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Introduction

David A. Frenkel
Norbert Varga

According to Salmond, philosophy of Law may be divided into three main branches: Dogmatic, Ethical, and Historical,[1] to which we add a fourth branch: Sociological.

The Dogmatic branch means analysing the pure principles of the law, with no reference to historical origin, development, validity or ethical significance.

The Ethical branch examines the ethical significance of the law which is concerned with the theory of justice and its relation to law.

The Historical branch deals with the general principles coveting the origin of the law and its development.

The Sociological branch means that a good practice of law should encompass human nature and sociology of law.

One method of legal research is to interpret and analyse any law from itself, by reading it, compare the various versions of the amendments legislated, analyse the differences and changes, compare it to other contemporary laws, either in the same country or elsewhere.

Another method, which should be added to the first, is study and research into the reasons that caused the legislation and its amendments; to learn what and how political, cultural, economic, moral and social interests and trends influenced and affected the legislation, and, on the other side to learn how the laws influenced them. This is needed not only in order to understand and interpret the law correctly, as binding documents, but also to draw conclusions regarding the need for changing the existing legislation, planning future legislation taking in to consideration the possible effects of any legislation on the lifestyle, culture, financial, philosophical, moral and social behaviour of the people and the international relations of the country.[2]

Current life, trends and views cause change in laws, and laws cause changes in everyday life. Life and law are reflections of each other. Law is the mirror of life and life is the mirror of law. One cannot separate law and life. Each affects and influences the other. It is impossible to understand law and legal trends of any period, without learning and understanding the real life and trends during the period, not only in a definite geographical location but also the international trends and political pressures. Likewise it is impossible to understand and follow social and political trends, without being acquainted and understanding the law of that time.[3]

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[1]Salmond, J. (1947) 10th ed. by Glanville K. Williams. London: Sweet & Maxwell, §§ 1-4.
[2]Frenkel, D.A. (2015). 'Introduction' in D.A. Frenkel & N. Varga (eds.) *Law and History.* Athens, Greece: Atiner, at 5.
[3]Ibid.

History is the present of the past. The present of today will be the past and history of the future. We should not ignore nor forget any part of history. The present without past and history is like a rootless tree or a building with no foundations.

This book offers a collection of essays whose research is focusing on the interrelationship between history and law.

The essays are revised versions based on selected presentations at the International conferences organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. They have been peer-reviewed and selected on the basis of the reviewers' comments and their contributions to the research discussion of the History and Law issues.

The following will briefly present the different contributions.

The book comments with **Vasileios Adamidis**'s essay *Manifestations of Populism in Late 5th Century Athens*. In this essay the manifestations of this phenomenon in fifth century Athens are analysed, while pointing to some legal responses to counter it. Despite the rigorous and comprehensive study of Athenian democracy, no systematic application of the concept of populism to classical Athens has taken place. This essay aims to fill this gap. The author's conclusion is that modern political theory on populism can be legitimately applied to contexts other than Western liberal democracies, being particularly suitable for a closer analysis of ancient Athens, while, in return, Athenian legal and extra-legal responses to populism could provide valuable guidance on how to tame this phenomenon.

The second contribution is **Norbert Varga**'s essay *The Jurisdiction in the Hungarian Cartel Law: Historical Background.* The practical validation of the Cartel Law in Hungary can be reconstructed based on judicial practice. The existing memorials, essentially, only contain the verdicts of the courts of the first and second instances, and there are only a small number of archive sources which describe the factum in its entirety. Due to this, only the information found in the verdicts' dispositional and justification portions can aid us in the examination of the rules of Procedural Law. All in all, it can be stated, by taking archival sources into account, that the peremptory majority of cartel cases were jurisdictional legal actions. The specialised nature of the procedural rules can be viewed as unique in the history of legal action in Hungary. Apart from the problems in the field of Substantive Law, we can observe the process of the lawsuits and the procedural acts, especially the act of verification. We can observe what data and information the courthouses used in order to reach their decisions.

Dénes Legeza in his essay *Development of the Hungarian 'Work Made for Hire' Provisions* raises many questions which concern the copyright qualification of the works created under employment, including what rights do the employer and the employee have, does the employed author of a work have any moral rights and is the employing company entitled to grant licence to third persons. After clarification of the differences between copyright and author's right systems, the author examines the development of the regulation of this legal field from the Prussian origins, introduces the achievements of judicial practice and

jurisprudence, the ambitions for codification in the sixties, towards to the regulation in force in Hungary.

The next essay in the book is **Máté Pétervári**'s *The Establishment of the Districts in Hungary after the Austro-Hungarian Compromise.* After the Austro-Hungarian Compromise of 1867, Hungary regained independence and consequently bourgeois reform of the state started on the basis of the April Acts of 1848. The legislator wanted to create an administrative system which would be able to carry out the acts and decrees on the local levels. The need for modernising the administrative system resulted in reshaping of feudal territorial division, thus redrawing of the districts territories was also put on the agenda during the implementation of the Act. The essay is based on the examination of the archive material of the Hungarian Royal Ministry of the Interior which implied the drafts of the Hungarian counties about the public administration organization and the controlling of the Hungarian Royal Ministry of the Interior. The attribute of the new Hungarian district system on the basis of the Act 42 of 1870 is presented in this essay.

Kristóf Szivós is the author of the fifth essay *The* Eventualmaxime *in the Hungarian Civil Procedure – A Historical Perspective*. The Hungarian Parliament adopted a new Code of Civil Procedure on 22 November 2016. During the codification proceedings, the gravity of the Hungarian traditions and the achievements of European legal development were emphasised. One of the most notable features of the new Code is the application of the structure of 'divided litigation', which means that the proceedings before the courts of first instance are divided into two parts*:* the preparatory stage and the main hearing stage. One of the main principles of the preparation is the *Eventualmaxime*, which had not been applied as a main rule since 1911. The essay introduces the historical basics of this legal institution. It examines the theoretical features including analysing the definition and highlights the reasons behind the necessity of the *Eventualmaxime*. The second part, the main hearing stage, will introduce the presence of this principle in the Code of 1868, where it became the main directive principle in the ordinary procedure before the regional courts.

The sixth contribution is **Ivan Kosnica**'s *Social Rights in the First Yugoslavia (1918-1941): Tradition, Model and Deviations.* Following T.H. Marshall's conception on gradual development of citizenship rights and an argument about 20th century as a century of social citizenship, the essay highlights development of social rights in the First Yugoslavia**.** The essay describes the various traditions of social rights on the Yugoslav territories before 1918 and then elaborates thesis about normative model of social rights established in the rules of the first Constitution of 1921 and in laws that implemented constitutional principles. In addition, it points out some deviations from that model, mainly lack of significant rules about social rights in the second Constitution of 1931, non-adequate implementation of regulations on social rights in legal practice, as well as pointing out the important role of municipalities in providing social transfers for the poor in 1930s.

The next essay is *Legal History of the Development of the Process of Forced Execution of Claims in Croatian law* authored by **Jelena Kasap and Višnja**

Lachner. Although modern legal science recognises a specially defined legal institute for enforcing claims that is realised in the framework of a special procedure governed by the Croatian Enforcement Act, the historical context of the development of that institute, although undisputable, was not so uniform. It is well recognised in numerous legal-historical researches that the emergence of the first forms of compulsory settling of the claims can be found in old legal systems, features inherent to that institute suitable for modern legal interpretation begin to be individualised in medieval law. When it comes to Croatian mediaeval law, it should be borne in mind that the determination of that institution cannot be interpreted by means of unique legal source. For this reason, the subject of analysis in this essay will be the provisions of the medieval statutes of Croatian coastal cities and the customary law that was valid in the area of Slavonia and a smaller part of Croatia through the Werbőczi's Tripartitum**.** The purpose of this essay is to realise the filling of obvious gaps in Croatian legal-historical science when it comes to the development of enforcement proceedings.

In the final essay in this book, **Charalampos (Harry) Stamelos**, in his essay *Ancient Cypriot Kingdoms: Political and Legal Aspects of Their Regimes (1200 BC to 30 BC)*, leads us back to the second and first millennia BC. His essay presents the political and legal aspects of the Ancient Cypriot Kingdoms from 1200 BC to 30 BC. It is about the historic period during which the various Ancient Cypriot Kingdoms had to pay taxes to various rulers: the Assyrians, the Egyptians, and the Persians. Alexander the Great established a system of autonomy, expanding the autonomous systems of the previous rulers. However, in 312 BC under the Ptolemaic rule, Cyprus was one province, whilst various local institutions remained unaltered. Finally, in 30 BC Cyprus became a Roman province. Public law was based on the system of the Kingdoms of Mycenae since the Greek Kings and Princes established the Ancient Greek Kingdoms after the Trojan War in 1.200 BC. As described and explained in the essay, the King had all the powers under his control. However, private law also existed and there is a significant written contract, the *Tablet of Idalion*, being considered as the first written contract in the world. Less evidence exists concerning criminal law.

We hope that the readers will find this collection of essays stimulating and interesting not only in the particular issues discussed but also to acquaint themselves with the history and law field of research.

The views expressed in the essays in this book are of the authors and do neither represent nor are they intended to express the views of any other individual or body.

Manifestations of Populism in late 5th Century Athens

Vasileios Adamidis

Abstract

In this chapter, by reference to modern research on populism, the manifestations of this phenomenon in fifth century Athens are analysed, while pointing to some legal responses to counter it. Despite the rigorous and comprehensive study of Athenian democracy, surprisingly enough no systematic application of the concept of populism (as defined by modern political theory) to classical Athens has taken place; this chapter aims to fill this gap. My conclusion is that modern political theory on populism can be legitimately applied to contexts other than Western liberal democracies, being particularly suitable for a closer analysis of ancient Athens, while in return, Athenian legal and extra-legal responses to populism could provide valuable guidance on how to tame this phenomenon.

Keywords: *Populism; Populist Ideology; Rule of Law; Athenian Democracy; Athenian Law.*

Introduction

The purpose of this chapter is twofold: i) to offer a definition of populism in classical Athens, the first and best attested direct democracy, by reference to its various manifestations, and ii) a comparison of the findings with those of modern political theory on the field. This inductive and progressive definition of the concept of Athenian populism and the original application of its main features to the evidence from the ancient sources, will support the arguable applicability of populism per se to contexts other than liberal representative democracies. Populism, if universally defined, can be seen as an integral part of authoritarian regimes, as well as of radical, direct democracies.

Classical Athenian democracy is the main paradigm used by those who (truthfully or hypocritically) exalt popular will as the main – and sometimes only – legitimate source of political power. Yet the Athenians, recognising the pathologies of their late fifth-century BCE (largely populist) regime, proceeded to a series of legal and extra-legal amendments to their constitution, promoting the rule of law at the expense of the unlimited and undiluted will of the people[1]. Despite the rigorous and comprehensive study of Athenian democracy, surprisingly enough, no systematic application of the concept of populism (as defined by modern political theory) to classical Athens has taken place.

[1]See, for example, Ostwald (1987).

The analytical description, within the above context, of this transition from a 'populist', radical democracy to a demarcated democracy based on the rule of law is the second main objective of this chapter. A close examination of the means for this transition will take place, focusing on an indicative number of legal reforms, as well as on the 'rhetoric of law', mainly on the popular forensic fora, which strengthened the idea of the rule of law and allowed it to dominate the ideological arena of Athenian politics. This will be a concluding suggestion as to one possible way of combating populism in modern politics.

Populism is a widely used, catch-all term in modern political discourse, yet would it be appropriate to apply it to settings other than the modern Western, representative democracies? For example, would it be appropriate, and to what extent, to argue that the Athenian democracy of the fifth and fourth centuries BCE was dominated by populist ideology? In the course of this chapter it will become evident that some manifestations of Athenian populism coincide with and corroborate the findings of modern research on the field and that the latter offers the conceptual tools to better analyse and comprehend Athenian democracy.

Reference to the radical, direct democracy of classical Athens, will assist in the further conceptualisation of the 'notoriously elusive, slippery and hard to pin down'[1] notion of 'populism'. It will also be useful to explore the similarities and differences between its modern manifestations and the Athenian practice. The main problem is that the suppleness, chameleonic nature and alleged applicability of populism (sometimes at whim) in different political and cultural contexts have contributed both to its resilience in practical terms but also to a relativism and variation in its definition and theoretical conceptualisation. Nevertheless, this fact, from a methodological point of view, legitimises the current endeavour to apply this concept to a non-liberal, direct (or radical), pre-modern democracy. Additionally, it sanctions this study of Athenian populism as referring to a regime regularly appealed to by modern populists as the putative model for wider democracy, more power to the people and more direct relationship between citizen and governance. This endeavour could easily slip to anachronistic conclusions. Yet I strongly argue that it is worth the attempt. If this experiment proves valid and Athenian populism shares common features with its modern counterpart, this would contribute to the better definition of this elusive concept on a universal rather than an ad hoc basis. Also, the application of current research to Athens will enhance our understanding of the unconceptualised ideology of Athenian democracy.

Scholars usually approach populism on an inductive and sometimes comparative way, examining and analysing its different appearances, in an effort to extract generally applicable conclusions. In other words, the definition of populism rests on the identification of common practices employed by various and diverse political actors, operating in different regions, under disparate ideologies, in dissimilar contexts. Therefore, empirically figuring out what might unite under the multifaceted umbrella of populism authoritarian, hybrid socialist-populist regimes in Latin America, the democratically elected radical left and radical right

[1]Canovan (1984); Canovan (1999) esp. n.3; Stavrakakis & Katsambekis (2014).

Syriza-Anel coalition in Greece, and movements such as the Tea Party, Occupy Wall Street in the U.S.A. or the Indignados in Spain, as well as tracing the different connotations of the term in diverse historical and geographical settings, is seen as the best method to approach and to better understand the concept.[1] If we add to this picture the application of the term to non-democratic political regimes, such as the Nazi Germany[2], it becomes evident that the assemblage and analysis of such a large volume of data, has the epistemological risk of blunting the accuracy and analytical sharpness of the relevant terms and concepts[3]. As a result, the term 'populism' itself could be criticised as lacking a coherent definitional frame, heavily depending on the context it is applied.

Defining Populism in Modern Political Theory

Despite the apparent difficulties, some common ground has been found and progress has been made on, provisionally at least, agreeing on a set of practices, principles and characteristics that could be labelled as populist.[4] As a preliminary note, it can be said that despite the fact that populism is 'chameleonic, culture-bound and context-dependent'[5], the concept per se is 'relatively robust'[6]. A definition, with arguable reservations, is provided by Cas Mudde who views populism as 'a thin-centred ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, 'the pure people' versus 'the corrupt elite,' and which argues that politics should be an expression of the volonté générale (general will) of the people'[7]. Scholars who perceive populism as an ideology[8] generally agree with its characterisation as 'thin-centred', not existing in a 'pure' form, requiring a thick-centred ideology with a solid normative programme for political action (e.g. liberalism, socialism, or even communism and nationalism) as a vehicle for its utilisation and flourishing. As it will become evident later in this chapter, Athenian populism (in the sense that politics should

[1]For the regional relativism of the term see Müller (2016); For the cultural relativism of the term see Canovan (1984), Canovan (2004), and Ochoa (2015). For the historical uses of the term, especially in the United States, see Kazin (1998). For the academic relativism see Ionescu & Gellner (1969), characterised as the "the definitive collection on populism" (Taggart (2000), in encapsulated by Wiles (1969) at 166), "To each his own definition of populism, according to the academic axe he grinds"; cf. Gidron & Bonikowski (2013).

[2]Depending of course on how populism is defined, few would deny that the use of the 'Volk' by the Nazi discourse had no similarity to populist practices. For example, the slogan "One People. One Reich. One Fuhrer." found in a 1938 poster, is essentially populist according to current approaches.

[3]"[T]he mercurial nature of populism has often exasperated those attempting to take it seriously", Stanley (2008).

[4]Woods (2014): "[C]ontrary to the now somewhat clichéd assertion that populism is a vague concept and lacks a coherent definitional frame is that the concept, in fact, is relatively robust. Almost without exception those who have engaged in a critique of the concept have conceded that there are three or four elements that lie at its core."

[5]Arter (2010) at 490.

[6]Woods (2014).

[7]Mudde (2004) at 543.

[8]For populism as an ideology see Abts & Rummens, (2007); Stanley (2008); Mudde & Rovira Kaltwasser (2012); Mudde & Rovira Kaltwasser) (2013).

be an expression of the popular will) differed in that respect; I argue that it was thick-centred, matching the needs and requirements of Athenian radical democracy, thus becoming the dominant, freestanding ideology.

On the other hand, populism can be defined as, primarily, a unique style, discourse, strategy, political logic or simply as an impulse, an outlook, an approach to or a way of doing politics[1]. Those who see populism as a strategy have also attempted to offer a minimal definition, with Weyland's being popular among them, particularly applying to Latin American populism. Populism is thus defined as 'a political strategy through which a personalistic leader seeks or exercises government power based on direct, unmediated, uninstitutionalised support from large numbers of mostly unorganized followers'[2]. The main focus of this approach is on the persona of the leader, the unmediated communication, directness, informality and plebiscitarian linkages with the 'People' and the expressed general frustration with institutionalism and intellectualism. Yet, and although there is no reason to believe that populism thrives only in instances of low institutionalism or organisation[3], the specific tactics and rhetoric of this broader strategy for the ascendancy to and preservation of power might still be similar to those described by scholars who define populism as a style or discourse. This view asserts that populism is an appeal that pits the (often marginalised and discontented) 'people' against a loosely defined 'establishment', 'elite' or 'oligarchy'[4]. Here, the focus lies on the mode of political expression evident in text, speech, and performance[5].

