

Nóra Beáta Bubori

Kristóf Benedek Fekete

Georgina Hatler

Valentin Kéri

law student demonstrators

Department of Constitutional Law, Faculty of Law, University of Pécs

LEGISLATIVE PROCESSES AND ICT*

Debreceni Jogi Műhely, 2019. évi (XVI. évfolyam) 3-4. szám (2019. december 31.)

DOI 10.24169/DJM/2019/3-4/2

Jogalkotási folyamatok és az IKT – Összefoglaló

Korunk jogalkotási metódusai folyamatosan gyorsulnak, a szabályozás ágai egyre szerteágzóbbak. Az állandóan változó (globalizálódó) élethelyzeteink megkövetelik, hogy a jogi szabályozás is lépést tartson, mind időben, mind pedig minőségben megfelelő választ adjon. A megfelelő, vagy ha úgy tetszik minőségi válaszok nyilvánvalóan a jogalkotáson keresztül érkeznek, és annak végtermékeiben, a jogszabályokban öltönek testet. A kérdés már csak az, hogy milyenek is ezek a minőségi "termékek", illetve az, hogy milyen szerep jut a modern (digitális) technológiá(k)nak a jogalkotási folyamatokban.

Jelen munka igyekszik röviden bemutatni, hogy a magyar jogtudomány álláspontja szerint mi is számít minőségi jogalkotásnak továbbá, röviden vázolja a technológiai eredményeinek az előbb említett folyamatoknak betöltött szerepét, annak összefüggéseit a különböző jogalkotási folyamatokban itthon és külföldön.

I. Introduction

Legislative methods in these days permanently accelerate and the branches of regulation are increasingly diverse. Our constantly changing (globalizing) life situations require legislation to keep pace and provide appropriate responses both in time and in quality. Appropriate, or if you like, quality responses are obviously given through legislation and they are embodied in its end products, in laws. The sole question arising is, what these quality "products" are and what role does/do modern (digital) technology(ies) play in legislative processes.

The purpose of the present work is to demonstrate, in the view of Hungarian jurisprudence, what quality legislation is, and to provide brief outline of the role of technological achievements in the aforementioned processes and the contexts of legislation in the various legislative processes in Hungary and abroad.

II. Legislation and quality legislation

In the 20th century, it emerged that legislation – as opposed to the dominance of judicial law and customary

* The authors express their thanks to associate professor Dr Péter Tilk (Head of Department of Constitutional Law, Faculty of Law, University of Pécs) for the technical support that made this study feasible. The authors also thank Judit Ormai-Czirkó, MSc in TEFL (Foreign Language Department, Faculty of Law, University of Pécs) for the professional language assistance.

law became the main and the most appropriate means of social governance.¹

Legislation as a process is the "resultant" of valid law, which leads to the creation of legal sources (in the most general sense, regulations).² A legal source – as the final product of legislation – however is a specific legal form under which its addressees (legal entities) can recognize their rights and obligations,³ and can adapt their conduct to this form.⁴ The better the legislative system in a given state, the more simple it is (i.e. the legislative process itself) and higher the quality of regulation as well, namely the more is realized of the goal of legislature. However, what do we mean by *quality*, and what does *quality legislation* mean?

The measure of legislation – referring back to the previous paragraph – is primarily its effectiveness, which briefly implies, to what extent an objective that is sought to be achieved, come true. From this point of view, legislation – in the words of János Koncz – "is worth as much as can be perceived from it and as much of the content of it, in parallel with practical life, can promptly prevail in order to satisfy public benefit."⁵ In 1982, Vilmos Peschka's use of the term "quality legislation" embraced the results and shortcomings arising in legislative processes.⁶ Namely, according to Peschka, the quality of legislation, to a large extent, depends on whether during the process of legislation it is possible to develop a homogeneous medium and legal forms complying with the new social-legal contents.⁷

