle traffic, in the defined areas, and does not drive while pushing or holding a vehicle while walking, may be fined an administrative fine of up to HUF 150,000.

Article 5/A of the Balatonfüred Decree also stipulates that the above-mentioned means of transport may only be used in certain areas, promenades and parks – which are popular and used by many people – as part of an organised tour, accompanied by a tour guide.

Municipal Decree 17/2019.(VI. 21.) of the Representative Body of the Municipality of Tihany amended the provisions of § 10 of the municipal decree 13/2013. (VII.4.) on the basic rules of community life and the legal consequences of failure to comply with them (hereinafter: Tihany Decree).

The Tihany Decree also restricts the use of self-balancing vehicles (e.g. Segways) and electric or other mechanically propelled means of transport, sport or leisure (e.g. hoverboards, electric scooters, electric skateboards). On the footpaths, cycle paths, pavements, parks, public parks, squares, other landscaped areas or public areas temporarily or permanently closed to motor traffic, as indicated in Annex 1 of the Tihany Decree, the use of the above means of transport is only permitted when pushing or holding them in hand while walking.

The Tihany Decree also affects the obligations of those who hire out or rent means of transport covered by the Decree, as they may be subject to administrative fines of up to HUF 150,000 if they fail to display information signs on the above restrictions or provide adequate information to users.

The legislative forum of Hungary has a distinguished role in terms of location in the Government Decree 119/2014 (IV. 8.) on the order of the use of the national monument. According to Section 1, point 1 of Article 1 of this act, the Parliament House and its surroundings are to be treated as a memorial site pursuant to Annex 2, point I of Annex 2 of Act LXIV of 2001 on the Protection of Cultural Heritage. In addition, in order to limit the range of vehicles that may be used on Kossuth Square, for example, Article 1 of the Decree also defines a number of means of transport. Point 1a, introduced by Government Decree 447/2016 (XII. 16.), as of 1 January 2017, defines the term bicycle. It is defined as a vehicle that rolls on wheels and is a) propelled by human power, assisted by a motor with a power not exceeding 300 W, b) driven by a motor and with a maximum speed not exceeding 20 km/h. This definition of a bicycle is partly in line with the definition of a bicycle in the Highway Code, as analysed above, and partly broader, since it also includes a device propelled solely by a motor, provided that it may develop speed of not more than 20 km/h.

More recently, however, following the new regulation outlining the scope of means of transport that can be used in the vicinity of the Parliament building, as of 5 December 2019, as a result of Decree 270/2019 (19.11.2019), a means of transport that is not a vehicle and that can be moved by human power or by electric or other mechanical means must be included in the category of simple means of transport in this area (Decree 119/2014 (8.IV.), § 1(4)).

In the light of the revised Article 13/A of the aforementioned Government Decree, as a general rule, it is not possible to enter the aforementioned area by a vehicle. An exception to this rule includes bicycles, in addition to trams and emergency vehicles. Paragraph 3 provides that bicycles may enter the protected waiting area without permission and may be driven in an area designated and clearly marked by the trustee of the national monument. Related news reports have interpreted the quoted amendments as a ban on e-scooters from the vicinity of the Parliament, among other things.

The problem in this context is that the definitions in the Regulation are partly different from the related rules of the KRESZ, which are in force nationwide, and are not easily distinguishable from each other. As we have seen, the electric scooter may fall under the definition of a vehicle under the KRESZ and, subject to certain parameters, in the KRESZ definition of a bicycle without any concerns, which is made quite clear by the even more permissive regulation in the legislation pertaining to areas around the Parliament (i.e. even two-wheeled motorised devices are considered bicycles if they may develop speed of not more than 20 km/h). The question is therefore what is meant by the newly introduced

concept of ‘a simple means of transport’, which, although not considered a vehicle under the amendment, is a means of transport for persons, which can be manually, electrically or otherwise mechanically propelled. It is, of course, likely that the government is backing the notion of electric scooter and Segway users as pedestrians, which, as we have seen, leads to absurd consequences and is therefore debatable. This is why the new legislation is intended to address this. However, the government is certainly not doing so in a way that is reassuring from the point of view of drafting the legislation. Let us look at an example here. If, for example, a vehicle that rolls on wheels, is driven by a human being or even – up to a certain speed limit – by a motor, is classified as a bicycle and can therefore enter Kossuth Square, it is essentially inexplicable how the concept of ‘simple means of transport’ can override this in relation to, for example, electric scooters.