Finally, Laclau, focusing on structural considerations and following Carl Schmitt on viewing politics as an arena of antagonism and a friend/enemy conception, interprets populism as the inner logic of the political[6]. Laclau claimed that any political project is premised on the division between two competing antagonistic groups. The way in which these groups are formed stems from what he posits as the minimal unit of politico-social analysis: the demand. To put it briefly, when a demand is unsatisfied within any system, and then meets other unsatisfied demands, they can form an equivalential chain with one another, as they share the common antagonism/enmity of the system. A frontier is thus created between this equivalential chain (the underdogs) and the establishment. From here, the loose equivalential chain between demands is interpellated and finds expression as 'the people' through a leader. 'The people' then demand change to, or of, the system. To put it in more concrete terms, Laclau's formulation of populism acknowledges that populists do not speak to or for some pre-existing

[1]Knight (1998). A useful compilation of the different views on populism is Moffitt (2016).
[2]Weyland (2001) at 14. Others who view populism as a strategy include Barr (2009), Ellner (2003), and Roberts (2003).
[3]The European right-wing populism of Le Pen's 'Front National' and Wilder's 'Partij voor de Vrijheid' or the left-wing populism of Syriza might be enough to prove that party discipline and organisation is not an obstacle to the thriving of populist strategy.
[4]Hawkins (2009); De La Torre (2010); Kazin (1998).
[5]For populism as style, which takes in both the rhetorical and the aesthetic aspects of populist communication, rather than merely discourse, see Moffitt (2016).
[6]Laclau (2005).

'people' but arguably bring the subject known as 'the people' into being through the process of naming, performance or articulation.[1].

To recap, the primary common features among the different approaches to populism are:

i) The 'People' as the nodal point (i.e. as a homogeneous, largely fictional, majority);
ii) antagonism/division in different manifestations (usually against an 'Establishment' or a corrupt Elite).

Secondary features include:

i) anti-pluralism;
ii) bad manners and anti-intellectualism / anti-institutionalism;
iii) charismatic leader;
iv) unmediated communication between the leader and the People.

These primary and secondary features will be used in the next part of this chapter for a close examination and definition of Athenian populism.

Manifestations of Populism in Late 5th C. Athens

Athens of the late fifth century was a radical democracy, basing its decision-making on the decrees of the Assembly, i.e. almost exclusively on the will of the people. There was no hierarchy of laws and subsequent decrees could annul earlier ones. Appeals to the Demos (the people of Athens, all male citizens over the age of eighteen) were common since power rested with them. At the start of each Assembly meeting, curses were pronounced by the herald on any orator who attempted to mislead the people. Whoever wished to speak, delivered his speech directly to the people, in an unmediated way. Although the real addressee was only a minority, representative segment of the citizen body, speakers nevertheless addressed the Assembly as if the whole citizen body was present. The people were unaccountable and penalties against illegal or inexpedient proposals were solely directed against the orators[2]. Extremely severe penalties were provided by law for anyone who misled or did harm to the people of Athens[3]. The Demos was emerging as the single most important and overwhelming unit of Athenian politics, as the nodal point of the political discourse.

The interpellation of the Demos (or, the Athenian People)[4], namely the formation of a group sharing a common, distinct identity (and, as a result, having

[1]Laclau (2005); Moffitt (2016).
[2]Landauer (2014). cf. Thucydides 3.43.4-5.
[3]E.g. the decree of Cannonus in Xenophon. *Hell.* 1.7.20.
[4]I use the 'People' and the 'Demos' interchangeably, although the latter might be seen as a more clearly and restrictively delineated group. In modern discourse, the 'People' refers to a homogeneous, almost transcendent, group which might include people with no right to vote, such as

common interests and demands), formally emerged (and through time advanced) by the legal measure introduced by Pericles in 451/0 BCE, the so-called Pericles' Citizenship law[1]. This law provided that citizenship would be conferred only on *gnesioi*, namely children whose mother and father were both Athenians, while previously the offspring of Athenian men who married non-Athenian women was granted citizenship[2]. Modern scholars interpret this measure as embracing the common people, against the aristocratic practice of inter-marriage with rich non-Athenian *oikoi*, enhancing the status of Athenian mothers and making Athenian citizenship a more exclusive category, thus definitively setting Athenians off from all others.

The formulation of the Demos' group distinct identity went a step further six years later, when in 445/4 BCE Psammetichus, the king of Egypt, sent a present to the people of Athens of forty thousand measures of grain, and this had to be divided up among the citizens. This triggered a *diapsephismos* (a check on the registers of citizens) and a series of prosecutions, resulting, according to Plutarch, to a little less than five thousand convictions by the popular courts[3]. The Athenians as a distinct group were beginning to consciously act for the defence of their common interests, deriving from their exclusive rights of now formally and well-defined citizenship.

The interpellation of this group emerged and developed not in a bottom-up way like the one Laclau envisages (i.e. as a front equivalential chain of unsatisfied 'demands' of the marginalised people) but primarily from top-down initiatives by people like Pericles (the 'leader') who strengthened a specific group's identity (not necessarily or exclusively the 'underdogs', who supported and voted for the Citizenship law in the Assembly), and could rely on this group to advance and preserve their political dominance. Supposedly, it is not a coincidence that a few years after the introduction of measures such as the jurors' pay and the citizenship law, especially after the 'clearing up' of the registers from *nothoi* (non-*gnesioi*) and the coming of age of those benefited by the law of 451/0, Pericles succeeded in formulating an electorate which would keep him in the forefront of Athenian politics until his death in 429 BCE.

The division between the *gnesioi* citizens and the non-citizens sharpened and was now demarcated by law. The first group shared common advantages, such as jury pay[4], and – at the issue of who should qualify as citizen – a common demand,

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minors and immigrants (although the latter are usually – in Right wing populist rhetoric - presented as outsiders who assist in the binary definition of the 'People'). The 'Demos' on the other hand was a group clearly defined by law and, thus, its interpellation was easier. Yet, appeals to the 'Demos' in Athens shared many common features with appeals to the 'People' in modern populist discourse.

[1]Plutarch, *Life of Pericles*, 37.3. Patterson (1981).

[2]Dmitriev (2017). Carawan (2008); Ogden (1996).

[3]Plutarch, *Life of Pericles*, 37.4.

[4]Ca. mid-450s BCE: Pericles' law on pay for jury service was introduced soon after the 'democratic faction', under the leadership of Ephialtes, managed to take power away from the (aristocratic) council of the Areopagus, creating more popular courts and manning them with ordinary citizens. Initially, pay for jury service was 2 obols per day, increased to 3 obols by the 'demagogue' Cleon in 420s. Pay for participation in the Assembly was introduced c. 410-407 BCE (Aristotle, *Ath. Pol.* 28.3): Cleophon the lyre-maker first introduced the (daily) two-obol dole; he went on distributing this for a time, but afterwards Callicrates of the Paeanian deme abolished it, being the first person to

deriving from their exclusive citizen status. It seems that while Cimon, Pericles' main political opponent in the 460s, focused on the people of his deme as the main target group of supporters[1], Pericles (successfully, as proven by his subsequent career) expanded his perspective and promoted policies to first interpellate and then to appeal to the Demos as a whole, as a distinct and increasingly venerated group[2]. Pericles cultivated a magisterial image of a charismatic leader, being the opposite of a modern populist persona, making rare public appearances and usually relying on his network of friends and supporters to introduce and propose measures he endorsed[3]. Yet, the aforementioned strategy, which assisted in the interpellation of the People as a group, can be described as populist.

Old fashioned, mainly aristocratic, politicians operated through (more or less) institutionalised networks (family ties, friends, *gene*, *hetaireiai*). Plutarch in the *Life of Pericles* (11-14), despite somewhat anachronistically referring to the presence of political parties[4], describes Thucydides' (son of Melesias) tactics, as the leader of the conservative group and main opponent of Pericles in the 440s. Plutarch says that Thucydides:

> *'would not suffer the party of the "Good and Noble," as they called themselves, to be scattered up and down and blended with the populace, as heretofore, the weight of their character being thus obscured by numbers, but by culling them out and assembling them into one body, he made their collective influence, thus become weighty, as it were a counterpoise in the balance'.*

This visualisation of the distinct group in the Assembly, possibly had the unpredicted result of the further interpellation of the common people through the deepening of the division and the antagonism between the "Good and Noble" and the masses (which, of course, is the second main feature of populism)[5]. Thucydides, in 444/3 BCE, was eventually ostracised and Pericles dominated Athenian politics until his death in 429 BCE[6]. Roughly at this period, the Pseudo-Xenophon (also known as the 'Old Oligarch'), proving the now conscious division of the Athenian society, wrote in his 'Constitution of the Athenians':

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promise to add to the two obols another obol. It is not a coincidence that this pay for participation was seen as a democratic measure, abolished by the oligarchs in the coup of 411 BCE.

[1]Aristotle, *Ath. Pol*. 27.3: 'For as Cimon had an estate large enough for a tyrant, in the first place he discharged the general public services in a brilliant manner, and moreover he supplied maintenance to a number of the members of his deme; for anyone of the Laciadae who liked could come to his house every day and have a moderate supply, and also all his farms were unfenced, to enable anyone who liked to avail himself of the harvest.'

[2]Plutarch, *Life of Nicias*, 3, claims that Nicias surpassed all his predecessors and contemporaries in extravagance and favour, the recipients of his generosity being the people as a whole. Nicias' great wealth allowed for this but the effect of the already, by Nicias' time, interpellated group of the Demos as a whole should not be underestimated.

[3]Azoulay (2010) at 40; Connor (1971).

[4]See Hansen (2014).

[5]Cf. Plutarch, *Life of Pericles*, 11 and Connor (1971) at 63 n. 54.

[6]Plutarch, *Life of Pericles*, 16.

'the poor and the Demos generally are right to have more than the highborn and wealthy, for the reason that it is the people who man the ships and impart strength to the city.'

This observation describes the now opposing interests and demands of the distinct, more or less antagonistic, groups in Athens. This conflict would eventually escalate with the war, as usually happens during crises. The emergence of the Demos as the nodal point of Athenian politics continued after the death of Pericles, with new politicians (the so-called demagogues), of a different style and manners, taking advantage of this new structural development in Athenian politics, hence becoming prominent particularly during the Peloponnesian War[1]. Cleon, the most typical example of them, established uninstitutionalised and unmediated communication with the People as a whole. He was both a real strategist and tactician as far as populism is concerned. To embrace the People as a whole, in a symbolic gesture, Cleon repudiated his friends, thus liberating himself from their influence[2]. He was not a member of an *hetaireia* (an upper-class political club), as was the case for other politicians too of this new style[3], thus enabling themselves to legitimately represent the underdogs and rely on the following and support of the unorganised masses. *Hetaireiai*, solely confined to upper classes, contributed to the marginalisation of poor citizens who gradually saw them with suspicion, and divided the citizen body in classes and factions[4].

Many of the features of modern populists are concentrated in the persona of Cleon: a charismatic leader who appeals to the People in an unmediated way, a proponent of anti-institutionalism and anti-intellectualism, exhibiting a populist style characterised by divisive rhetoric and bad manners. Cleon is described by Thucydides (3.36.6; cf. 4.21.3) as "the most violent man at Athens, and at that time by far the most powerful with the demos". He had carried a motion of putting all Mytilenians to death after their revolt against Athenian rule in 427 BCE, but the demos changed their mind and a further debate was called. During this second debate, Cleon demonstrates his leadership skills, though refrains from pandering

[1]Humphreys (2004) at 233 claims that: "Conditions in the Peloponnesian war increased the need for state employment in military service, since many Athenians were cut off from their land, and made it easy for Kleon to play openly on the *demos'* economic interest in assembly decisions […]. It was easy enough thereafter to turn the accusation of importing private interests into public business against Kleon, by accusing him of appealing to the (metaphorical) pockets of the *demos*. This became a stock accusation against demagogues and, in time, the basis of the oligarchic political theory that *banausoi* [low-grade workers] could not be trusted with political power". On the demagogues see Finley (1962) and Rhodes (2016).

[2]Plutarch, *Moralia*, 806 F: "Cleon, when he first decided to take up political life, brought his friends together and renounced his friendship with them as something which often weakens and perverts the right and just choice of policy in political life". Cf. Aristophanes, *Knights*. The ideological hegemony of populism and the success of populist tactics persisted until the end of the 5th century. In the 'Trial of the Generals' after the naval battle of Arginusae, Euryptolemus, speaking in defence of the generals and in accordance with the law, nevertheless he thought it necessary to clarify that his kinsman Pericles should be tried too, for he 'should be ashamed to put Pericles' interests before those of the city as a whole' (Xenophon, *Hell.* 1.7.21)

[3]Connor (1971) at 29 n. 47.

[4]On the *hetaireiai*, see Connor (1971); Jones (1999); Roisman (2006).

the people. Nevertheless, his divisive rhetoric, through an affiliation with the ordinary people, who are presented as the real upholders of the laws, and a sheer anti-intellectualism, is evident:

> *'[o]rdinary men usually manage public affairs better than their more gifted fellows. The latter are always wanting to appear wiser than the laws, and to overrule every proposition brought forward, thinking that they cannot show their wit in more important matters, and by such behaviour too often ruin their country; while those who mistrust their own cleverness are content to be less learned than the laws, and less able to pick holes in the speech of a good speaker; and being fair judges rather than rival athletes, generally conduct affairs successfully. These we ought to imitate, instead of being led on by cleverness and intellectual rivalry to advise your people against our real opinions.'* (Thucydides. 3.37.3-5)

To this argument, Diodotus, Cleon's main adversary in the Mytilenean debate, replied along the following lines. Firstly, open debate and pluralism are integral features of good decision-making and anyone opposing this is senseless or interested. If such a person, "wishing to carry a disgraceful measure and doubting his ability to speak well in a bad cause, he thinks best to frighten opponents and hearers by well-aimed calumny" (Thucydides 3.42.2). Secondly, Cleon's bad manners, accusations and, ultimately, anti-pluralism, might "deprive the city of its advisers" (Thucydides. 3.42.4). Antagonistic rhetoric and divisive accusations of conspiracy and corruption directed against his opponents, seem to be Cleon's favourite discourse. Aristophanes in the *Knights* has Cleon crying out 'Conspirators, conspirators!' whenever he sees the chorus of upper-class members. Posing himself as an anti-establishment figure and using aggressive rhetorical tactics (*'he was the first person to use bawling and abuse on the platform, and to gird up his cloak before making a public speech, all other persons speaking in orderly fashion*' according to Aristotle, *Ath. Pol.* 28.3) Cleon was thought to have done the most to corrupt the people by such impetuous outbursts (cf. Aristophanes, *Knights* l. 137).

Cleon's unmediated affiliation with the Demos, allegedly acting as their champion, is evident in the following passage relating to the negotiations about truce with Spartan envoys (Thucydides 4.22.1-2):

> *'[the] envoys made no reply but asked that commissioners might be chosen with whom they might confer on each point, and quietly talk the matter over and try to come to some agreement. Hereupon Cleon violently assailed them, saying that he knew from the first that they had no right intentions, and that it was clear enough now by their refusing to speak before the people, and wanting to confer in secret with a committee of two or three. No! if they meant anything honest let them say it out before all.'*

As happens in most crises, the Peloponnesian war raised passions and led to divisions among the people. Extreme voices and manners, such as Cleophon's, who

according to Aristotle, *Ath. Pol.* (34.1) prevented the conclusion of peace by completely deceiving the demos, 'coming into the assembly, drunk and wearing a corset, and protesting that he would not allow it unless the Lacedaemonians surrendered all the cities', escalated the tensions between the different groups. The moderate Nicias, during the heated debate on the Athenian expedition to Syracuse in 415 BCE, endorsed and fuelled this multilevel division while attacking the ambitious Alcibiades and his followers:

> 'And if there be any man here, overjoyed at being chosen to *command, who urges you to make the expedition, merely for ends of his own […] do not allow such an one to maintain his private splendour at his country's risk […] this is a matter of importance, and not for a young man to decide or hastily to take in hand. When I see such persons now sitting here at the side of that same individual and summoned by him, alarm seizes me; and I, in my turn, summon any of the older men that may have such a person sitting next him, not to let himself be shamed down, for fear of being thought a coward if he do not vote for war.' (Thucydides 6.12.2-13.1)*

The gradual consolidation of new, divergent demands due to the ongoing war, interpellated antagonistic groups (mainly a pro-war and an anti-war one) with the result that emotions and tensions were heightened and the ground for populist tactics was paved. The nature of Athenian politics which provided for power to ultimately lie with the *demos* could provoke irresponsible leadership and populist manipulation. This was acknowledged in the so-called 'constitutional debate' in the *Histories* of Herodotus (3.81.1-2):

> *'Nothing is more foolish and violent than a useless mob; for men fleeing the insolence of a tyrant to fall victim to the insolence of the unguided populace is by no means to be tolerated. Whatever the one does, he does with knowledge, but for the other knowledge is impossible; how can they have knowledge who have not learned or seen for themselves what is best, but always rush headlong and drive blindly onward, like a river in flood?'*

In Euripides' *Suppliants* (423 BCE), in the debate between Theseus and the Theban herald, the latter, critical of the ignorant masses who can be easily swayed, observes that:

> *'the city from which I come is ruled by one man only, not by the mob; no one there puffs up the citizens with specious words, and for his own advantage twists them this way or that [...]. Besides, how would the people, if it cannot form true judgments, be able rightly to direct the state?'*

This is part and parcel of the observation in Euripides' *Orestes* (408 BCE) that 'whenever a man with a pleasing trick of speech, but of unsound principles, persuades the mob, it is a serious evil to the state'" (line 910). The exemplary case of Athenian populism and, I would suggest, its culmination as ideology per se,

comes from the aftermath of the Battle of Arginusae (406 BCE) and the euphemistically called 'Trial of the Generals'[1]. In that event, the Athenian Assembly, following a series of neglects of the normal institutional legal procedures, decided with a single vote to execute all the winning generals without trial (unconstitutionally, according to Athenian perceptions, notwithstanding the anachronism of the term), for failing to collect the bodies of the dead (and, possibly, of the survivors of the shipwrecks) from the sea due to a storm (Xenophon, *Hell*. 1.6.35; Diodorus Siculus 13.100.1-6). The generals' speeches, in the first debate which was convened in order for them to give account to the Athenian people in the Assembly, were shorter than what the law provided (Xenophon, *Hell.* 1.7.5)[2]. The Council (*Boule*) was then instructed to bring a proposal as to what sort of trial the generals should have.