After 1987 Hungary, slowly but perceptibly, developed towards quality legislation which, in the period of the regime change resulted in an "initial advantage" over other socialist countries in the region. However, in the early 2000s, this process began to slow down.⁸ Hence after the accession of our country to the European Union, further development of Hungarian legislation became a top priority. Since 2001, the requirement of "Better Regulation" has gradually gained more emphasis in the institutions of the European Union, and it has constantly been leaking into national legal systems.⁹ Nevertheless, it must be stated here that "Better Regulation" presumes "Good Regulation", which, in our view means that a particular state has/had a fundamentally adequate legislative method, but the accession to the European Union requires further – mainly simplification etc. – duties relating to legislation. The European Union thus appropriated essentially "National Reform Programs" and helped to improve the quality of legislation in the Member States by making proposals and recommendations.¹⁰

In a heterogeneous approach – based on the above – we can only talk about an appropriate (qualitative) legislation as a legislative product insofar it is capable to satisfy the legislative expectations labelled as *qualitative* by jurisprudence. With regard to these facts, we present the views of experts in the field of jurisprudence in a chronological order below.

In 2006, József Petrétei in his study pointed out five activities of particular concern, which largely determine the quality of legislation, namely the importance of the improvement of impact assessment, simplification of law, consultation, quality codification, and access to legislation.¹¹

Imre Verebélyi in his lecture in 2009 expressed his view that quality legislation is defined by the following

¹ Bottyán, B. (2015). Egyes kérdések a minőségi jogalkotás elvéről. *Pro Publico Bono*, 3(1), 38-54.

² Kiss, L. (1996). Jogforrás és jogalkotás. In *Válogatott fejezetek a rendszeres alkotmánytan köréből* (pp. 119-145). Pécs: JPTE ÁJK.

³ The notion of legal source also refers to the origin of the legal norm, that is, which organ it comes from, and what can be the forms of law. Visegrády, A. (2015). *Jogi alaptan*. Budapest: Menedzser Praxis Szakkiadó és Gazdasági Tanácsadó Kft. p. 14.

⁴ 25/1992. (IV. 30.) AB határozat, ABH 1992, 131, 132.

⁵ Koncz, J. (1937). *Önkormányzat és közigazgatás*. Budapest. p. 147. Quotes: Kiss, L. (1998). *Jogállam – jogalkotás – önkormányzatok (Örökségünkről – mai szemmel)*. Pécs, Közigazgatás-módszertani Bt. p. 204.

⁶ Peschka, V. (1993). A jogalkotás minősége. *Jogtudományi Közöny*, 37(6), 564-567.

⁷ Ibid. Needless to say, nowadays this concept has added further elements, described below.

⁸ Borsa, D. (2009). A minőségi jogalkotás problémái (A győri jogi kar doktori iskolájának szakmai konferenciája). *Jog, állam, politika*, 1(2), 157-162.

⁹ Petrétei, J. (2006). A minőségi jogalkotásról. In *Piacgazdaság – Jogállam – Jogalkotás* (pp. 11-26). Budapest: Emberi Jogok Magyar Központja Közalapítvány.

¹⁰ Ibid.

¹¹ Ibid.

three groups of principles: effectiveness and cost efficiency, democracy, and the rule of law.¹²

Vanda Lamm in 2009 – alike *Petrétei* – highlighted five out of the eight points she considered as the minimum requirement of the rule of law. In her view, the law:

1. should be written, clear, and comprehensible,
2. should be published, and made accessible,
3. should not seek impossible matters,
4. should avoid contradictions when drafted,
5. should be future-proof.¹³

Finally, in 2010 *Tímea Drinóczi* used the following concept for quality legislation: "Quality legislation denotes such an interdisciplinary approach to legislation that promotes the achievement of short, medium- and long-term social and economic goals through public preparation, adoption, and implementation of planned, effective, and enforceable laws." In her view, the horizontal level of quality legislation involves essentially six elements, i.e. simplification, reduction of administrative burdens, consultation, impact assessment, qualitative legislative drafting, and access to legislation.¹⁴

It is therefore clear that "quality legislation" can be interpreted also as a set of constantly varying professional expectations, deriving from the rule of law that can be deduced and interpreted through legal certainty.