SHORTCOMINGS IN MUNICIPAL LEGISLATION – THE NEED FOR UNIFORM LEGISLATION

It is a good example that some towns and municipalities have reacted to the situation, but in my view this does not provide a generally adequate solution and guidance for the legal use of the means of transport in question.

In fact, the provisions of the municipal ordinances merely exclude the means of transport covered by them from certain areas, but do not specify the conditions of lawful use, such as the equipment required, maximum speed limits, etc.

Thus, the two Budapest districts described above have simply banned from their administrative territory the so-called “electric or other mechanically propelled means of transport, sport, leisure or tourism” covered by the regulations which stipulate that they may only be used when pushed or carried while walking. Therefore, in the case of the above-mentioned Budapest districts, there would be no *de iure* need to outline further conditions for lawful use, since lawful use is only possible when pushed or carried while walking, and this is covered by the regulations. It is another matter that, in reality, all this legislation could at most result in a *lex imperfecta*, since anyone who spends even an hour in these districts can see for themselves that these regulations are never enforced in practice.

The same cannot be said of Balatonfüred and Tihany (or even where there are no regulations at all), since in these municipalities only “self-balancing vehicles and electric or other mechanically propelled means of transport, sport or leisure” are banned from certain areas. Here, therefore, in addition to the above-mentioned prohibition, the conditions of legal use should also be outlined to a certain extent.

As for the most recently published rules relevant to the Parliament and its surroundings, we have noted that the legal definitions, which are not devoid of controversial correctness and redundancy, will certainly not provide adequate

guidance on the increasingly urgent need for regulation of electric scooters (or even Segways).

In my opinion, the creation of the conditions for lawful use should be a matter of legislation at state level because local regulation may cause concern and also because we need legal certainty and predictability. It would therefore be appropriate to establish a uniform set of requirements.

Another problem is that municipal regulations merely provide (or may provide) for the imposition of administrative fines in the event of infringement of the rules laid down in them. However, it should be borne in mind that in all cases such vehicles are means of transport and their users are involved in traffic. It is therefore necessary to clarify exactly what these means of transport are, whether they are vehicles, and in what capacity their users are involved in traffic. Territorial (municipal) legislation is not the appropriate instrument for regulating this issue and state-level intervention in the field of transport law is needed to establish such rules.

Unfortunately, accidents caused by electric scooters or Segways are becoming more and more frequent, which raises important questions in terms of criminal law and the legal assessment of these means of transport. The reason for this is that, with regard to certain traffic offences, the relevance of whether or not the given device qualifies as a vehicle, or whether its user is a driver – and thus subject to the Highway Code – or a pedestrian, is of considerable, essentially decisive relevance.

In addition, the lack of insurance for these means of transport due to the lack of regulation is also a problem in private law terms in the context of accidents caused. Lastly, the lack of a uniform terminology for designating and classifying the new means of transport, even within individual municipal regulations, may also be a cause for concern. Consideration should therefore be given to the introduction of a new *genus proximum* as a catch-all name which could cover all these modern means of transport. This could be followed by the elaboration of possible sub-groups and detailed rules.

THE POLISH EXAMPLE

As Sokołowski stated in 2020, the Polish law, just like the Hungarian law, had not until that time recognised electric scooters as a separate category of vehicles¹².

¹² M.M. Sokołowski, *Laws and Policies on Electric Scooters in the European Union: A Ride to the Micromobility Directive?*, 'European Energy and Environmental Law Review' 2020, No. 4, p. 129.

However, the Polish legislator decided then to introduce a *sui generis* regulation for these new traffic participants.

The new Polish traffic law deals in detail with the problems of electric means of transport, including scooters. Under the UD51 regulation, drivers of these vehicles must give priority to pedestrians and must not obstruct their movement.

The new regulation defines an electric scooter as an electrically powered, two-axle vehicle with a steering wheel, without a seat or pedal, structurally designed to be moved by the driver only.