Xenophon and the subsequent developments leave no doubt as to the illegality of the Council's proposal and the motives of its initiators. Callixenus, being bribed by the people who wanted the generals executed, introduced a motion whereby the fate of all generals would be tried by a single vote, collectively, and since they had already spoken before the Assembly at the earlier debate, the requirement of having a speech in their defence has putatively been fulfilled. Voices in the Assembly against the legality of this measure were silenced by the threat of applying the same measure (execution without trial) to any disagreeing parties. The response was a monument to undiluted populism:

> *'And some of the people applauded this act, but the greater number cried out that it was monstrous if the people were to be prevented from doing whatever they wished' (τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι εἰ μή τις ἐάσει τὸν δῆμον πράττειν ὃ ἂν βούληται.).* (Xenophon, *Hell*.1.7.12)

Some of the orators endorsed this view, pandering the people, escalating and capitalising the people's fury:

> '*Indeed, when Lyciscus thereupon moved that these men should be judged by the very same vote as the generals, unless they withdrew the summons, the mob broke out again with shouts of approval (ἐπεθορύβησε πάλιν ὁ ὄχλος), and they were compelled to withdraw the summonses'*. (Xenophon, *Hell*. 1.7.12-14)

Socrates happened to be the official responsible for putting the measure to the vote on that day[3]. He refused to do so declaring that he would do nothing that was contrary to the law. The atmosphere of this debate is clearly described in the *Apology* (32b-c):

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[1]Andrewes (1974).

[2]One can speculate that the cause for this was the uproar (*thorubos*) caused by - and against - their speeches by the masses. The mere endorsement of *thorubos* as a legitimate way for the people of expressing their opinion and silencing the speaker is a counter-productive, anti-pluralist and ultimately, I would argue, populist phenomenon. *Contra* Tacon (2001).

[3]Cf. Plato, *Gorgias*. 473e-474a; Xenophon, *Memorabilia*. 1.1.18, 4.4.2.

'I, men of Athens, never held any other office in the state, but I was a bouleutes; and it happened that my tribe held the presidency when you wished to judge collectively, not severally, the ten generals who had failed to gather up the slain after the naval battle; this was illegal, as you all agreed afterwards. At that time I was the only one of the prytaneis who opposed doing anything contrary to the laws, and although the orators were ready to impeach and arrest me, and though you urged them with shouts to do so, I thought I must run the risk to the end with law and justice on my side, rather than join with you when your wishes were unjust, through fear of imprisonment or death.'

The aforementioned incidents from the 'Trial of the Generals' did not emerge accidentally. Instead, there was a well-thought, coordinated plan to arouse the people's emotions, mobilise them, and unite them under a common demand: the punishment of those responsible. A critical mass of followers was gathered by Theramenes, the leader of those who demanded the execution of the generals. They were instructed to dress in black and shave their heads as if they were the grieving kinsmen of those lost after the battle. People's fury was escalating, and the only thing now required was its capitalisation. Even a man got up in the Assembly, claiming that he was a survivor of the shipwrecks and was instructed by those who were drowning, if he got away safely, to report to the people of Athens that the generals did nothing to rescue the men who had fought bravely for the country (Xenophon, *Hell*. 1.7.11). The cynical exploitation of dramatic events aiming at the utilisation of people's emotions is often linked to populism, since it is the channelling of the will of the people which eventually decides the course of events[1].

Legal and Extra-Legal Responses to Athenian Populism

If the ideology of populism - namely the belief that the People could unrestrictedly and unaccountably, with complete impunity, pass any measures whatsoever, despite their inexpediency or, even worse, illegality - was close to degenerate the Athenian democracy, the two oligarchic coups (411/0 BCE and 404/3 BCE) and the Athenian defeat in the Peloponnesian war, revealed the necessity of countering this phenomenon. The Athenian responses were multifarious, ranging from the political and legal arenas to the ideological battlefield. Some of the measures were introduced throughout the course of Athenian democracy and only further evolved, matured, or directed against the phenomenon of undiluted populism. Others were probably designed and implemented on purpose after the restoration of democracy in 403 BCE. While

[1]It is not uncommon for populist propaganda, especially in times of crisis, to use graphic images to interpellate a group feeling the same emotions of anger and indignation and direct it against a common enemy-perpetrator. In the years of the Greek economic crisis, it is not rare for such tactics to be employed, with many examples (of sometimes 'fake' news) referring to instances and inflated numbers of suicides due to destitution or to 'fake news'.

references will be made to the collective outcome of such measures, the main focus of this chapter will be on the rhetorical efforts, especially in the popular courts, which would allow success in this ideological *brade de fer*.

One of the features which makes an audience more susceptible to populism is their marginalisation, the belief that they belong to an 'underdog culture' which differentiates them from and pits them against the establishment or the elite[1]. This is the main reason of the populists' divisive and antagonistic rhetoric, in an effort to create a common, visible enemy for the 'underdogs', display to them their common demands and, thus, interpellate them as a group with a shared identity and set of beliefs. This is also the main reason as to why populism, being a protest movement, rarely becomes the 'Establishment'; however, when this happens, populists tend to behave similarly to the 'professional politicians' they once reprimanded. The seed of Athenian populism, growing in the fertile ground of Athenian democracy, gradually emancipated and mobilised (mainly politically) quasi-marginalised groups, brought them to the forefront and became the dominant ideology.

Despite the numerous and sophisticated procedures for holding officials into account (e.g. *dokimasiai*; *euthunai; graphe paranomon; graphe nomon me epitedion theinai*), the Demos, the ultimate decision-maker in the Assembly and judge in the popular Courts, remained unaccountable[2]. The oaths, prayers and curses in the Assembly before its convocation and the Heliastic oath taken by all 6,000 judges (Athenian male citizens over the age of 30) in any given year, were proactive measures with uncertain reliability[3]. Yet, these measures contributed to the interpellation of the Athenian people under a noble objective: their adherence to the rule of law and their pride in its protection. A counter ideology was emerging to unite the, so far, (at times) reactionary people, under a common demand and objective: to make the Athenian system different from those of other city-states and link the democracy to the rule of law rather than the rule of the masses. This effort, though premature, was evident during the Trial of the Generals when Euryptolemus, arguing for a trial in accordance with the law, said:

> *'Let no such act be yours, men of Athens, but guard the laws, which are your own and above all else have made you supremely great, and do not try to do anything without their sanction.'* (Xenophon, *Hell*. 1.2.29)

In an effort to place appropriate constitutional limits, the Athenians ordered a revision of the law-code (in the aftermath of the oligarchic coup in 411 BCE)[4] which paved the way for the subsequent hierarchy of norms and distinction

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[1]Spruyt, Keppens & Van Droogenbroeck (2016).

[2]On the laws and procedures in Athenian law, see Harrison (1968-1971); MacDowell (1986).

[3]The Heliastic oath, among other things, provided that: 'I will cast my vote in consonance with the laws and with the decrees passed by the Assembly and by the Council, but, if there is no law, in consonance with my sense of what is most just, without favour or enmity. I will vote only on the matters raised in the charge, and I will listen impartially to accusers and defenders alike.' On the Heliastic oath see Harris (2013) Ch. 3: 'The Judicial Oath'; Johnstone (1999) at 33-45; Adamidis (2016) at 92 n. 66; at 177 and 194 n/ 34.

[4]See more on this issue in Adamidis (2016) at 50-51 n.92.

between laws (of general application and permanent nature) and decrees (temporary, of individual application). The law-making process in the fourth century was now initiated by the Assembly but was entrusted to the board of *Nomothetai* (law-givers)[1]. Numerous law-court speeches survive from cases triggered by the legal procedures protecting the constitution and scrutinising the constitutionality and expediency of proposed laws and decrees. At a later date, showcasing how the Athenian democracy continued evolving into a regime based on the rule of law, there was the establishment of the board of *Nomofulakes* (guardians of the Laws) (c. 330s BCE) to overview the office-holders' conformity with the laws.

The emergence of the rule of law as ideology, culminating during the fourth century (contrary to what Athenians of the late fifth century had experienced) is also evident in the writings of the period. Aristotle straightforwardly provides that '[t]he rule of law is preferable to that of a single citizen.' (Aristotle, *Politics*. 1287a 16–20) while Hyperides in his funeral speech, linking democracy with the rule of law and contrasting it with authoritarianism, claims that 'For men to be happy they must be ruled by the voice of law, not the threats of a man' (Hyperides, *Epit*. 25). Aeschines also links democracy (against oligarchy) with the rule of law:

> '*You are well aware, men of Athens, that there are three kinds of constitution in the whole world, dictatorship (tyrannis), oligarchy, and democracy, and dictatorships and oligarchies are governed by the temperament of those in power, whereas democratic cities are governed by the established laws*.' (Aeschines 3.6)

The lawbreaker is now perceived as an enemy of the law and, as a result, an enemy of the state democracy (and the People). Demosthenes, as the accuser of a person who putatively committed the offence of hubris, calls the numerous jurors in session to rescue themselves and the laws:

> *'If I prove that the insults of Meidias touch, not me only, but you and the laws and the whole body of citizens, to come at once to my rescue and to your own.*' (βοηθῆσαι καὶ ἐμοὶ καὶ ὑμῖν αὐτοῖς.) (Demosthenes 21.7)

People are now united under a noble objective. Their real strength, and the strength of the democratic constitution, derive not from the unlimited power of decision-making afforded to the Demos but to the power of the people to uphold and protect the rule of law:

> *'Oligarchs and all who run a constitution based on inequality must be on guard against people who attempt to overthrow the constitution by force; but you, and all who have a constitution based on equality and law, must watch out for people whose words and way of life contravene the laws. For your*

[1]For the difference between laws and decrees in the fourth century see Hansen (1978), Hansen (1979), and Hansen (1991) at 161-177; Rhodes (1987).

real strength is when you are ruled by law and are not subverted by men who break them.' (Aeschines 1.4-5)

Everyone is equal before the law and this is the basic premise of this new ideology. Ordinary people and office-holders are equally ruled by law:

'For where we have laws expressly drafted for the case, surely punishment should fall alike on those who disobey them and on those who order an infringement of them.' (Lysias 22.10)

Yet, there is a crucial point which needs to be stressed. The 'People' apply the law, they are the guardians of the law, they are not identified with it, they are not representing the law themselves:

'laws were laid down by you before the particular offences were committed, when the future wrongdoer and his victim were equally unknown. What is the effect of these laws? They ensure for every citizen the opportunity of obtaining redress if he is wronged. Therefore, when you punish a man who breaks the laws, you are not delivering him over to his accusers; you are strengthening the arm of the law in your own interests.' (Demosthenes 21.30-1)[1]

The hegemonic position of the 'rule of law' ideology in the law-court speeches is primarily evident in the rhetoric of litigants. Regardless of the revision stages before their publication, forensic speeches had to be appealing to the minds and values of the Athenian laymen jurors[2]. Hence, we may safely assume that references to the dominance of the 'rule of law' ideology were positively accepted by the audience. The 'participant personality' of the ancient Athenians[3] - meaning that their ideas and values were largely shared with the community they found themselves in and they had strong incentives to show adherence to these norms - combined with the endorsement and respect they show for the rule of law in their speeches, prove that this principle was now advancing to become the guiding one in regulating their behaviour. The character evidence which litigants generously provide in their speeches corroborates the above point. The alignment of ethical norms with state laws allowed litigants to point to their adherence to both, with their rule, finally, being indisputable[4].

[1]Contrast this approach of the People as 'guardians of the law' with the modern populist 'identification' of themselves with the law so as to become inviolable: "The 'People' deserve only respect […] This government can only be the voice of the 'People'[…] We are flesh of the flesh of the 'People'[…] We are every word of this country's Constitution." Alexis Tsipras in a speech in the Hellenic Parliament (Feb 8, 2015).
[2]For more on the revision of speeches see Adamidis (2016) at 14 and 19 n. 52.
[3]Adamidis (2016) Ch. 5; Gill (1998).
[4]Adamidis (2017).

Conclusions

This chapter has offered a description of populism as an ideology. This is the first time that populism is seen as a freestanding, rather than a 'thin' ideology. Populist ideology in Athens of the late fifth century, inductively approached, offered the main set of ideas which ultimately supported the democratic regime. Its various manifestations (as a style, discourse, strategy and political logic) corroborate and advance the findings of modern political theory. Whether or not originally being a movement of the 'underdogs', the (mainly) top-down interpellation of the demos as a unique group with a distinct identity, made it the ruling class of the city. Crisis, in the form of the Peloponnesian war, contributed to the emergence of a new type of leaders, developing innovative tactics and techniques to approach and sometimes manipulate the people.

The populist ideology of the new ruling class, namely the mass of Athenian citizens, which provided for the largely unaccountable and unlimited power of the demos, proved to be dangerous for the running of the Athenian city state. The response was an emerging ideology of the rule of law, providing for safeguarding structures and rules to secure a smooth implementation of democracy, preventing its degeneration into mob rule. The introduction of new legal procedures and provisions was part of this ideological reform and actually paved the way for the gradual dominance of the 'rule of law' ideology. This could be a lesson to be learnt by the history of Athenian laws regarding modern day populism; building a legal and extra-legal bulwark against it in the form of a strong counter ideology, capable of uniting the people under a noble objective, could be a solution. Nevertheless, the least that this chapter has achieved, through the application of populism to the Athenian setting, is a further proof of the resilient and chameleonic nature of the concept of populism. More research needs to be done on the field, yet classical Athens is definitely worth looking at for this purpose.

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The Jurisdiction in the Hungarian Cartel Law: Historical Background[1]

Norbert Varga

Abstract

The practical validation of the Cartel Law in Hungary can be reconstructed based on judicial practice. The existing memorials, essentially, only contain the verdicts of the courts of the first and second instances, and there are only a small number of archive sources which describe the factum in its entirety. Due to this, only the information found in the verdicts' dispositional and justification portions can aid us in the examination of the rules of Procedural Law. All in all, it can be stated, by taking archival sources into account that the peremptory majority of cartel cases were jurisdictional legal actions. The specialised nature of the procedural rules can be viewed as unique in the history of legal action in Hungary, for the civil courts reached verdicts by mainly employing the rules of Bp., according to Statute 68400/1914. I. M. Apart from the problems in the field of Substantive Law, we can observe the process of the lawsuits and the procedural acts, especially the act of verification. We can observe what data and information did the courthouses used in order to reach their resolutions. I would like to present the regulation of the Hungarian cartel law special attention to the legal cases.

Keywords: *Cartel Law; Hungary; Procedural Law; Archival Sources.*

Introduction

The rules and cases of the so-called legal actions of general interest in connection to the cartels were introduced by the 20th Act of 1931. According to the technical definition, the procedural law, as a specified aspect of Cartel Act, regulated the formal law so that the common good and the economy could benefit from it.[2] The methodology of the cartel supervision offices belonged to this area of law, and it was practiced by the government, the specific ministries, the Royal Hungarian Legal Board, the Cartel Committee and the Price Analysing Committee from the executive branch, and the regular, elected and

[1]Updated and modified footnotes and references from Varga, N. (2016). 'The Procedure and Operation of the Cartel Court' in Klára Gellén & Márta Görög (eds.) (2016) *Lege et Fide: Ünnepi tanulmányok Szabó Imre 65. Születésnapjára* (pp. 660-669). Szeged: Iurisperitus Bt. and Varga, N. (2017). 'The Cartel Policy in the Cartel Law Special Attention to the First Cartel Act in Hungary' in Klára Gellén (ed.) (2017) *Honori et Virttuti: Ünnepi tanulmányok Bobvos Pál 65. Születésnapjára* (pp. 463-468). Szeged: Iurisperitus Bt. The research was supported by GVH.

[2]Harasztosi (1936) ar 510.

Cartel Court from the judicial branch.[1] In this essay, I basically would like to describe the dispositions in connection to the procedural law of the Cartel Court, and with that, to analyse the existing legal precedents.

The Cartel Court has been introduced after the law came into effect, and it was reasoned by the statement of the Secretary of Agriculture as follows. The "measures which must be taken against a cartel should be objected to the consideration of a judge most of the times, so […] the judicature of the Cartel Act could best be assured by a separate cartel court".[2]

Should an agreement or a statement fall under Paragraph No. 1 of the aforementioned Act, then, according to the statement of the assigned secretary, the Royal Hungarian Legal Board could file a case at the Cartel Court.[3] The problem of the definition of cartels by the courts arose in legal proceedings in connection to the agreements. To be more exact, the problem was that what acts can be considered to be under the effects of Cartel Act.[4]

The aforementioned understanding of the act became interpretable by practice. The Cartel Court examined an agreement that considered the acquisition, resale, sale price and conditions of firewood, coal, charcoal and forge coal, and also contained rules on its accounts and mutual buyer protection. The Cartel Court interpreted Paragraph No. 1 of the Cartel Act, and determined that the intention of the respondent was not to regulate the actions on one occasion but "defined the respondents' behaviour in the terms of business for a longer time period". The point of the agreement was to regulate the economic competition "in connection to the commerce and formation of prices of these merchandises, between two subjects of free trade".[5] In its verdict, the Cartel Court stated that "such an agreement is under the effects of Paragraph No. 1 of the Cartel Act, with no consideration of its personal, economic or geographic field".[6]

The definition of common good and the interests of public economics was one of the most notable problems of the legal institutions which regulated cartels. The works of Ferenc Harasztosi Károly should be highlighted among other literary sources, which stated that "the state must establish a public law system for cartels, which ensures that the cartel disagreements of economic life are taking place within a framework which ensures that they do not endanger the interests of public economy and of common good".[7]

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[1]A karteltörvény és a Kartelbizottság teljesíteni fogják hivatásukat. *Kartel Szemle*, Vol. 1(1): 1. Összhangot kell teremteni a Kartelbizottság és az Árelemző Bizottság munkája között. *Kartel Szemle*, Vol. 1(1): 1-2.