III. The spread of ICT

According to *Mannuel Castells* "our world, and our lives, are being shaped by the conflicting trends of globalization and identity. The revolution of information technology and the restructuring of capitalism have induced a new form of society, the network society. It is characterized by the globalization of strategically decisive economic activities."¹⁵ We think, this statement applies to the world of law as well.

With the emergence of "global village"¹⁶, states should utilize every possible channel so as to get closer to people, and people should also get closer to the state and state activities. One of the most obvious means for this is information and communication technology (hereinafter: ICT). However, in order to be aware of the role of ICT in legislation, first we need to understand the notion of ICT, in a general sense. Similarly to quality legislation, this concept constantly changes and permanently expands with various new elements. That is why we wish to illustrate the meaning and content of the concept itself through several definitions. The definitions we have chosen are as follows:

a) A useful definition of ICT is that it: "... generally relates to those technologies that are used for accessing, gathering, manipulating and presenting or communicating information. The technologies could include hardware (e.g. computers and other devices); software applications; and connectivity (e.g. access to the Internet, local networking infrastructure, videoconferencing). What is most significant about ICT is the increasing convergence of computer-based, multimedia and communications technologies and the rapid rate of change that characterises both the technologies and their use."¹⁷

b) "ICT is technology that supports activities involving information. Such activities include gathering, processing, storing and presenting data. Increasingly these activities also involve collaboration and

¹² Borsa, D. (2009).

¹³ Ibid.

¹⁴ Drinóczi, T. (2010). *Minőségi jogalkotás és adminisztratív terhek csökkentése Európában*. Budapest: HVG-ORAC Lap- és Könyvkiadó Kft. pp. 21-43.

¹⁵ Castells, M. (1997) *The Information Age: Economy, Society and Culture. vol. 2: The Power of Identity*. Oxford: Blackwell Publishers. p. 1.

¹⁶ Therein, "village" implies that people can communicate with others around the world as if they were living in the neighbourhood (see e.g. neighbouring villages). ICT. (2018, October 26). <https://techterms.com/definicion/ict>

¹⁷ Toomey, R. (2001). *Schooling Issues Digest No 2: Information and Communication Technology for Teaching and Learning*. Canberra: Commonwealth of Australia. p. 3.

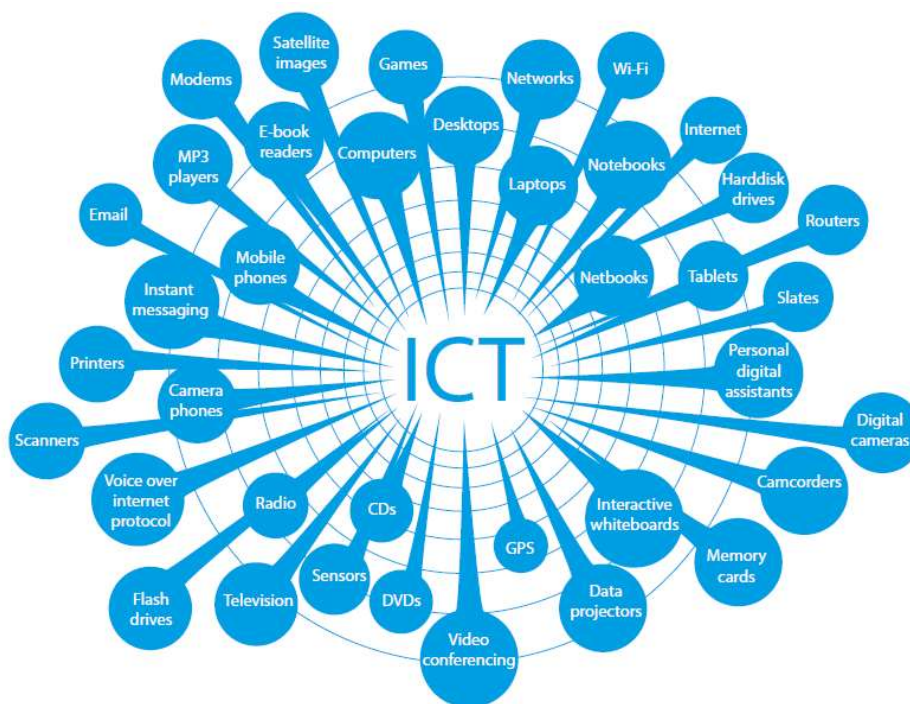
communication. Hence IT has become ICT: information and communication technology."¹⁸