The driver of the electric scooter must cycle on the roadway, or in the cycle lane if it is designated for the direction in which he intends to turn, with a speed limit of 20 km/h. In addition, he or she must use the road on which the traffic is allowed at a speed not exceeding 30 km/h, and if there is no separate cycle track and cycle lane at a speed of up to 20 km/h. Exceptionally, a driver may drive on a pavement or footpath if the pavement is alongside a roadway on which vehicular traffic is permitted at speeds exceeding 30 km/h and there is no separate cycle path and cycle lane – subject to the following rules: speed close to that of a pedestrian, increased caution.

Persons between 10 and 18 years of age must have the necessary cycling qualifications to drive an electric scooter, i.e. a category AM, A1, B1 or T cycling card or driving licence.

Children under the age of 10 are prohibited from riding electric scooters on public roads, even if accompanied by an adult¹³.

CONCLUSION

Summarising a very hot topic of transport law, I would like to point out that, in my opinion, the biggest problem with newly emerging and rapidly expanding means of transport, such as electric scooters and Segways in particular, is that the legal environment previously established may leave not only the average user but also the enforcement of the law in a state of fundamental uncertainty. However, there is no doubt that it is likely that it will soon be appropriate to take a position and decide on cases concerning accidents involving such devices, even those involving serious injury. Fortunately, the problem has also been recognised at the legislative level.

¹³ Ministry of Infrastructure, Nowe przepisy dotyczące hulajnog elektrycznych i urzadzzen transportu osobistego, 26.01.2021, gov.pl, <https://www.gov.pl/web/infrastruktura/nowe-przepisy-dotyczace-hulajnog-elektrycznych-i-urzadzen-transportu-osobistego> (accessed 10.11.2022).

Although the issue was already on the agenda in Hungary before the COVID-19 pandemic, unfortunately a recent fatal accident has triggered the Hungarian legislative thinking on the amendment of the KRESZ¹⁴.

In my opinion, if the legislator were to finally take steps towards the new legislation, it should consider the following aspects, set out in general terms.

a) It is a fundamental problem of legal certainty that in the current legal framework for traffic law, new means of transport, especially in urban areas, could be interpreted in such a way that they are not even considered to be vehicles and their users are therefore treated in the same way as pedestrians. However, the interpretation could also go to the other extreme, i.e. to the point where such vehicles are automatically considered to be mopeds. Although, in my view (contrary to both solutions, which seem somewhat extreme), it is currently possible to place these devices within the coordinate system of current traffic law and the lack of independent regulation creates a situation of obvious uncertainty. The only way to remedy this would be to amend the legislation, the most fortunate form of which would be to regulate at least the most typical of these new devices (electric scooters, but also Segways, etc.) as *sui generis* vehicle categories.

b) Of course, the right of local authorities to issue regulations in this area, taking account of specific local characteristics, cannot be disputed, but a satisfactory solution to this issue would require a central law. In the light of this, the new rules in question should be laid down in the KRESZ (or, even more fortunately, in a new law replacing the Highway Code, at least at the level of a government regulation). Even more ambitious, but not unachievable in perspective, would be the creation of a single EU regulation.

c) In addition to the definition, it is of course also necessary to draw up detailed rules. Thus the legislation must stipulate the conditions of use of the equipment in question, in particular the age of users, the maximum speed of vehicles, where they can legally travel, what equipment they must have, or where and how they may park, etc.

d) When drafting the legislation, it would be advisable to take account of the actual situation at home and that of the models already available abroad (with special regard given to the Polish regulation), so that the new legislation can be drafted in the most reassuring form.

e) It is not inconceivable, of course, that this aspect will become obsolete in a few years' time, as self-driving (autonomous) technology will require fundamentally different behaviour from road users. In the meantime, it would of course be necessary to disseminate more widely a transport culture that could minimise the risk of accidents, regardless of whether an old, established or even a completely new means of transport is used.

¹⁴ O. Nagy, *A kerékpárokhoz sorolnák a KRESZ-ben az elektromos rollereket*, Magyar Nemzet, 26.03.2023, <https://magyarnemzet.hu/belfold/2023/03/a-kerekparokhoz-sorolnak-a-kresz-ben-az-elektromos-rollereket> (accessed 10.04.2023).

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