[2]Magyar Nemzeti Levéltár (Hungarian National Archive) (hereinafter MNL) K-184. 1933. 41. 30061/35309. Kelemen (1931) at 32-34. A Kurián ma megalakult a kartelbíróság. *Budapesti Hírlap*, 6 Marc 1932. 17., Stipta (2016) at 53-64.

[3]MNL. K-184. 1933. 41. 31960/92488., MNL. K-184. 1933. 41. 30061/35309.

[4]MNL. K-184. 1937. 41. 86293/86293. See: MNL. K-184. 1937. 41. 86293/86293.

[5]Cartel Court P. IV. 5261/1932. See: Ranschburg (1935) at 35; A Kartelbíróság újabb ítélete.. *A Kartel*. Vol. 3. No. 1. *A Kartel*. Vol. 3. No. 2. 6-7., MNL. K-184. 1933. 41. 31960/92488., Szabó (2016) at 64-84.

[6]Cartel Court P. IV. 5261/1932 in Ranschburg (1935) at 35. See: Curia P. IV. 3065/1933-22. Ranschburg (1935) 36-37., P. IV. 920/1933/9 in: Ibid 35.

[7]Harasztosi (1936) at 512.

In this matter, we have to stress the first statement of principle of the Cartel Court (on the matter of business isolation, boycott or exclusion).[1] This statement – by referring to Paragraph No. 6 of the Cartel Act – established that it is against the common good and economic conditions "exclusion not only gives a party economically reasoned disadvantages, but in fact capable of destroying its complete economic existence".[2] In connection to this, the Cartel Court also examined the cartel contracts containing the stipulations of isolation. The Cartel Court only agreed to enforce this if it had "reasons especially significant and relevant to the public".[3] According to the Cartel Court, "the emphasis is not so much on private, but general interests".[4] The committee referred to the justification of the 5th act of 1923: "The categorical imperatives of morals must also be validated during conflicts in the fields of commerce and industry, if one does not want to set individual selfishness loose on the trade".[5] In connection to both fair competition and cartel regulations, one must always keep the interests of common good in mind.[6] The Curia also stated in Mandate No. IV. P. 4936/1927 that any contract which is against general interests and good morals shall be considered null and void.[7]

One could file a legal action to the Cartel Court if an agreement or an application of a regulation, or a cartel which was formed because of it, was against proper ethics or common good.[8] A secretary could ask for several things in such actions: the court should disband a cartel formed by such an application or regulation, and make a pecuniary offence if it keeps on functioning. The secretary could also ask for forbidding the execution of the agreement or the regulation and for a fine if the participants continue to pursue their goals.[9] Filing a legal action introduced by the cartel court could be done by any office or individual by contacting the Secretary of Trade and providing ample evidence.[10] Before filing the legal action, the secretary could ask for a second opinion from the Cartel Committee, but it was not compulsory. However, if a public office or authority filed the claim, the secretary usually turned to the Cartel Committee for their opinion.

The administrative offices only practiced initiative rights during proceedings, and after this, taking measures were assigned to the court. The offices could participate in the legal action as a party to the dispute. All in all, it was in connection to the consideration of court independence and the guarantees of judicial proceedings, not to mention the respect of basic rights.[11]

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[1]MNL. K-184. 1933. 41. 31960/92488.
[2]Ranschburg (1935) at 47. MNL. K-184. 1933. 41. 31960/92488.
[3]MNL. K-184. 1933. 41. 31960/92488.
[4]MNL. K-184. 1933. 41. 31960/92488.
[5]MNL. K-184. 1933. 41. 31960/92488.
[6]Szegő (1936) at 34-36.
[7]MNL. K-184. 1933. 41. 31960/92488.
[8]Dobrovics (1937) at 126; Szente (1931) at 11-12.
[9]Ranschburg (1931) at 100.
[10]Ranschburg (1931) at 100; Harasztosi (1936) at 513.
[11]MNL. K-184. 1933. 41. 30061/35309.

In a lawsuit based on a legal action of general interest, the court could disband of the cartel, to shut down its operations, to forbid the fulfilment of an agreement or a regulation, or force them to cease a certain action or behaviour. The Act clearly stated what legal arrangements were within the jurisdiction of the government. This meant that in order to enforce these decrees, one did not need a court order. The secretary could enact these measures if the agreement or regulation enforced upon the cartel endangered economy or general interests, especially if it regulated the circulation of goods production or price formation in such a way that the interests of the customers, the entrepreneurs or the manufacturers were harmed.

It was within the jurisdiction of the ministry to examine the case, and, if was deemed necessary, it could propose to register the data, to make inquiries and submit official documents. With the participation of a commissioned, emissary, it could examine the business conductions and business management, and by looking at the business records and other documents of a cartel in question. It could also question the members and the employees. In case the ministry opted for the suspension of the operations of a cartel, then it could try to reach a peaceful solution by holding a hearing for the concerned parties. If this method was not fruitful, then it could propose to the government to withdraw tax and customs discounts, and the exclusion from public contracts. These arrangements fell under the topic of industrial codes and transport rates, and this is how the government intended to stop the cartel from continuing such actions that were against general interests.[1] Based on the suggestion of the Secretary of Commerce, the government could introduce these arrangements if none of the specified conditions dictated by the Act were present.[2]

In cases where the ministry filed for the cancellation of an official permit without which the cartel could not continue its intended activities, then they had to turn to the court. The ministry could make a suggestion to the government to modify or nullify the customs items written down in the customs tariff. There is an archived example for the latter. The Alkaloida Chemical Factory Inc. wrote an official letter to the Hungarian Royal Central Customs Directory in 12th December, 1933, which stated that "for preparations, and in exchange for the exported amount of morphine intended for transformation, the morphine derivate and their salts" be imported customs-free".[3] Because of the emerged economic conditions, if everything else failed, the ministry could turn to the Cartel Court.[4] After briefly describing the rules of conduct, the procedural law – mostly civil law – rules in connection to the cartels will be described in a much detailed fashion, and the legal practice related to this and still available will also be presented.

[1]MNL. K-184. 1933. 41. 30061/35309.
[2]Harasztosi (1936) at 513.
[3]MNL. K-184. 1933. 41. 30061/92818.
[4]Ranschburg (1931) at 100-101.

The Lawsuits

The concept of a lawsuit of general interest was understood as a legal action started based on a claim filed by the Legal Board on the order of the secretary of commerce, which the possible purposes of disbanding a cartel or to forbid them to continue their operations; the suspension of the ongoing legal action, without taking into account whether it is held by an orderly or a court of arbitration; to determine whether or not the actions of a cartel are against the law; the annulment of the verdicts made by the specialised courts.[1]

The question arose that in which cases can one pass a lawsuit of general interest. It can be stated that the general opinion was that if there was a chance that the state should intervene. The aforementioned Paragraph No. 6 of the Cartel Act determined these. This is not a laxative list, because the act mentioned above lists other cases for filing a statement in order to start a lawsuit of general interest in Paragraph No. 7. A statement could be claimed if the cartel's operations were against the law, public morals or general decrees. Most of these types of cases were of private interest, and were held earlier by orderly courts or courts of arbitration of the chamber since they broke the law of fair trade. Among many others, some of these cases were lawsuits filed because of boycott or sale under price.[2] It is questionable whether these cases could become lawsuits of general interest since the law was broken, or the acts in question also harm general interests. This is a significant matter, for in cases where competition laws were broken and no general interests were harmed, orderly courts had the jurisdiction.

In my opinion – based on the understanding of the normative text, in order to a lawsuit of general interest to be filed to the Cartel Court, not only the law and public morals had to be broken, but also general interests.[3]

I agree with the statement of Nándor Raschburg, according to which even the name of the lawsuit of general interest excludes the opportunity for a private proposal. The legal action was proposed by the Secretary of Trade at the Royal Hungarian Legal Board.

This also referred to that not only the law and public morals had to be harmed, but also the general interests. The statement had to be filed to the Legal Board based on this. In the conviction, the Cartel Court's verdict had to determine the harm that came to not only the law and public morals, but to the general interest, as well.[4]

The evasion of the Cartel Act was the purpose of the so-called "coal cartel", where the coal merchants and the mines, the coal merchants and the medium vendors, and the MÁK and the Salgó reached an agreement. This contract resulted in a monopolistic situation in the coal supplies of Budapest, for ten wholesale merchants took on the obligation to purchase 37.500 carriages of coal from two mines, which was almost the complete coal needs of Budapest for a whole year. The merchants were not allowed to sell any other coal. Because of this, any mines

[1]Harasztosi (1936) at 512; Dobrovics (1937) at 126.
[2]MNL. K-184. 1933. 41. 31960/92488.
[3]Ranschburg (1931) at 101-102.
[4]Ranschburg (1931) at 102.

and merchants who were not involved in this contract got into a difficult position. Not to mention that if we look at the situation from the point of view of the consumers, they were forced to buy briquette. The purpose of the cartel was to sell the so-called powdered coal which was pent up.[1] According to the viewpoint of the Cartel Committee, several elements of the cartel contract endangered common good and the interests of public economy, and as such, it falls under the effect of Paragraph No. 6 of the Cartel Act, and because of this, they requested a rise in prices, the elimination of the uncertain economic situation, the decrease of unemployment, stopping the cartel from gaining any advantages in the field of public services, and the annulment of the disadvantaged position of the mines outside the cartel.[2]

The Jurisdiction and Procedure of the Cartel Court

Lawsuits of general interest, temporary measures, lay on pecuniary fines per orderly punishment, forbiddance, nullification of the verdicts of elected courts, and the suspension of execution of the regulations of elected courts were within the jurisdiction of the Cartel Court.[3]

The Cartel Court could only order the dissolution and the ban from ongoing operation of a cartel, if a cartel's operations were against general interests and there was no other way of terminating it. The law gave the secretary the right to ask for a termination directly from the court, without authorizing any other means. However, the rights related to the termination could mean constraining basic rights, especially the right to fusion. But the constitutional rights could only be limited in special cases and with legal authority. Any other case would make the court's actions illegitimate, and it would have been measured by the arbitrary legal practice.

With the dissolution of the cartel, the court generally forbade the cartel and its members to keep on their operation. The dissolution of the cartel did not mean that the members would not keep up its operation by acting in unison. This meant that the only way that the verdict would come into effect if the court forbade the cartel to practice their operation.

There were cases where in spite of the fact that the cartel was dissolved, but it kept on operating. The law did not forbid this per se, but in practice, what this meant is as it follows. The verdict of the court was only valid for the dissolution and the forbiddance of the operation of the cartel involved in the lawsuit. If a new cartel was formed based on a new treaty, then the former verdict did not came into effect there. A new legal action had to be taken against the operation of the new cartel, and new proof was needed that its operation is against general interests. However, in urgent cases, the secretary could place temporary solutions into effect.

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[1]MNL. K-184. 1933. 41. 51140/88831

[2]MNL. K-184. 1933. 41. 51140/88831. MNL. K-184. 1932. 41. 51140/53726. MNL. K-184. 1932. 41. 51140/88298. Homoki-Nagy (2017) 4-14.

[3]Harasztosi (1936) at 528-529. See A Kartelbíróság újabb ítélete. *A Kartel*. Vol. 3(1):8..

In cases where the misconducts of the cartel could be nullified by the fulfilment of an agreement or a decree, then this became the court's order. This was also the decision where the nullification for the statement of claim was filed. In spite of all this, if the statement only asked for the nullification of the agreement or the decree, then the court could not state the dissolution in its verdict. In these cases, the court would have overruled the statement of claim, which is against 1st Act of 1911 (Judicial Procedure Code, JPC from here on out). They only petitioned for the nullification of the operations or behaviour, if the behaviour of the cartel could not be demonstrably correlated to an agreement.[1]

The structure of the Cartel Court was regulated by the Cartel Act itself (Paragraph No. 8). This court was a separate institution, which was established, interestingly enough, within the Supreme Court, the topmost institution within the ordinary judicial system with a president, two appointed judges and two lay judges. Its head was the president of the Supreme Court, or an individual appointed by the Supreme Court: the vice president or one of the presiding judges of the Supreme Court. The two judges were invited by the presiding judge appointed by the Supreme Court and the president of the acting council from the two appointed judges. The two lay judges were selected by the president of the acting council from those ten specialists which were selected every three years from the list assembled by the Secretary of Justice and the Secretary of Commerce, containing thirty names. The reason behind this was ensuring competency.[2]

Lawsuits of general interests had to be delivered for all participants concerned. In cases where representatives were announced or appointed, then the statements had to be delivered to this individual. In these legal actions, any participants could participate separately, and accompanied by their legal representatives.

In order to ensure a professional opinion, the court could meet with the Cartel Committee ex officio. If it proved to be necessary, the Cartel Committee could do the same with the Price Analysation Council.[3] For example, they followed this procedure in the case of the so-called tin box cartel, in order for the matter to be properly examined. The Cartel Committee called upon the Price Analysation Council in order to proceed with the run-down of the prices of some "cartelised commodities". For example, hemp, string and canvas belonged to this group. There were some agricultural tools on the list, as well, for example, spits, hacks and shovels.[4]

The Cartel Committee took the report of the Price Analysation Council into account in connection to the price of wool and cloth. They also elaborated upon the fact that what business policies should the concerned parties follow in order to increase the price of Hungarian fleece. They collected their suggestions on appendix sheet 92157/1933, which, among others, listed such suggestions like increasing the influence of the state.[5]

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[1]Ranschburg (1931) at 103-104.
[2]Ranschburg (1931 at 104; Harasztosi (1936) at 528.
[3]Harasztosi (1936) at 522-526.
[4]MNL. K-184. 1933. 41. 31960/92488.
[5]MNL. K-184. 1933. 41. 31960/92157.

The Cartel Court took the examination results of the Price Analysation Council into account in the suit of Alkaloida.[1] They wished to determine the price of narcotine by moderating.[2] The Committee formed a specialised group while determining the prices. This group reached a decision after the acquisition of the necessary data and conducting hearings for the concerned parties.[3] In the case of the so-called "oil cartel", they criticised the price and quality determined by the Committee. Quality assurance methods had to be established, as well.[4]

In connection to the work of the Price Analysation Committee, a registry can be found amongst the archived materials, with a short description of price reduction for each and every commodity. This report specifically mentions white oils (paraffin, gasoline, diesel oil), lubricating oil, agricultural tools (i.e. axles, horseshoes, shovels), ironmongeries, machine lubricants, textbooks, linseed oil, pesticides, textile, cement.[5]

As I previously mentioned, the Secretary of Trade could give an order to the Legal Board to start a lawsuit of general interest. The plaintiff of these lawsuits was the Royal Legal Director, who always stood for the interests of the state and the general population. No single individual could become the plaintiff in such lawsuits.[6]

It is also noteworthy that the outline of the Cartel Act would have given an opportunity for a competitor outside the cartel (a so-called *outsider*) to file a claim for a lawsuit of general interest. However, the counterargument was brought forward that *outsider*s would most likely try to secure their private interests by a lawsuit of general interest, and it would be "a direct harassment of the cartel, would learn and publish their business secrets, and their ultimate goal would be to enforce a bigger and bigger contingent for themselves, and also to join the cartel, and after that, would nullify the lawsuit which was started by them being the plaintiff".[7] But there were reasons for the outsiders to become plaintiffs, stating that this would have helped the detection of cartel abuses. The lawsuits filed against cartels could have been much more successful if these were started by *outsider*s. However, private and general interests were separated within the law proposal, so in the proposition submitted to the parliament, outsiders were not granted the right to become plaintiffs. Legislation accepted this viewpoint.[8]

This meant that no interest of private law could be enforced in lawsuits of general interests. "The legal action of private law – public action – can only serve to protect and avoid the endangerment of the law, public morals, general interests, and by that, economy and the welfare of the public, and in order to do so, it shall

[1]MNL. K-184. 1936. 41. 50306/55755.
[2]MNL. K-184. 1936. 41. 55714/55714.; MNL. K-184. 1936. 41. 50306/55594. MNL. K-184. 1935. 41. 62330/62330. MNL. K-184. 1933. 41. 51140/88831.
[3]MNL. K-184. 1935. 41. 62330/62330. MNL. K-184. 1934. 41. 28720./71729.; MNL. K-184. 1934. 41. 26180/71732. *8 Órai Ujság*, 1934. Vol. 20. No. 246. MNL. K-184. 1932. 41. 51140/ 66312.
[4]MNL. K-184. 1932. 41. 51140/53726.
[5]MNL. K-184. 1932. 41. 51140/66312.
[6]Harasztosi (1936) at 533.
[7]Ranschburg (1931) at 105.
[8]Ranschburg (1931) at 105.

not be used to serve personal interests".[1] In cases where individuals suffered private wrongs due to the operation of cartels, then a civil lawsuit, and not a lawsuit of general interest was necessary. If, apart from his complaint, the operation of the cartel endangered general interests, the individual had the opportunity to draw the attention of the supervision and the ministry to this fact. After this, the ministry had to take the necessary legal actions.[2]

The respondent of a lawsuit of general interest could be all of the concerned parties. In a case when a cartel was operating as a legal entity, then the respondent mostly became the cartel itself via a representative. The members of a cartel could also be included in the lawsuit as concerned parties.