c) "Information and Communication Technology (ICT) can broadly be defined as the tools, facilities, processes, and equipments that provide the required environment with the physical infrastructure and the services for the generation, transmission, processing, storing and disseminating of information in all forms including voice, text, data, graphics and video."¹⁹

d) "Information and communication technologies (ICT) is an extended term for information technology (IT) which focuses on the role of unified communications and the integration of telecommunications, computers as well as necessary enterprise software, middleware, storage and audio-visual systems, which enable us to access, store, transmit and manipulate information."²⁰

e) "The application of science to the processing of data according to programmed instructions in order to derive results. In the widest sense, ICT includes all communications, information and related technology. The term Information Technology (IT) is used in a narrower sense, typically excluding telecommunications (voice) technology while including data networks (although almost all networks today are digital), as a reference to the systems that support information processing."²¹

f) "The term ICT, short for Information and Communication Technologies, embraces the many technologies that enable us to receive information and communicate or exchange information with others."²²



¹⁸ Gokhe, M. (2018, October 26). Concept of Information and Communication Technology. http://www.tscermumbai.in/resources%20paper_%204/IV.1_information_and_communication_technology.pdf

¹⁹ Asabere, N. Y. – Enguah, S. E. (2012). Use of Information & Communication Technology (ICT) in Tertiary Education in Ghana: A Case Study of Electronic Learning (E-Learning). *International Journal of Information and Communication Technology Research*, 2(1), 62-68.

²⁰ Sarfo, F. K. – Amankwah, S. K. – Oti-Agyen, P. – Yidana, I. (2016). *Journal of Media and Communication Studies*, 8(5), 43-51.

²¹ Information Technology Infrastructure Library [ITIL]. (n. d.). ITIL glossaries. Retrieved from http://www.itil-officialsite.com/InternationalActivities/ITILGlossaries_2.aspx. Quotes: Zuppo, C. M. (2012): Defining ICT in a Boundaryless World: The Development of a Working Hierarchy. *International Journal of Managing Information Technology*, 4(3), 13-22.

²² Anderson, J. (2010). *ICT Transforming Education*. Bangkok: UNESCO Bangkok. p. 4.

Figure 1: The "branches" of ICT²³

As it is shown in the figure above, ICT includes a number of technologies for understanding, storing, and transmitting information.

Thus, the states (governments) – as perceivable – should keep up with the requirements in respect of regulations and with meeting the needs, which direct the attention to quality legislation. The use of certain ICTs is an indispensable condition to ensure quality legislation, since they provide the better quality of legislation in respect of both form and content, the internal coherence of created and amended legislation, and the improvement of the consistency of the legal system.²⁴

It is important to emphasize that ICT can serve merely as a tool for the improvement of democratic processes, such as (quality) legislation in order to achieve community goals.²⁵

IV. E-Legislation: abroad and in Hungary

As e-legislation is a part of e-governance and e-democracy, which are not subject to this work, it shares their common features, namely they all can provide common goals, similar tools, and similar benefits. An important feature of ICT is that it can be applied at any stage of the legislative process – i.e. in the governmental or preparatory phase and also in the parliamentary procedure to which the publication of the decision is related.²⁶ Ensuring quality legislation can therefore be guaranteed through the "channels" shown in the figure below.