If a cartel did not have a separate legal entity on its own, the legal action was taken against its members. In cases where a cartel had a sales office or administrative organisation functioning as a legal entity, or all of its transactions were fulfilled by the cooperation of a bank, then it was practical to include these in the lawsuit, as well, for most of the debatable legal actions were made under the names of these legal entities. This is why it became justified that the enforcement to discard the ban or actions could be carried into effect directly against these, as well.[3]

There is a specific example for these in the contract in the case of the "bakery cartel", where Paragraph No. 30 elaborates upon the legal entity's jurisdiction and tasks. A bank was delegated to fulfil these tasks, and it did so by using its own name but by keeping the interests of the members of the contract in mind, so "is legally bound in their name, and in case of becoming a plaintiff or a respondent, could act on its own, and practice all rights that is present for all concerned parties as individuals".[4]

The large headcount of the cartels could significantly make summoning more difficult, and could slow down the legal action. So if a cartel had a registered legal representative, the statement of claim had to be delivered to that individual. If there was no such person, then the head of the Cartel Court appointed a representative. If the representative accepted the statement of claim, it meant that all of the cartel members received and noted it. It was the obligation of the representative to notify each member of the cartel on the contents, who could participate in the lawsuit with separate legal advisors.

The proceedings of the Cartel Court were held with the basic principle that nobody with private interests can participate in them. As I mentioned above, the concerned parties were represented by attorneys in the legal action. In cases of general interests, the action at law could only be filed against all participants, which, in these cases, meant all members of the cartel.[5]

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[1]Harasztosi (1936) at 532.
[2]Ranschburg (1931) at 105-106. MNL. K-184. 1937. 41. 86293/86293.
[3]Ranschburg (1931) at 106; Harasztosi (1936) at 534.
[4]MNL. K-184. 1934. 41. 26180/71732.
[5]Ranschburg (1931) at 106-107; Harasztosi at (1936) at 534.

Execution

In the verdict – in case of amerce – the court always forbade a cartel or one of its members from continuing their operation, or the enforcement of an agreement or regulation by a pecuniary fine. This is how a cartel was forced to discontinue its operations. The verdict did not state the size of the fine, the executive branch was tasked to establish that. The execution was asked by the Legal Board. The application had to be filed to the Cartel Court, and certify that the cartel or its members fulfilled their obligations as stated in the verdict. The Cartel Court determined the fine after a hearing with the amerced participant. During this, they had to take the wealth intended to be gained from the action and the financial status of the participant into account. The warrant which enacted the fine was a legal document also carrying executive powers, which were obligated by a judicial executive. Not obeying the interdiction could result in the repeated infliction of the fine.[1]

The Cartel Policy in the Cartel Case Law

A very specific area of Cartel Law was the Cartel Policy Law, which was in close connection to the state's power to oversee cartels, which meant nothing more or less than the protection of economy and public welfare. This procedure included the ordinary fining procedures.[2]

According to the Act XX of 1931, only those could be punished by ordinary fines who failed to introduce the Cartel Settlement or the order, and did not provide ample reason for this omission, who did not obey the appeal for the examination of the case of the Secretary of Economy, all in all, failed to fulfil the duty to provide data, or obstructed the fulfilment of the appeal.[3] Those who carried out appeals or settlements which they were forbidden to do so by the Cartel Court, or manifest behaviour or carry out acts forbidden by the Cartel Court are contained within the same framework.

In the first two cases, the assigned courthouses were required to see the case through, which started the procedure according to the request of the legal director of the treasury based on the proposal of the secretary. In the third case, the Cartel Court was privy to the case, for it could establish a fining ex officio. The Cartel Court was assigned to the case if the fine was established repeatedly but unsuccessfully for a second and third time according to the motion of the Secretary of Economy, or in another lawsuit of general interest according to the motion of the legal director, if they wished to suggest proscription from trade or industry permanently, or for a pre-established period of time.[4]

According to Harasztosi, none of his cases in fining procedures only the lawsuits concerning ordinary fines had any actual significance, especially if the

[1]Ranschburg at (1931) 108-109; Harasztosi (1936) at 536.
[2]Harasztosi (1936) at 546-547; see Varga (2017) at 46-56.
[3]Lőw (1935) at 350.
[4]Lőw (1935) at 351; Dobrovics (1934a) at 10; Dobrovics (1935) at 9.

presentation of a document was forgotten or was filed in late; or in cases filed for omission of compulsory data presentation. In cases filed for the failure to oblige presentation duties, the matter of penalty fell under the rights of the assigned secretary. The conformations filed to the secretary had no such effect which vindicates the affair, the contestants could not achieve more with it than saving themselves from paying the ordinary fine.[1]

In fining procedures started at courts of justice, the court had to use the rules in in cases of trade delinquencies. This order of 68,400/1914. I. M. had to be taken into account.[2]

In a case of ordinary fining procedures, no imprisonment could be ordered as a main rule, for the fine levied due to the failure to present a document could be transformed into custodial sentences. There were specific cases where the fine could not be collected, but even then the Act had to specifically allow this transformation.[3]

The legal director asked for the actuation of the procedure, and presented the Mihály Schwarz, Mihály Menzer and Ignácz Ádler, timber merchants from Kiskunhalas, made an agreement in 1933 according to Pharagraph No. 1 of the Cartel Procedural Law concerning timber, terracotta bricks and pottery products. They introduced the cartel contract to the Secretary of Trade on the 12th April, 1933, however, the list of pre-determined prices, which should have been one of the appendices of the contract, was only presented on the 4th May, 1933. In this case, the participants were late, and didn't even provide a justification for this. According to this, the Secretary of Trade ordered the legal directorate to actuate a case due to the failure to present a document. According to decree No. 68400/ 1914. I. M., the legal directorate asked the Royal Court of Kalocsa to actuate a case against the aforementioned companies.[4]

The fining procedures was heard out by one of the orderly judges of the court of justice, who, as the presenter of the case and put the examination and trial aside to direct the attention of the complainants that the justifying statement had to be presented within 15 days after the appeal to do so was received. After this, the court decided on the appropriate penalty or the annulment of the case by takin the presented documents and the officially imparted information. The warrant established during the closed hearing was delivered to both the complainants and the royal legal directorate. According to this, the aforementioned decree presented role of public accuser to the royal prosecutor, but based on legal practices, this position was fulfilled the legal director in such cases.[5]

In the aforementioned lawsuit actuated by the Court of Kalocsa, the participants were asked to provide a document in proof.[6] According to this, the complainants provided the document in proof, with which they wished to verify

[1]Harasztosi (1936) at 548; Lőw (1935) at 352.
[2]1931:XX. tc. 15. §.
[3]See: Act X of 1928 article 16.
[4]Cg. 187/1933. sz. BKML. VII. 2. c. See: P. VI. 9489/16/1934 BFL, 13. P. 46341/3/1933. In: 2746/1934 BFL, Cg. 35030/9. sz. In: 1158/1934 BFL., Cg. 33989/6/1932 In: 920/1933 BFL., Cg. 34592/4. sz. In: 4913/1933 BFL.
[5]Harasztosi (1936) at 549.
[6]Cg. 187/3/1933. sz. BKML. VII. 2. c. See: 13. P. 46341/3/1933. In: 2746/1934 BFL

that they did not fail their duty to present documents, established in the Act.[1] According to their document of proof, their opinion is that there was no sin of omission, for they didn't establish the appendix of the contract when they signed the contract, and after it was signed, they introduced it to the Secretary for inspection within the deadline.[2]

Within 8 days after the delivery, they could turn to the assigned High Court against the decision. This affected the decision by having a postponing effect. Any individual who was thwarted in validating his or her individual rights in a lawsuit of the first or second degree, could file a document of proof. However, one could not file a document of proof because of an omission, the application for the document of proof had to be filed for the court of justice within 30 days of the established day of the trial or the expiration date of the failed legal remedy.[3]

The formulaic rules of the application were under the effect of Paragraphs 464-466 of the Criminal Code of Procedure. It had to be filed at the courthouse where the complainant failed to keep to the deadline. This application had to contain the reason for the delay and the justification information and data, with the evidences that the court needed also had to be enclosed. If the matter was of the omission of an act of legal remedy, then the appointed court of the first degree turned the application over to the assigned higher court. In cases where the court made place for the document of proof, than, at the same time, also acted for the substitution of the omitted documents. The Court of Appeal had the power to come to an absolute decision in the case.[4]

In the lawsuit filed against the companies Nagykovácsi Lime Factory Corporation and the Lime and Grout Sales Corporation, the complainants presented in their document of proof that the debated agreement was not made on the 20th March, 1933, for on this date, they only signed the draft of the contract. The court did not accept the statement presented in the document, and fined the complainants for breaking Paragraph No. 14 of the Cartel Procedural Law.[5]

To find out the bearings of a case, the court could order an examination, if deemed necessary. In this case, the court selected an investigator from its own apparatus of judges or notaries. The duty of the investigator was to describe the bearings of the case, and based on this, the court of justice could order the termination or the continuation of said legal action. In order to do so, the investigator interrogated the complainant, and acquired all documents and evidences necessary to clarify the bearings of the case.[6]

The rules of Bp. were deemed valid during the interrogation of witnesses and experts.[7] The court or the investigator could absolve any business associate from clarifying any circumstance which was not deemed vital to the examination or the

[1]Cg. 187/1933. sz. BKML. VII. 2. c.
[2]Cg. 187/1933. sz. BKML. VII. 2. c. See: Cg. 187/4/1933. sz. BKML. VII. 2. c., Cg. 35030/9. sz. In: 1158/1934 BFL. Dobrovics (1934) at 14.
[3]Harasztosi (1936) at 549.
[4]Harasztosi (1936) at 549.
[5]Cg. 35537/3. In: 5812/1934. BFL. Lőw (1935) at 354; Dobrovics (1935) at 12; Dobrovics (1934b) at 13.
[6]Harasztosi (1936) at 550.
[7]Cg. 35030/9. sz. In: 1158/1934 BFL. Dobrovics (1934) at 15.

case, yet would result in business secrets that are not necessary for the trial to come to light. If the investigator deemed it necessary, he could ask for a court order for an audit. This procedure was only valid if it was deemed necessary to ascertain the omission or act under investigation. If the procedural step could only be fulfilled by the means of writ, it was necessary to turn to the assigned County Court. The court of justice could order the investigator to continue or terminate the investigation.[1]

To uphold common welfare, the legal directorate could oversee the inspection, and because of this, it could examine the investigation documents, and could file a proposal to the investigator to continue or terminate the investigation, or could file a proposal to the court of justice to debate the investigator's regulations. The latter two was within the complainant's rights, as well, who could select a defence attorney even during the investigation, whose rights were also determined by the Bp. The defence attorney could only be one of the practicing legal experts, one who was registered at one of the Bar Associations.[2]

The complainant had no right to intervene or propose during the examination or the rest of the procedure, could not form a statement or get legal remedy. However, he or she was free to introduce any circumstance to the investigator, the court of justice or Court of Appeal which could move the examination of the omission or illegal activity forward or assists the verification. If he was not selected to appear as witness, he could press for this, and the court of justice and the Court of Appeal was obliged to enact this, with the added burden of nullifying.

After the examination was finished, the investigator sent the documents to the court of justice. Based on these documents, the court could order the termination or the continuation of the legal action. The court stated the termination of a legal procedure in a warrant. In any other case, a term had to be set in order to continue the case orally. In cases when the act or malpractice fell under the effect of criminal law, the legal action had to be transferred to a Criminal Court.[3]

A case was filed against the Chinoin Pharmaceutical and Chemical Factory Corporation for breaking Paragraphs No. 2 and 14 of the Cartel Procedural Law, and thus committing cartel malpractice, and it took place at the court of justice of Budapest, where the court of the second degree reached a warrant, specified as No. 35779/2, but was turned to a higher court by the legal directorate, yet it was rejected by the Court of Appeal, and in their warrant, they pointed out Paragraph No. 1 of the 5th Act of 1878, according to which an act can only be considered a crime or a delinquency if the Act considers it as such.[4] In such cases, Criminal Courts should proceed.

The court could order the legal action to move forward, if the bearings of the case were clear. Before this, the complainant was asked to make a statement with a 15-day deadline.[5]

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[1]Harasztosi (1936) at 550.
[2]Harasztosi (1936) at 551.
[3]Harasztosi (1936) at 551.
[4]P. VI. 8146/4/1934. BFL.
[5]Harasztosi (1936) at 551.

In the warrant ordaining the trial, the act or malpractice encumbering the complainant had to be stated, with the exact place of a specific provision under the law.

At the same time, the court of law was assigned with the task to provide a warrant to appear to all contestants, witnesses, and experts. They could issue a warrant to appear for even those participants who were announced after the beginning of the trial by any of the contestants. The complainant had to be warned that if he or she chooses not to appear, this non-attendance does not obstruct the continuation and discussion of the case, he was free to hire a legal representative and take place in the case.[1] The arrival of the subpoena and the beginning of the trial had to be at least 15 days apart. During trials, if the complainant was a natural person, he or she could not be apprehended, committed into custody or put in detention awaiting trial. This was a significant difference between this and a criminal legal action.[2]

The beginning of the trial was marked by reading out the warrant which ordained it, and after that, the judge summarised the case. The trial could be held even if the contestants failed to appear. The witnesses and experts could be ordered to step forward, and, in order to do so, the trial could be interrupted for a few hours.

After this, the president could interrogate the present complainant in connection to the act or malpractice, and the members of the judicial board, the president of the legal department and the defence attorney could ask their questions.[3] After these, verification was recorded.

After verification was finished, the president of the legal department introduced his proposal to the court, followed by the defence attorney and, finally, the complainant. There was no place for any other discussion in this section of the legal action. In cases where the contestants failed to appear, the judge introduced and described the evidence.[4]

The publicity of the trial was under the rules written down in Bp. The court could order the exclusion of the public in order to preserve business secrets. The rules written down in Bp. were also valid in connection to the development of the trial and maintaining order.[5]

During the fining procedure filed against the Textile Factory of Győr Corporation, the Textile Industry of Soroksár Corporation, and Mózes Freudinger and Sons corporation, the royal court of Budapest considered the minutes of the 18th February, 1931 as evidence, and according to this, they determined that the complainants were present on the general assembly on the raw material agreement, and these individuals "report their inclusion to the raw material agreement, since up to that point, their inclusion was based on gentlemen's agreement".[6] The court

[1]Cg. 187/2/1933. sz. BKML. VII. 2. c.
[2]Harasztosi (1936) at 551.
[3]Harasztosi (1936) at 552.
[4]Harasztosi (1936) at 552.
[5]Lőw (1935) at 354.
[6]Cg. 35504/6. sz. In 4681/1934 BFL.

considered this unwritten gentlemen's agreement to fall under Act No. 1 of the Cartel Procedural Law.

The court judged the circular letter on the same merit, when it stated that it is a regulation in itself that should have been presented to the Secretary of Trade, "for it obviously serves the purpose that the individuals who wrote it down and signed it could sell their merchandise on a higher price, and this, limit the economic competition in connection to the formation of prices".[1]

The court considered the fact that the agreement formed by Rezső Vágó Corporation and the Hungarian Timber Corporation was not presented to the court in time for it only fell under the effect of Paragraph No. 1 of the Cartel Procedural Law after the P. IV. 5261/1932 verdict of the Cartel Court as an extenuating circumstance. The court stated that "the decrees of the Cartel Procedural Law are not only valid for cartel contracts, but also establish the duty to present any sort of agreement which, in connection to merchandise, establishes any sort of limitation or regulation duty to the economic competition, both in the matters of circulation or price formation, so, even a delivery contract can fall under the regulations of Act No. 20 of 1931[2]

After the trial was finished, the court of justice could either terminate the proceedings or could determine that the complainant was guilty and described the appropriate punishment in its warrant. In both cases, the order needed reasoning. The proposal of the legal director did not bind the court in any way. The fine had to be executed with a 15-day deadline.[3]

The legal director established a similar procedure against the Sándor Angyalfi Asphalt and Tar Industry Corporation, János Biehn, Grozit Asphalt and Tar Chemical Products Corporation, Tivadar Helvey, DSc, Manó Kallós Ferenc Kollár and Co. Hungarian Asphalt Corporation, Posnánszky and Strelitz and Hungarian Cover Panel Factory purchaser and sales cooperative due to cartel elision[4] The royal court of Budapest stated in its warrant that the complainants are guilty, for the agreement which elongated the contract that expired on the 28th February, 1934, was only presented after the deadline, so, belatedly.[5] The court stated that "according to Paragraph No. 2 of the 20th Act of 1931, any agreement which modifies or regulates the economic competition, modifies and elongates he original, or any necessarily written agreement that falls under Paragraph No. 1 of the Cartel Procedural Law should be presented within 15 days after the establishment of the agreement. According to this mandate, it is not enough to just report the agreement, but a written form of the agreement had to be filed for the Royal Secretary of Trade of Hungary for registration."[6]

In another case, the court of justice of Budapest terminated the procedure against the complainants, for it turned out that the agreement was presented before

[1]Cg. 33989/6/1932. In 920/1933 BFL.
[2]Cg. 34592/4 In 4913/1933 BFL. Lőw (1935) 355
[3]Harasztosi (1936) at 552. See: 13. P. 46341/3/1933. I: 2746/1934 BFL; Lőw (1935) 353.
[4]Cg. 35891/3. sz. BFL. 11543/1934
[5]Cg. 35891/3. sz. BFL. 11543/1934
[6]Cg. 35891/3. sz. BFL. 11543/1934, Dobrovics (1934/c) 14.

the deadline, since the court established that the formation of a cartel agreement is, by definition, the moment when every participant signed the contract.[1]

Summary

To sum it all up, according to the sources available in archives, most cartel cases were judicial proceedings. It can be stated that the special nature of the rules of these proceedings were unique in the Hungarian Code of Civil Procedures, for the civil courthouses made their decisions in a case of civil law by using the rules of the Code of Criminal Action. After the turn of the century, the economic changes started processes in both the field of legal life and legal sciences, and as a result of this, a demand arose to legally codify any rules in connection to cartels. The foundations of these were found in private law, especially in the regulations of the commercial law, which could be further elaborated upon and lead to a development of the regulations on the annulment of contracts in connection to dishonourable business competition. Beyond the creation of the technical legal regulations, the establishment of certain judicatory institutions was inevitable in order to enforce these. This is how the Cartel Court and the Cartel Committee became one of the most decisive legal institutions in economic life up until the middle of the 20th century.