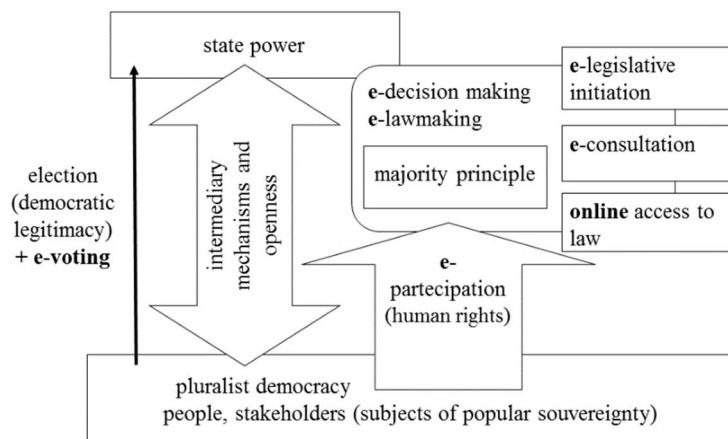


Figure 2: Simplified illustration of e-democracy²⁷

Since the figure covers quite a large number of components the following analyses is restricted only to the processes regarding (e-)legislation, to the presentation of its elements and content, paying particular attention to ICT.

Firstly, we have to refer back to the previous section, namely that with the development of technology, the spread of ICT has an increasing role in the state-citizen (and also resident) relationship, and within that in legislative processes. To this, ICT contributes in the following ways:

a) it opens up the possibility of (e-)consultation, which means vertical (external) and horizontal (internal) communication with stakeholders and public servants, and even with other politicians. This can be

²³ Ibid.

²⁴ Tervezés és jogalkotás informatikai támogatása. (2018, October 26). <http://magyaryprogram.kormany.hu/tervezés-es-jogalkotas>

²⁵ Zemplén, B. (2008). Bevezetés az e-Government-be, esettanulmány: magyarországi okmányirodák. In *E-Government Tanulmányok – V. Elektronikus rendszerek a közigazgatásban* (pp. 7-34). Budapest: E-Government Alapítvány a Közigazgatás Modernizációjáért.

²⁶ Drinóczi, T. (2010). p. 118.

²⁷ Ibid. p. 117.

interactive (optional) and can be directed, namely less interactive (this applies to the way of opining);²⁸

b) it facilitates interdepartmental cooperation and dispute processes between ministers (see Georgia, the Czech Republic) and the conduct of government meetings (see Estonia);²⁹

c) it makes decision making smoother (see Finland);³⁰

d) the legislative process gets even closer to the stakeholders through the publication of advertisements (see e.g. Netherlands, Belgium, Italy).³¹

In summary: the various editorial processes and the entire legislative process become easier and more manageable through means and programs promoting them.

In Hungary, the utilization of ICT in legislation is on the move, the latest milestone of which is the Integrated Legislative System (hereinafter: IJR).

Today, in Hungary, the electronization of legislative processes and the strengthening of legal awareness are priorities and they both will result in further reductions of administrative burdens and will make legislative processes even faster. Regarding these matters, we should emphasize IJR, which guarantees a very high standard of service for the quality of the legislative process through the following systems: *GovLex* (governmental legislative preparation work processes supporting system), *ParLex* (Parliament's IT system for legislation), *EJR* (electronic law preparation system), *LocLex* (system supporting the editing and validation of local government regulations), *EUComplex* (system of European Union requirements for legislation), *NJT* (National Legislation Library), the administrator and decision-preparatory module, the data protection incident reporting system, as well as the IJR personalized administrator interface module, enabling access to services provided to citizens, businesses, civil and other organizations through a personalized administration interface. All in all, in this way, a legislative system built on a common framework becomes accessible and known to everyone on a single interface