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Development of the Hungarian 'Work Made for Hire' Provisions

Dénes Legeza

Abstract

The legal situation of the works created under employment was not clear in the past. What rights do the employer and the employee have? Does the author still have any moral rights? Is the company entitled to grant licence to a third person? These are just a few among the many questions which concern the copyright qualification of the works created under employment. After clarification of the differences between copyright and author's right systems, the study examines the development of the regulation of this legal field from the Prussian origins, introduces the achievements of judicial practice and jurisprudence, the ambitions for codification in the sixties, towards to the regulation in force in Hungary.

Keywords*: Work made for Hire; Copyright History; Authorship; Copyright and Employment; Publishing Right.*

Introduction

European countries have different provisions regarding rights in works made by an employee in the course of employment. In the Netherlands, for example, the rights of literary, scientific or artistic works consisted out of a labour of an employee, belong to the employer unless the employer and the employee agreed otherwise,[1] and in the United Kingdom the employer is the first owner[2] of any copyright in a literary, dramatic, musical or artistic work including a film made by employee in the work of his employment. At the same time, besides the inalienable moral rights, the French dualistic author's right approach permits the transfer of economic rights[3] while the German monistic approach[4] makes the granting of economic rights, which are needed for business[5] purposes, only as a possibility. The common principle which we

[1]Article 7 of the Dutch Copyright Act states that 'Where labour which is carried out in the service of another consists in the making of certain literary, scientific or artistic works, the person in whose service the works were created is taken to be the maker, unless the parties have agreed otherwise.' (Translation M.M.M. van Eechoud); see Seignette (2012).

[2]11 CDPA 1988, article 11: '(1) The author of a work is the first owner of any copyright in it, subject to the following provisions. (2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.'

[3]Article L111-3 CPI 1992; see Lucas, Lucas & Lucas-Schloetter (2012).

[4]Articles 29, 31, 39 UrhG 1965.

[5]Klagge & Czychowski (2014) at 181.

find is that all the legal regulations are by default, while the parties may agree on any terms they wish. In this study instead of making an international comparative analysis, each solution will be presented through the development of the Hungarian work made for hire provisions.[1]

Differences between Copyright and Author's Right Systems

In spite of the fact that the copying of manuscripts was usual in the antiquity, the first real copyright act was codified in the 18th century. Copyright legislations developed in parallel in different countries, which resulted in different approaches. Continental legislation put the author in the centre (*szerzői jog, urcheberrecht, droit d'auteur*), while in common law countries the focus was put on the act of copying (*copyright*).

Due to the cross-border trade of books countries concluded bilateral agreements on copyright from the early 19th century. However, the first international copyright agreement, the Berne Convention for the Protection of Literary and Artistic Works was adopted only in 1886. Even the title of the Berne Convention, which mentions the protection of the *works* and not of the *authors,* shows that it was hard to harmonise the different approaches.

Copyright System

In a copyright system not only natural persons but also legal persons (other than "flesh-and-blood authors"[2]) are entitled to authorship. The best known example is 'the works made for hire' doctrine in the United States, where *"the employer or other person for whom the work was prepared is considered the author."*[3] On the other hand, the United Kingdom Copyright, Designs and Patents Act 1988 makes a distinction between the author (the person who creates the work and some legal entities such as producers) and the first ownership of copyright.[4] The UK concept of authorship in a copyright system is much wider than in continental jurisdictions.

The ownership of rights is transferable,[5] and that covers mainly economic rights in the United States. While the economic rights are fully transferable,[6] moral rights are not transferable but may be subject to a waiver or consent by the rightholder[7] in the United Kingdom.

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[1]This study is based on Legeza (2014).
[2]Goldstein & Hugenholtz (2012) at 21.
[3]§201(b) U.S. Copyright Act.
[4]Article 9(1) CDPA 1988.
[5]§201(d) U.S. Copyright Act.
[6]CDPA 1988, Article 90: "Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property."
[7]CDPA 1988, Article 87.

Author's Right Systems

The French dualistic approach can be characterised by the separation of economic rights and moral rights. The former serves the financial acknowledgement, the latter the recognition of authorship. Copyright laws originally stipulated the exploitation of works (such as reproduction and dissemination), but the perpetual and inalienable (or unwaivable) moral rights were crystallised in France only at the beginning of the 20th century. As a main rule, the creator of a work is the author and he/she may exercise their economic rights by the transfer thereof.[1]

The other main European traditional civil law approach, known as the *monistic approach*, is followed in Germany, Austria and Hungary. The main principle of this approach is the unity of the copyright, which means that the creator-author is the source of the copyright who may dispose of his/her economic and moral rights. The moral rights are also inalienable, and the economic rights, too, cannot be transferred with some exceptions. The exploitation of the work is granted by a licensing agreement. As György Boytha presented in his study, the moral and economic rights are closely connected and complement each other:

> *"in the case of the first publication of a writing, where the rights of divulgation and reproduction are necessarily exercised by one and the same act of authorization. The right to authorize adaptation also inevitably involves both economic and moral aspects. The right of withdrawal of the work, again, is inseparably linked with economic consequences to the author, and so on."*[2]

If a country's legislation contains both of these groups of rights, the exploitation of the work could lead to difficulties when they are exercised by different persons. In certain circumstances the legislator lifts the veil of the author's moral rights, and provides the licensee (user) with the right to perform the necessary changes of the work.[3]

Two Systems in one Country

The copyright legislation had an idiosyncratic development in Hungary. The first draft bills and the Copyright Acts followed the dualistic approach (if we can speak of dualism at all in the absence of moral rights in the 19th century) until 1970, and then the monistic approach. Although the current Hungarian Copyright Act represents monistic approach, the provisions of the works made by an employee are strongly dualistic, namely the employer becomes the legal successor of the employee's economic rights, and the limitation of the moral rights (to stay anonymous) are granted by the Act.

The subject matter of this kind of research is of great importance nowadays. If we want to digitalise a journal and make it available on the internet, to colourise an

[1]Goldstein & Hugenholtz (2012) at 265.
[2]Boytha (1983) at 383.
[3]Article 50 HCA 1999; Article 39(2) UrhG 1965.

old black and white film, to demolish a building or make it accessible for disabled, we have to know who the owner of the copyright is. The existing legislation is applicable to the subject matter and the term of copyright protection and infringement as well in Hungary. But the applicable law for licence agreements is that which was in force when the agreement in question was signed. The orphan works regime or the collective management organisations may authorise certain uses of works, but the problem of publishing or adaptation of a literary work in the absence of right holder, for instance, has not been solved in many countries.[1]

'Creator as Author' Doctrine

After the differences between copyright and author's right regimes have been presented, authorship will be analysed. The authorship is central to the works made within the scope of employment 'quandary'[2] because if the law permits the employer to become the author or the initial owner of the copyright, further transfer is unnecessary.[3] If the employer may be a derivative (non-initial) right holder only, the rights must be transferred.

Although the term 'author' is not defined by the Berne Convention and none of its provisions defines that only a natural person or both natural and legal persons can be an author, some scholars are in opinion that the term of protection - life plus 50 years[4] (except anonymous works or works written under a pseudonym), the phrase 'death'[5] and the term "moral" rights prove that the Berne Convention protects mainly natural persons. Article 7[bis] which provides the calculation of the term of protection in joint authorship says: 'The term of protection] shall be calculated from *the death* of the last *surviving author*" (emphasis added).

As a matter of fact, Article 14[bis] of the Berne Convention[6] has a special provision for cinematographic works. In the first place it provides copyright

[1]See Mezei (2014).
[2]Jacobs (1993) at 34.
[3]Pogácsás (2014) at 151-156.
[4]Berne Convention, article 7.
[5]Berne Convention, articles 6bis, 7, 7bis.
[6]Ibid, "(1) without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The *owner of copyright* in a cinematographic work *shall enjoy the same rights as the author* of an original work, including the rights referred to in the preceding Article. (2) *(a) Ownership of copyright* in a cinematographic work shall be a matter for legislation in the country where protection is claimed. *(b)* However, in the countries of the Union which, by legislation, *include among the owners of copyright in a cinematographic work authors* who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work. [...] (3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by

protections to the owner of the copyright in a cinematographic work, who can be defined by a national legislator, and differentiates the owner of the copyright from the other authors, who have brought contributions to the making of the work. Section (3) makes it clear that these contributors can be natural persons such as the author of the screenplay or the principal director. From this point of view, the Berne Convention entitles legislators to widen the concept of the "author" regarding cinematic works, and does not preclude the legal persons from being authors.[1]

Apart from the Berne Convention, the European Union regulated the concept of author and of ownership in some directives, which can serve as a stronghold. The relating provisions will be analysed below.

The Software Directive makes a distinction with regard to the circumstances of software creation. In a 'general relationship' which can be a non-employment relationship, a natural person (or a group of natural persons) and—if where the legislation of the Member State permits—a legal person can be the author or the right holder of software.[2] By contrast, in an employment relationship where the software is created by an employee, unless the parties agreed otherwise, the employer exclusively shall be *entitled to exercise all economic rights* in the program.[3] It necessarily follows that in an employment relationship as *lex specialis*, the legislation of the Member State cannot permit that a legal person (employers usually are legal persons) be the initial right holder of a computer program. Hence the copyright is not vested in the employer by operation of law as the employer obtains only a grant.

The original Software Directive was adopted in 1991, and the Database Directive of 1996 has the same provisions, except for the employment rules. The original European legislator probably changed his intent for harmonising the employment relationship in copyright. Article 2(3) of the Software Directive can be found in recital 29 of the Database Directive.[4] The European Communities stepped back, and left the question of databases created by employees to the discretion of the Member States.

Taking the opportunity given by the Berne Convention, the European Union as national legislator defined the copyright owner of the cinematographic work in several directives:

> "[f]*or the purposes of* [the given] *Directive, the principal director of a cinematographic or audio visual work shall be considered as its author or*

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means of a written declaration, which will be immediately communicated by him to all the other countries of the Union."

[1]See Grad-Gyenge (2016).

[2]Software Directive Article 2(1)

[3]Software Directive. Article 2(3).

[4]Database Directive (29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore nothing in this Directive prevents Member States from stipulating in their legislation that where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract.

one of its authors. Member States may provide for others to be considered as its co-authors."[1]

Development of the Hungarian Work Made for Hire Provisions

Until 1875 neither publishing nor copyright law was regulated in Hungary. Since 1844, at least five copyright bills had been drafted, yet none of them were adopted.[2] Only one regulation of the Provisional Rules of Legislation[3] protected intellectual creations as a whole:

"creations of intellect are to be taken as property, which is protected by law".[4]

The Commercial Code of 1875 regulated publishing as a commercial transaction. The assignment of copyright ownership existed, although there were no works made in the course of employment per se.

The Prussian-German and Austrian legislation always had a significant effect on Hungarian jurisprudence.[5] Strictly speaking the first few copyright bills were translation of the Prussian Copyright Act of 1837 and the German Copyright Act of 1870, and the provisions of publishing contract in the Commercial Code of 1875 were adopted mostly from the General state laws for the Prussian States (ALR). Article 1021 of the ALR provides that

"[t]he abovementioned restrictions of the publishing right in favour of the author shall not apply if the bookseller has entrusted a writer with the task of preparing a work based on an idea that he, the bookseller, had conceived, and if the writer takes on this task without making any specific reservation in written form; or where the bookseller has engaged several authors to work together on the execution of such an idea."[6]

This regulation shows that the Prussian laws regulated the situation when a work was made for hire or commissioned. Moreover, the Code determined that "[I]n such cases the full publishing right belongs to the bookseller from the very start, and the author(s) cannot claim any right to subsequent impressions and editions beyond what has been explicitly reserved for them in the written

[1]Article 1(5) of Satellite Directive; Article 2(2) of Rental Directive; Article 2(1) of Term Directive. Grad-Gyenge (2016) at 26-28.
[2]Balogh (1991); Legeza (2018) at 44-64;, Mezei (2004)
[3]These rules were approved by both chambers of the Parliament but were not formally enacted. The Provisional Rules of Legislation entered into force on 23 July 1861 and their majority were in force until 1 May 1960.
[4]Homoki-Nagy (2014).
[5]Homoki-Nagy (2013) at 90-92; Homoki-Nagy (2018); Balogh (1997).
[6]Article 1021 of Prussian Statute Book. (Translated by Friedemann Kawohl).

contract."[1] The bookseller (publisher) became the first owner of the copyright in such cases.

The General Civil Code of Austria (ABGB; *Allgemeines Bürgerliches Gesetzbuch*) uses similar solution when states that

> *"[I]f an author undertakes the composition of a work according to a plan given to him by the publisher; he can only claim the remuneration agreed upon. The publisher has for the future the entire free right of publication*."[2]

Later, the Prussian Copyright Act of 1837 left the provisions of commissioned works. In contrast, the Austrian Copyright Act of 1846, which was in force in Hungary between 1853 and 1860 (and until 1884 in Transylvania) adopted the concept of legal persons' authorship.[3] The Austrian Copyright Act provides as a main rule that literary and artistic works belongs to their authors. But it has three other ancillary provisions when the copyright owner differs from the initial author:

a) the commissioner of a work who at his own expense has entrusted someone else with its elaboration and execution according to a given plan;
b) the publisher or entrepreneur of a work which is made up of independent contributions from various contributors;
c) the publisher of an anonymous or pseudonymous work (§.14, a, b).[4]

It is not known why, but the Hungarian legislator did not follow the Prussian-German, nor the Austrian solutions and until now, the creator as author doctrine is dominant.

The Scope of Copyright and Publishing Law

Following a dualistic approach, Hungarian Copyright Act of 1884 (HCA 1884) and the superseding Copyright Act of 1921 (HCA 1921) made possible the entire assignment of copyright as property right. Within the meaning of the act, copyright can be wholly or partly assigned by contract or passed by inheritance. Hence, if the parties had stipulated that in a contract, then the author's rights were partially or fully passed according to the contractual consensus. The first two Hungarian copyright acts did not contain any further provisions applicable to works made in the course of employment. However, some cases related to this issue can be found in the academic references and jurisprudence.

Géza Kenedi writes about employed journalists who were bound to their publishers in terms of employment on the one hand, and a copyright relationship on the other,[5] hence general private law regulations applied to the former, while provisions of the Commercial Code affected the latter. According to Kenedi, an

[1] *Idem.*
[2] Article 1170 ABGB. (Translated by Joseph M. de Winiwarter).
[3] Mezei (2004)
[4] Article 1 of Austrian Copyright Act (1846). (Translated by Friedemann Kawohl).
[5] Kenedi (1908) at 88–89.

employed journalist's duties were to write and translate articles in return for remuneration. Unless the parties agreed otherwise or the copyright was transferred according to the Commercial Code, the author was discharged of the exclusive publishing contract only after all copies of the newspaper were sold.[1] Beside literary works, this act also applied for technical inventions and art as a commercial transaction. Furthermore, it included reproduction and distribution as well.[2]

The Commercial Code did not determine the form of the valid contract, nor must that consideration (royalty) be specified. Therefore, several regulations of the Code could replace contractual provisions of the parties,[3] for instance in case of doubt, a contract entitled the publisher only to a single publication of the work, and translation and its publication were not implied to the contract. Besides that, the publishing contract was exclusive, which means that the author could not use his/ her work. Finally, the parties were able to limit the territorial (like translation), temporal and quantitative (number of copies) scope of use contractually.[4]

In the period of the HCA 1884 and the HCA 1921, the authors generally assigned the copyright only partly. Several decisions of the Royal Curia[5] support the rule that there was no presumption that the author assigned the publishing rights for the full term of protection (judgement C. 1122/1906),[6] and if nevertheless the publishing rights had been assigned, the author still retained the moral rights (judgement P. I. 348/1932)[7] and the right of adaptation (judgement P. I. 3896/1929).[8] With regard to new types of use, the judgement P. I. 1112/1932 declared that

> *"in the case of a copyright assignment or publishing transaction, it generally had to be assumed that the will of the contracting parties had been aimed at the assignment of only those rights which had been known to the parties at the time of contracting and only at the possible exploitation of these rights which had been apparent to the parties at the time of contracting. However, rights, which the parties could not even have thought of at the time of contracting, cannot be deemed assigned—unless it can be inferred from the content of the contract and the existing circumstances that the parties could have stipulated to the contrary."*[9]

Later on it has been demonstrated that the scope of the assigned moral and economic rights is an important element of the regulation pertaining to works made in the course of employment.

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[1]Article 515 of Kereskedelmi törvényről szóló 1875. évi XXXVII. törvénycikk.
[2]Ibid. Article 517.
[3]Apáthy (1873) at 579.
[4]Nagy (1913) at 479–483.
[5]The Royal Curia was the Supreme Court between 1868 and 1949 in Hungary.
[6]Nagy (1913) at 482.
[7]Szladits (1935) at 522.
[8]Szladits (1935) at 528.
[9]Szladits (1935) at 522–523.

According to judge Dezső Alföldy, who synthesised in his book the judicial practice of the 1930s, the Royal Curia took it upon itself to supplement insufficient legislation with interpretation of the law.[1] In the jurisprudence, the exploitation rights of authors are only assigned in the case of cinematographic works to the film studio by a production agreement. The rights of writers and composers participating in the filmmaking process can only be assigned in a separate contract (e.g. the agreement for adaptation for screen).

In the case of other works, according to the Royal Curia, the circumstances of the given situation should help decide to what extent the copyright was contractually assigned to the employer (judgement P. I. 1684/1934).[2] Thus, the scope of assignment was defined by the circumstances of the case and the presumable will of the contracting parties and not by a service or other similar relationship such as that between an author and the editor of an anthology for instance. As to newspapers, employed journalists were free to publish their own articles as collected works, since the employer or commissioner did not have exclusive rights.[3]

According to a later commentator, Róbert Palágyi, the agreement of the parties was the norm with regard to work made in the course of employment.

> *"In principle, the right of exploitation outside the business activities of the employer remained with the author."*[4]

This confirmed the view that the parties could dispose of their rights freely and the employer could only use the work for his / her intended purpose.

Demand for Regulation

Based on the above, it can be seen that up to the years following World War II, neither academic references, nor legislation dealt with the necessity to regulate copyright issues arising between the employee and the employer.[5] The demand for regulation of works made in the course of employment emerged in the 1950s. In a society, where the work of laborious people is placed on a pedestal, it is necessary to regulate the legal standing of works made in the course of employment. As a first step, the provisions of the Commercial Code were supplemented with a ministerial decree in 1951,[6] which required publishing contracts to include royalties and made them valid up to four years (until 1996, then eight years until 1999), limiting the freedom of contract.

[1]Alföldy (1936) at 172; Varga (2014) at 288-289.; Varga (2016) at 171-172.
[2]Térfy (1936) at 251.
[3]Alföldy (1936) at 23.
[4]Palágyi was the Legal counsel of the Association of Hungarian Lyricists, Composers and Music Publishers collective management organization (nowadays Artisjus). Palágyi (1959) at 105–106.
[5]About the employee's invention see Papp (2015) at 158-169.
[6]Az írói művek kiadásáról szóló 98/1951. (IV. 21.) MT rendelet.

The Keynote Study of János Batta

The article of János Batta appeared in the law journal *Magyar Jog* in July of 1956.[1] Batta presented the Royal Curia's already cited decision about the inalienable nature of moral rights[2] and two further decisions of the Hungarian Supreme Court[3] about the remuneration of employees (BH1956. 875.).[4]

In the first case, a professor had to submit his lecture notes to his institution in accordance with its bylaws. For these notes, he was not entitled to any additional remuneration such as royalties on top of his wage. Nevertheless, the notes were used by other schools as well, from whom the teacher could have claimed royalties. In the second case, the employed photographer took pictures for advertising purposes. In this case, the employee's task was to take photos of the employer's products, and therefore, it was self-evident that the pictures would be handed over to third parties. The photographer was aware of the purpose of the pictures at the time of the shooting, and consequently, he could not claim further royalties (BH1956. 959).[5]

In these two decisions, the dividing line between the copyrights of the employee and the employer was very sharply demarcated.

After reviewing the decisions, Batta defined four principles: moral rights are inalienable, the property rights of works made in the course of employment are assigned to the employer, the employer only gains economic rights falling within his/her sphere of interests, finally the employed author can only allow the use of his/her work to third parties with the employer's approval.[6]

The Debate of 1962

The Hungarian Lawyers' Association organised a debate on the 13th of February 1962 with the participation of Hungarian civil and labour law specialists.[7]

In the view of Aurél Benárd, it is necessary to regulate the relationship between the author and the employer in socialist law, as more and more people create in employment.[8] Legislation of the time had to address the questions of whether copyright was to be assigned exclusively to the employer, if not, how particular rights could be divided, and whether the employee was eligible for further remuneration on top of his/her wages. According to Benárd, the answer to the first and third question is that moral rights had to be ensured for the employee as moral incentive,

[1]Batta (1956) at 210–212.
[2]The Supreme Court kept in force the decision of the Royal Curia on moral rights. Az LB Elvi Tanácsának 1423/1952. (VI.20.) döntése.
[3]Called Supreme Court of the (People's) Republic of Hungary between 1949-(1989)-2012
[4]Gézcy (1956) at 210.
[5]Gézcy (1956) at 210.
[6]Batta (1956) at 212.
[7]Hágelmayer (1962) at 136–138.
[8]Benárd (1962) at 111.

> "*strictly speaking remuneration for works made in the course of employment must not be determined, since that would mean double compensation."*[1]

He considered it self-evident that the employer's rights prevailed only within his/her standard business activities, only the author can give permission for the use of the work to third parties, and only he can decide about the assignment of the economic rights. In spite of the fact that in principle the author's moral rights were not infringed, in everyday life, both the right of divulgation and the right of integrity were infringed according to Benárd. In his opinion, it is not the employee, but the supervisor who decides whether a work is completed or not. In the same manner, the employer had the author, or if he/she was not willing, somebody else, make necessary changes to the work. Notwithstanding the above, the right of paternity enabled the relationship between the work and the author, or on the contrary, he/she could request anonymity in case he/she found the work to be distorted.[2] In his point of view, the law should provide for how a work could be used outside the employer's sphere of interests similarly to inventions made in the course of employment.[3] He concluded his lecture with the problematic aspects of remuneration on top of regular wages: *"As a matter of fact, why do we pay for further use? Since the author does not do anything!"* In connection with this, he explained that wages compensate the employee for the work done and for the future use of the work. Nevertheless, if the work was used further and in other forms, then the original remuneration was not in balance with the work done. *"The author's work satisfies societal needs, and therefore, he is given remuneration from society."*[4]

During the debate, Róbert Palágyi suggested that the scope of the employer's rights should be limited to 2-4 years, after which the copyright would be reassigned to the author. Many participants agreed with the introductory lecture in that the author was entitled to remuneration if *"the work outgrew the confines of the employment."*[5]

The participants concurred with Benárd's closing thoughts "that a regulatory system should be formed, which encouraged members of society to create, and thus furthered the development of science, art and literature with the most suitable and most effective methods."[6]

The Codification of the HCA 1969

The third Hungarian Copyright Act III of 1969 (hereinafter HCA 1969) and its ministerial decree[7] regulated the legal standing of works made in the

[1]Benárd (1962) at at 112.
[2]Benárd (1962) 112–113.
[3]Benárd (1962) at 114.
[4]Benárd (1962) at 115.
[5]Hágelmayer (1962) at 137.
[6]Benárd (1962) at 115.
[7]Article 14 HCA 1969; Article 11-12 Decree of the HCA 1969.

course of employment. The following is the examination how the individual issues, which emerged in the study and during the debate above, were codified.

Partial Limitation of Moral Rights

The ministerial justification of the bill boldly declared that the author's moral rights should not be infringed in the course of employment –

> *"The decrees pertaining to the use of works made in the course of employment shall not affect the moral rights of the author, thus the author shall have the right to claim authorship of the work, the right of paternity, the right for anonymity, or the right for protection against unauthorised use or distortion."*[1]

According to the law, the author determined whether the work was completed or not, and he/she consented to the publication of the work by handing it over. After the handover, the employer has the right to dispose of the work when the decision about publication and adaptation as well is theirs.

Scope of Employment

It was possible to apply the special decrees pertaining to employment only under strict conditions. These decrees applied to works made in the course of employment only if the creation of the work was an employment duty of the author documented in written form—which could have been workplace regulations or direct written instructions—and if the employer was qualified in his/her business activities for the use of the work. The onus of proof was on the employer, since the employee-author was in a doubly exposed position.

Remuneration on Top of Wages

In the judicial practice referenced during the debate, it emerged that double compensation could occur in the use of works made by employees and this should not be a goal to be followed. The HCA 1969 declared that a work made by an employee could be beneficial for the employer as well as society, thus it would be exploitation if the employee was not eligible for further remuneration. The act allows for supplementary remuneration for the author in the case of use outside the business activities of the employer. To put it simply: if the employer's tasks did not cover contracting the right to use to third parties, the author was eligible for 60-80% of the royalties, or 10-30% in the case of software; if the employer's tasks did cover contracting the right to use to third parties, the author was eligible for a maximum of 60%, or 10% respectively. If the author was authorised and contracted the right to use to a third party, then he/she was eligible for the whole amount of the royalties.

[1]Indokolás a szerzői jogról szóló törvényjavaslathoz (1979) at 351.

The Supreme Court had to decide whether one of the dictionary editors of the Research Institute for Linguistics (BH1968. 10)[1] or one of the members of the design team of a construction company (BH 1974. 11)[2] was entitled to royalties on top of his/her wages. The Court dismissed the claim in both cases, since the Institute published the volume in the dictionary case, and the construction company dealt with construction besides design. The employers used the works within their usual business activities in both cases.

Relationship between Civil Law and Labour Law

It is also important to regulate the relationship between copyright law and labour law. Article 3 of the HCA 1969 solved this issue by stating that the Labour Code was decisive in questions pertaining to labour law in the absence of special copyright regulations. Thus the coordinative civil law relationship was decisive in copyright law as opposed to the superior-subordinate labour law relationship.

The Allocation of Rights

The legislature divided the author's economic rights between the employer and the employee. The employer gained the right to use them only partially, since the work could only be used within his/her usual business activities. However, it was possible to interpret usual business activities in a way that the employer was qualified to use the work in another work made in the scope of his/her business activities. The employee was authorised to allow the use of the work outside the employer's usual business activities, although the act demanded the employer's consent for that, which the employer could only deny on reasonable grounds.

The scope of this particular law was limited by further decrees defining the length of time according to work type after which the copyright was completely reassigned to the author. Moreover, the decrees defined the length of licensing contracts (e.g. publishing contract) as well in a mandatory or dispositive way.

Mandatory regulations can help decide if the economic rights of authors formerly employed at state-owned companies, institutes or public institutions can still not be assigned to their former employers, i.e. use of works handed over before the 1st of September 1999 can only be requested from the author. On the other hand, employers had surely not gained rights to use in cases that were not regulated by the copyright laws of the time.

Hungarian regulations do not mention the relationship between works carried out in the course of employment and time of protection. The main message of this being that the *post mortem auctoris* principle was asserted (i.e. time of protection lasted 50 years after the death of the author, later it was increased to 70 years) despite the scope of copyright assignment.[3]

[1]Bardócz (1972) at 24–25.
[2]Benedek (1977) at 31–33.
[3]It was not a work made for hire type of protection term like used in the United States.

The Provisions of the HCA 1999

The prevailing copyright law has expanded the special provisions described to include other works made in similar legal relations,[1] and further strengthened the rights of the employer.

> "*Unless otherwise agreed, the delivery of the work to the employer shall imply the transfer of the economic rights upon the employer as the legal successor to the author, provided that the creation of the work is the author's duty under an employment contract*."[2]
> and
> *"In case of works made in the course of employment, the employer gains not only the right to use, but becomes the owner of all economic rights, unlike in the previous copyright regulations."*[3]

It is the employer's duty to reach an agreement with the employee in writing concerning work tasks and remuneration, since the Labour Code[4] declares that the employment contract has to be in written form. The written form is not only important to exactly clarify the economic and moral rights, but also because of the power difference between the two parties in the course of employment.[5] The written agreement makes it possible for the parties to agree that certain economic rights remain with the employed author contrary to the main regulation.

The new rights of the employer should be interpreted restrictively. In case the employer gives permission to third parties for use or assigns economic rights connected to the work, the author is entitled to equitable remuneration.[6] Nevertheless, it is allowed to depart from this remuneration if it turns out from the collective agreement, internal regulation or company profile that the completed works are from the beginning meant to be passed on to a third party for further use. In such a case the salary already contains the appropriate remuneration.[7] In case of a dispute between the parties, the employer may demand the work to be handed over not on the basis of copyright, but of labour law.[8] According to judicial practice, the employer is authorised to change this work without the author's consent, thus the work can be modified by a colleague or it can be used in other

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[1]Article 30(7) HCA 1999 "The provisions relating to a work created as duty under an employment contract shall be applied mutatis mutandis if the work has been created by a person employed as a public or civil servant, a person belonging to the professional staff of the armed forces and police forces and being in active service, or a co-operative member employed under legal relations similar to those of employment relations."
[2]Article 30(1).
[3]SZJSZT–18/2004.
[4]Article 44, 23(1), 45(1) A munka törvénykönyvéről szóló 2012. évi I. törvény.
[5]HCA 1999 Article 30(6): "Legal statements made with regard to the work created by way of fulfilment of the author's duty under an employment contract shall be laid down in writing."
[6]HCA 1999 Article 30(3): "The author shall be entitled to fair remuneration if the employer authorises another person to use the work or assigns the economic rights relating to the work to another person."
[7]SZJSZT–09/2001.; SZJSZT–14/2002.
[8]SZJSZT-09/2001.

works (BH1997. 19). In case the author does not agree with the modifications or does not consent to the changes to the work, he/she may only request anonymity, as otherwise the author's right of paternity remains intact.

An important element of the regulation is that the author is still entitled to remuneration resulting from economic rights enforced by collective management organisations, such as private copy levy, reprographic levy, right of cable retransmission, public lending right and resale right.

Conclusions

This article tried to illustrate that several legislature approaches for work made in employment relation can coexist and each of them is good in its own way. The first approach is based on the freedom of contract, but in the absence of a contract only judicial practice can show the contracting patterns. The second approach protects the author's interests; hence the copyright is temporarily divided between the employer and the employee. The current Hungarian Copyright Act of 1999 has regard to the employer's investment and the employer owns the most of the economic rights. This regulation bridges the problem of moral rights ensuring the rights of divulgation and integrity to the employer and seemingly maintains the right of paternity (or anonymity) to the employee.

This article presented the background of the changes of copyright regulations. The right clearance for making available works made in employment is still very difficult. One should be careful not to have frequent change of legislature approaches, as they may makes the mass use of works difficult.

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The Establishment of the Districts in Hungary after the Austro-Hungarian Compromise[1]

Máté Pétervári

Abstract

After the Austro-Hungarian Compromise of 1867, Hungary regained independence and consequently bourgeois reform of the state started on the basis of the April Acts of 1848. The legislator wanted to create an administrative system which would be able to carry out the acts and decrees on the local levels. The majority in the National Assembly (Hungarian Parliament) achieved this goal by implementing the Act 42 of 1870 and Act 18 of 1871. The need for modernising the administrative system resulted in reshaping of feudal territorial division, thus redrawing of the districts' territories was also put on the agenda during the implementation of the Act. The districts were the lowest levels of the counties' organizations. The paper is based on the examination of the archive material of the Hungarian Royal Ministry of the Interior (Hungarian National Archives, Documents of Ministry of the Interior K150 117, 118 bundles) which implied the drafts of the Hungarian counties about the public administration organization and the controlling of the Hungarian Royal Ministry of the Interior. The attribute of the new Hungarian district system on the basis of the Act 42 of 1870 is presented in this paper.

Keywords: *Kingdom of Hungary; District Administrator; Austro-Hungarian Monarchy; Public Administration: Dualism.*

Introduction

The institution history of district level accompanied the development of Hungarian constitutional history, since the Noble Judges (*szolgabíró*) appeared simultaneously in the 13th century with the formation of Noble County (*nemesi vármegye*).[2] The office remained until the middle of 20th century, but it adjusted the social needs.[3] Its territory of competence was the "district" (*járás*) from the 16th century,[4] which was an administrative level below the counties until 1 January

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[2]Béli (2008) at 47-49 ; Béli (2017) at 120-121; Zsoldos (2003) at. 791; 797-798.; Zsoldos (1994) at 488-489; Novák (2003) at 30; Mezey (2018) at 134.

[3]Marjanucz (2013) at 443-453.

[4]Tringli (2009) at 515; C. Tóth (2008) at 26 ;C. Tóth (2010) at 413.

1984. In 1971, the political decision-making removed the district councils, thus this local level were deprived of the representative organ.[1] The district level lost the authority of public administration in 1983, as the offices of district (*járási hivatal*) were abolished.[2] For this reason, Hungary remained without local level under counties from 1984.