¹, by which not only legislation itself will be faster, more transparent, and manageable, but also the process and goal of quality legislation will be more unequivocal for citizens.²

V. Conclusion

In the first part of our work, we described the judgment of quality legislation in Hungary. Based on the standpoint of outstanding practitioners of domestic jurisprudence, we presented the conceptual definitions of quality legislation together with their content elements, stating that quality legislation is a constantly changing "legal category", the periodic review of which is justified.

In the second part of our work, we gave an overview of the general role of ICT in the human community, which similarly to quality legislation, constantly changes, and permanently increases and evolves.

²⁸ Ibid. pp. 118-119.

²⁹ Drinóczy, T. (2017). Legislative Process. In *Legislation in Europe – A Comprehensive Guide for Scholars and Practitioners* (pp. 33-52). Oxford-Portland: Hart Publishing.

³⁰ Ibid.

³¹ Ibid.

¹ In this context, it is not right to use the term "everyone" (see digital gap) because objective (e.g. disadvantaged financial situation, material deficiencies) and subjective (e.g. some degree of intellectual competences) constraints prevent the legislative process and its outcome from being accessible and known to everyone.

² Gyorsabban születhetnek és egyszerűbben kereshetőek lesznek a jogszabályok. (2018, October 26). <https://mfor.hu/cikkek/befektetes/gyorsabban-szulethetnek-es-egyszerubben-kereshetoek-lesznek-a-jogszabalyok.html>; Integrált Jogalkotási Rendszer (IJR): gyorsabban születhetnek és egyszerűbben kereshetőek lesznek a jogszabályok. (2018, October 26). <https://hirlevel-egov.hu/2018/07/22/integralt-jogalkotasi-rendszer-ijr-gyorsabban-szulethetnek-es-egyszerubben-kereshetoek-lesznek-a-jogszabalyok/>; Könnyebb lesz eligazodni a magyar jogban – csúcstechnológiával készülnek majd a paragrafusok. (2018, October 26). <http://m.privatbankar.hu/makro/csucstechonilogival-keszulnek-a-paragrafusok-konnyebb-lesz-eligazodni-a-magyar-jogban-318318>

In the final part of the study, we briefly outlined the role of ICT in legislation (including some examples of foreign states) and the most recently applied system in Hungary, i.e. IJR.

In conclusion, it is important to see that in these days legislative processes are mostly carried out electronically. This also means that further addressees of the law wish to join not only through their elected representatives, but in other direct forms as well, which is a challenge Hungary will encounter. Whether our country can stand trial and be able to operate the system described in the previous section will turn out in the near future. Nonetheless, decision-makers should be aware of the fact that in order to cope with this new issue, some essentially non-legislative (regulatory) areas are also inevitably affected (e.g., different trainings, technical conditions, etc.), concerning which further requirements should be satisfied.

Bibliography

Book or Monography Citation

Anderson, J. (2010). *ICT Transforming Education*. Bangkok: UNESCO Bangkok.

Castells, M. (1997) *The Information Age: Economy, Society and Culture. vol. 2: The Power of Identity*. Oxford: Blackwell Publishers.

Drinóczi, T. (2010). *Minőségi jogalkotás és adminisztratív terhek csökkentése Európában*. Budapest: HVG-ORAC Lap- és Könyvkiadó Kft.

Kiss, L. (1998). *Jogállam – jogalkotás – önkormányzatok (Örökségünkről – mai szemmel)*. Pécs, Közigazgatás-módszertani Bt.

Koncz, J. (1937). *Önkormányzat és közigazgatás*. Budapest:

Toomey, R. (2001). *Schooling Issues Digest No 2: Information and Communication Technology for Teaching and Learning*. Canberra: Commonwealth of Australia.

Visegrády, A. (2015). *Jogi alaptan*. Budapest: Menedzser Praxis Szakkönyvtár és Gazdasági Tanácsadó Kft.

Journal Article Citation

Asabere, N. Y. – Enguah, S. E. (2012). Use of Information & Communication Technology (ICT) in Tertiary Education in Ghana: A Case Study of Electronic Learning (E-Learning). *International Journal of Information and Communication Technology Research*, 2(1), 62-68.

Borsa, D. (2009). A minőségi jogalkotás problémái (A győri jogi kar doktori iskolájának szakmai konferenciája). *Jog, állam, politika*, 1(2), 157-162.

Bottyán, B. (2015). Egyes kérdések a minőségi jogalkotás elvéről. *Pro Publico Bono*, 3(1), 38-54.

Peschka, V. (1993). A jogalkotás minősége. *Jogtudományi Közlöny*, 37(6), 564-567.

Sarfo, F. K. – Amankwah, S. K. – Oti-Agyen, P. – Yidana, I. (2016). *Journal of Media and Communication Studies*, 8(5), 43-51.

Zuppo, C. M. (2012): Defining ICT in a Boundaryless World: The Development of a Working Hierarchy. *International Journal of Managing Information Technology*, 4(3), 13-22.

Encyclopedia or Dictionary Entry Citation

Drinóczi, T. (2017). Legislative Process. In *Legislation in Europe – A Comprehensive Guide for Scholars and Practitioners* (pp. 33-52). Oxford-Portland: Hart Publishing.

Kiss, L. (1996). Jogforrás és jogalkotás. In *Válogatott fejezetek a rendszeres alkotmánytan köréből* (pp. 119-145). Pécs: JPTE ÁJK.

Petrétei, J. (2006). A minőségi jogalkotásról. In *Piacgazdaság – Jogállam – Jogalkotás* (pp. 11-26). Budapest: Emberi Jogok Magyar Központja Közalapítvány.

Zemplén, B. (2008). Bevezetés az e-Government-be, esettanulmány: magyarországi okmányirodák. In *E-*

Government Tanulmányok – V. Elektronikus rendszerek a közigazgatásban (pp. 7-34). Budapest: E-Government Alapítvány a Közigazgatás Modernizációjáért.

Web Site Citation

Gokhe, M. (2018, October 26). Concept of Information and Communication Technology. http://www.tscermumbai.in/resources%20paper_%204/IV.1_information_and_communication_technology.pdf

Gyorsabban szülehetnek és egyszerűbben kereshetőek lesznek a jogszabályok. (2018, October 26). <https://mfor.hu/cikkek/befektetes/gyorsabban-szulehetnek-es-egyszerubben-kereshetoek-lesznek-a-jogszabalyok.html>

Information Technology Infrastructure Library [ITIL]. (n. d.). ITIL glossaries. Retrieved from http://www.itil-officialsite.com/InternationalActivities/ITILGlossaries_2.aspx.

Integrált Jogalkotási Rendszer (IJR): gyorsabban szülehetnek és egyszerűbben kereshetőek lesznek a jogszabályok. (2018, October 26). <https://hirlevel-egov.hu/2018/07/22/integralt-jogalkotasi-rendszer-ijr-gyorsabban-szulehetnek-es-egyszerubben-kereshetoek-lesznek-a-jogszabalyok/>

Könnyebb lesz eligazodni a magyar jogban – csúcstechnológiával készülnek majd a paragrafusok. (2018, October 26). <http://m.privatbankar.hu/makro/csucstechonilogival-keszulnek-a-paragrafusok-konnyebb-lesz-eligazodni-a-magyar-jogban-318318>

Tervezés és jogalkotás informatikai támogatása. (2018, October 26). <http://magaryprogram.kormany.hu/tervezes-es-jogalkotas>