After the democratic transformation, the Hungarian government strove for establishment of small regions (*kistérség*) as needed for joining the European Union, but this attempt achieved only some partial results[3]. Finally, the legislator leaned on the historical traditions in compliance with the Fundamental Law of Hungary, and the districts became again the part of the Hungarian public administration system from 1 January 2013, on the basis of Act XCIII of 2012 and Government Decree No. 218/2012 of 13 August 2012.[4] The government moved the big part of public administration competence from the self-governments to the district level, which has given a special topicality of the historical research of districts.[5] The districts served its purpose of LAU 1 in Classification of Territorial Units for Statistics (NUTS) in the European Union nomenclature. The aim of this paper is working up of a contemporary legal historical subject. According to István Stipta, the contemporary legal historical subject means a prevailing legal institution, which had age-olds traditions.[6]

The main subject of my paper is the provisions of the Act XLII of 1870, which realised bourgeois reorganisation, modernisation of the feudal (before 1848) district system thorough working up of narrower interval. This legal regulation completed the modernisation of this administrative unit; therefore its examination is reasonable. The new information complemented some research achievements which were concerned with the Municipality Act perfectly, since numerous scholarly works dealt with the making of Act XLII of 1870,[7] the functioning of the counties (vármegyei törvényhatóságok)[8] and the cities with municipal rank (törvényhatósági jogú városok).[9]

The district system had to be reorganised in the same way like the counties after the Austro-Hungarian Compromise, because the Act IV of 1869 ordered the separation of jurisdiction and public administration,[10] and it was necessary to the execution organization into the public law construction of the Compromise.[11] Two provisions concerning the districts (§61 and §91) could be found only in the Act XLII of 1870 on the municipality, but these did not provide detailed

[1]Takács (1963) at 53.; Antal (2003) at 85.
[2]Dominkovits & Horváth (2011) at 49.
[3]Kovács (2009) at 40-42.
[4]Hoffman (2014) at 193-194.
[5]Barta (2012) at 28.
[6]Stipta (2016) at 39.
[7]Mezey (2004) at 18-23; Varga (2007a.); Varga (2009) at 227-250.
[8]Zsuppán (1980) at 260-280; Stipta (1998a) at 77-93.
[9]Ruszoly (2004) at 11-17; Antal (2011) at 154-215.; Kajtár (1992) at 68-77; Varga (2002) at 59-63; Varga (2006) at 606-623; Varga (2007b) at 466-475; Varga (2013) at 715-726.
[10]Homoki-Nagy (2014) at 6-7; Homoki-Nagy (2017) at 50-51; Papp (2017) at 69-70; Máthé (1982) at 36.
[11]Sarlós (1976) at 13-15.

regulation.[1] I analysed the execution and the practical implementation of these provisions. The execution of the act was the authority of the counties. The counties were middle-level public administration units with rights of self-government. These organs had to create their public administration organization, and they were obliged to send the drafts to the Ministry of Interior with the purpose of confirmation. The councillors of Ministry of Interior controlled the conformities of the drafts with the legal regulation. In cases they criticised some provisions, they sent them back to the general assembly of the county for modification.[2]

Having examined these documents in the National Archives of Hungary I worked up the drafts of 26 municipalities which were submitted by the counties to the Ministry of Interior.[3] I examined counties from different part of the country, and dealt with municipalities with diverse population, including the counties of Transylvania, privileged regions (*kiváltságos kerületek*) and Székely seats. The municipalities of Transylvania constitute the basis of research due to reannexation by Hungary in 1868.[4] I do not examine the district organization in the Croatian territory, because the Hungarian-Croatian Compromise of 1868 formed independent administration of internal affairs in Croatia, since the internal affairs, the judicial matters, the education and the religion, were left to the Croatian autonomous government.[5] Nor I deal with the Military Border.[6] In my opinion it is possible to reach an appropriate conclusion in this way on the district organization which was formed by the Act XLII of 1870 in Hungary.

The Creation of the Municipality Act

The National Assembly passed the April Acts on 11 April 1848, thanks to the Hungarian Revolution of 1848. These acts established the principle of

[1] *61.§ The district administrator is the first officer of district.*
The district administrator supervises the communities under his authority, and he exercises the rights and executes his duty which were delegated by the act or municipal statutes.
His directives – unless otherwise required by law – were given by the deputy-lieutenant (alispán) and he received by deputy-lieutenant, and the district administrator was in contact with deputy-lieutenant.
He possessed private seal with the municipality coat of arms and a legend which included the name of the district.
He employed an administrative clerk who was paid by the municipality with the aim of accurate discharging of the duties. The parties were able to appeal to the deputy-lieutenant and after that to the Ministry of Interior against the adverse decisions which were made by the district administrator independently in the authority which was determined by the act and the municipal statutes.

[2] Pétervári (2018a) at 122-123.

[3] The examined municipalities: Alsó-Fehér County; Arad County; Aranyosszék; Bars County; Békés County; Bereg County; Csanád County; Csongrád County; Doboka County; Fejér County; Felső-Fehér County; Fogaras Region; Gömör és Kis-Hont County; Hajdú Circle; Hont County; Krassó County; Kővár Region; Nagy-Kikinda Circle; Pozsony County; Sáros County; Szabolcs County; Szepes County; Temes County; Trencsén County; Veszprém County; Zala County.

[4] Kisteleki (2018) at 282-284.

[5] Ogris (2015) at 26-27; Cepulo (2006) at 64-69; Cepulo (2015) at 50; Csorba (1998) at 378.; Heka (2004) at 150-152.

[6] Ereky (1910) at 51.

equality before the law and the foundations of the modern state. But Hungary lost the War of Independence against the Habsburg emperor and the Russian troops. As a result, Hungary lost its autonomy, and the monarch of Habsburg treated the Hungarian state as a province on the basis of "Verwirkungstheorie".[1] The Emperor practised his powers in an absolutistic manner, therefore this period of Hungarian history was named neo-absolutism. Franz Joseph I of Austria created unified public administration organization in the entire empire due to the modernization of the Habsburg Empire.[2] For this reason, the Hungarian independent administrative system became the part of the imperial government in 1853.[3] However, the era of neo-absolutism ended in 1860 when the Habsburg emperor issued the October Diploma, which restored the Hungarian public administration to the status prior to 1848.[4]

In 1867, Franz Joseph I and the Hungarian political elite under direction of Ferenc Deák reached the Austro-Hungarian Compromise. The Kingdom of Hungary became the part of the Austro-Hungarian Monarchy, which was a "real union".[5] The monarch was common in the member states, and Hungary handled the external affairs, the military affairs and the financial matters of both fields in common with the other member state.[6]

The National Assembly became again independent. As a result, Hungary was able to create a modern Hungarian public administration from the feudal system. The re-establishment of the public administration was one of the most important goals of the Hungarian central government,[7] but it was established only with the Act XLII of 1870 (Municipality Act).[8] This act codified the Hungarian public administration for the first time.

The Act XLII of 1870 created the municipalities as unified public administration units. Municipalities (*törvényhatóság*), which were the big cities and the counties, represented the middle level of public administration in Hungary.[9] Such municipality exercised the right of self-government and conveyed the state government. In addition, they had the right to discuss questions of public interest.[10] The right of self-government included free decision making in own affairs. The municipality elected its own officials, determined its budget and levied taxes in order to cover the expenses.[11]

Furthermore, the municipality executed the acts and the government decrees by its own official functionary. In addition, the municipality had a petition right, which constituted a legal basis to raise before the ministry its opposition against a decree the municipality regards as unlawful or impractical before it

[1]Papp (2014) at 157.
[2]Sashegyi (1965) at 58-59.
[3]Ereky (1939) at 31.
[4]Stipta (1998b) at. 117.; Varga. (2010) at 856.
[5]Rigó (2017) at 197.
[6]Máthé (2018) at 46-47.
[7]Csorba (2000) at 193.
[8]Stipta (1985) at 910-911.
[9]Kmety (1911) at 84; Magyary (1942) at 336.
[10]Stipta (1992) at 481.
[11]Csizmadia (1976) at 123.

comes into force. The rights of the municipality are vested in the municipal board (*törvényhatósági bizottság*). Half of the members of the municipal board consisted of those who paid the highest taxes while the other half consists of the elected representatives.[1] The head of the municipality was the Lord Lieutenant (*főispán*), who was appointed by the king upon the advice of the Minister of the Interior. The minister controlled the self-government of the municipality and defended the interests of the state administration.[2] Moreover, he controlled the work of the municipality's officers at least annually, but these officers were elected by the municipal board.[3] However, the deputy-lieutenant (*alispán*) led the public administration in the county, and carried out the decrees of government; consequently. He served a mission of state administration. In addition to these tasks, he was empowered to instruct the officers of the municipality.[4] Along with other officers of the municipality, he was elected by the municipal board.

The District Level on the Basis of Act XLII of 1870

The Act XLII of 1870 established the local executive organs in Hungary, on the basis of feudal tradition, so the counties (*megyék*) and the districts (*járások*) remained part of public administration. The districts were public administration units between the counties and the communities. The top officer of the district was the district administrator (*szolgabíró*).[5] The English terminology of this position is questionable, because it was formed in the 13th century and was transformed radically by the Municipality Act. The Latin name was *iudex nobelium ("Stuhlrichter*" in German). The English version of this term before 1848 was "the Noble Judge",[6] but it had no meaning after 1872, as these officers lost their jurisdiction competences. In my opinion the equivalent term is the "district administrator" because that expresses exercising public administration authority after 1870.

The territory of the county divided into districts, which were headed by the district administrators, who supervised the communities of his district. His superior was the deputy-lieutenant, who had to power to instruct him. Moreover, the district administrator was the delegate of the district. The district administrator was elected by the municipal board and was independent of the central power.

The aim of the central government was the creation of legal terminology, which was absent in some branches of law in Hungary.[7] The other aim of this act was the unification of the Hungarian public administration system; therefore the Ministry of the Interior corrected the divergences from the terms of legal norm.

[1]Varga (2011) at 44.
[2]Boncz (1876) at 128.
[3]Stipta (1995a) at 299-300.
[4]Fésüs (1880) at 61.
[5]Máthé (2017) at 432.
[6]Iusztin (2013) at 253.
[7]Mezey (2011) at 101-102.

This administration level was denominated permanent as "district".[1] Arad County and Fejér County referred to the administration units as "circle" (*kerület*).[2] Bereg County named the territories of the district administrator "parts" (*szakasz*).[3] These wrong denominations were corrected by the councillors of the Royal Ministry of the Interior, but the different denominations were corrected just as "not so important issue". The unified terminology was also an aim of councillors of Ministry of Interior in connection of the offices of the district administrators, but they intervened more efficient in this issue on the occasion of confirmation. Bars, Sáros, Gömör and Kis-Hont, Veszprém Counties planned, that the heads of the districts would be the "chief district administrators".[4] This solution was the old custom in these counties. This was important because these counties established the chief district administrator in addition to the deputy district administrator. The counties wanted to give the two of then different powers. For example, Sáros county wished entrust recruitments of the soldiers only with the chief district administrator.[5] The Ministry of the Interior rejected these drafts.

Moreover, the councillors of Ministry of the Interior focused their attention on the establishment of the unified organizational structure. They transformed successfully the district system into one level organization. The Ministry of the Interior refused to divide the districts into additional subunits.[6]

We can observe the same aim to the unification in connection of formation of offices of district administrators, but the councillors required of the counties to unify in this issue on the occasion of confirmation more accurate. The majority of the municipalities employed the district administrator clerk (*szolgabírói írnok*), who was appointed by the district administrator, and assisted to the work of the district administrator pursuant to the Act XLII of 1870. However, a part of the municipality considered this solution unsatisfactory; therefore they established a new position, the district administrator assistant (*szolgabírósegéd*) with the consent of the Ministry of the Interior.[7] Such position was more acceptable and favourable than the district administrator clerk. However, the counties wanted to empower the municipal board to elect the district administrator assistant, but the Ministry of the Interior dismissed this proposal, because, according to their

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[1]National Archives of Hungary (hereinafter MNL) Documents of the Ministry of the Interior (BM) K150 117. bundle K150 117. 21161/1871.-Békés County, 17803/1871.-Csanád County; 21068/ 1871.; 27282/1871.-Csongrád County; 21272/1871.-Doboka County, 17808/1871-Fejér County; 22026/1871.-Felső-Fehér County, 21800/1871.-Region of Fogaras; 21798/1871.-Zala County; 118. 31726/1871-Alsó-Fehér County; 23816/1871-Gömör és Kis-Hont County; 22499/1871.-Region of Kővár; 22336/1871.-Veszprém County.

[2]MNL BM K150 117. 17731/1871; 17731Sz/1871; 32702/1871.-Arad County; MNL BM K150 117. 17808/1871.-Fejér County.

[3]MNL BM K150 118. 22592/1871.

[4]MNL BM K150 117. 21799/1871.; 20826/1871.; MNL BM K150 118. 23816/1871.; 22336/1871.

[5]MNL BM K150 117. 20826/1871.

[6]MNL BM K150 117. 117. 21799/1871.; 28287/1871.-Bars County; 20826/1871.-Sáros County; 118. 22592/1871.; 27001/1871.-Bereg County; 28726/1871.; 31986/1871.-Hont County

[7]MNL BM K150 117. 32702/1871.-Arad County; 28287/1871.-Bars County; 28525/1871.-Trencsén County;118. 32051/1871.-Gömör and Kis-Hont County; 26616/1871.-Pozsony County; 33141/ 1871.-Hont County; 30172/1871.-Veszprém County; 22499/1871.-Region of Kővár.

opinion, the Lord Lieutenant had the power to appoint this official.[1] The Ministry reduced the number of the elected officials in this way, because the general assembly elected the deputy-noble judges (*alszolgabíró*) in the feudal era.[2]

The legislator regulated the establishment of the districts in the Municipal Act. The territories of the districts were formed by the general assemblies of the counties with the consent of the Ministry of the Interior, in the Kingdom of Hungary. The Municipality Act provided that the general assemblies must establish the districts considering the election districts of the country. The election districts were organised by the general assemblies according to Act V of 1848 (Voting Act), too. The legislator established a legal ground to the counties with the intention to determine the districts' territory divisions since the size of the election of districts were fixed in 30 000 inhabitants, after a short parliamentary debate.[3] The interpretation of this provision of Act XLII of 1870 were different in Transylvania, because the elections there were regulated by Act VII of 1848 on Union of Hungary and Transylvania was included in this area, and the election districts did not adjust to the population of the Transylvania's municipality.[4]

The archive materials, which I have examined, proved the fact that in this case, the majority of the counties acted contrary to the provisions of the Act.[5] The municipalities refused to pay attention to the election districts because they believed that the organization, which is suitable for the voting, was impractical to discharge the duties of administration. The counties argument was that the election districts resorted just one time in three years, while the public administration required a regular and daily connection between the population and the district officers.[6] The municipalities divided the territory typically on the basis of natural endowments and district courts.[7] It happened so due to the irregular district organization. In the counties, which I explored, the biggest district was the Békés District with 52 159 inhabitants,[8] but the smallest district was the Peselnek District with 5450 inhabitants.[9]

The Act XLII of 1870 did not define the seats of the districts in Hungary. It only provided that the external officers had to reside in the area of the district. For this reason, the majority of the district did not even establish their centre during the implementation of the Act. As an exception, the counties of Csongrád, Pozsony, Hont and Békés, the region of Fogaras and the Nagy-Kikinda Circle did set up the

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[1]MNL BM K150 117. 17731Sz/1871.-Arad County; 118. 28726/1871.; 31986/1871.-Hont County.
[2]Puky (1828) at 62-64; Récs (1861) at 482.
[3]Ruszoly (1986) at 219; Ruszoly (1996) at.291-293.
[4]Pap (2014) at 242-244.
[5]MNL BM K150 117. 17731/1871; 17731Sz/1871.; 32702/1871.-Arad County; 20171/1871.-Aranyosszék; 21068/1871.-Csongrád County; 21272/1871.-Doboka County; 22026/1871.-Felső-Fehér County; 21800/1871.-Region of Fogaras; 20826/1871.-Sáros County; 22226/1871.-Krassó County; 28525/1871.-Trencsén County; 21799/1871.-Bars County; 21161/1871-Békés County; 21798/1871.-Zala County; 118. 22592/1871.-Bereg County; 23816/1871.-Gömör and Kis-Hont County; 26616/1871.-Pozsony County; 28391/1871.-Szabolcs County.
[6]MNL BM K150 117. 28525/1871.-Trencsén County; 22226/1871.-Krassó County; 21799/1871.-Bars County.
[7]Pétervári (2018b) at 239-240.
[8]MNL BM K150 117. 28287/1871.
[9]MNL BM K150 117. 22026/1871.

centres of their districts.[1]

The Act IV of 1869 of the Kingdom of Hungary separated the jurisdiction and the public administration on all levels. The district level of administration was established as independent from the judicial organization. The heads of the districts carried out judicial duties during six centuries,[2] which was a big change. The district administrator became just a worker of the public administration. He supervised the communities, and executed the acts, the decrees and the statutes of the municipality. But the general assemblies of the counties got the power and authority to specify the authority of their district administrator. The most important authority of the district administrator was the recruitment of the soldiers, quartering of the soldiers and the administration in connection of the army.[3] He coordinated the public work, which was imposed on the inhabitants.[4] They repaired the ways and the bridges in the framework of public work. The district administrator administrated and recovered the public work. He took part in the collection of the back taxes.[5] Another important duty was the maintenance of the public security and public order.[6]

The unification of salaries and working conditions of district administrators was not the main intention of the Ministry, hence the councillors did not strive to form a class of civil servants in the counties like in the neoabsolutism. His mandate changed from three years to six years. The salaries of district administrators were left by the counties on the former level due to the straitened financial sources, thus it created a wage differential contrary to the judges, who were paid by the central government. The district administrator was a recognised office among the officials of the counties. Their salaries showed deviation between wide frames, and the public administration officials were not well-paid positions. The salaries of judges were competitive with the similar positions in this period. The Ministry of the Interior did not attempt to unify the daily allowances, the travelling fees or the duration of holiday of the officials. It corrected them sporadic which resulted with unreasonable financial demands.

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[1]MNL BM K150 117. 21161/1871.;-Békés County; 21068/1871.-Csongrád County; 21800/1871.-Region of Fogaras; 118. 31986/1871.-Hont County; 24696/1871.-Nagy-Kikinda Circle; 26616/1871-Pozsony County.

[2]Bató (2010) at 23.

[3]MNL BM K150 117. 21272/1871.-Doboka vármegye; 22026/1871.-Felső-Fehér vármegye; 21800/1871. -Fogaras vidék; 20826/1871.-Sáros vármegye; 118. 22592/1871.-Bereg vármegye; 32032/1871.-Gömör és Kis-Hont vármegye; 22187/1871.-Közép-Szolnok vármegye; 22336/1871.-Veszprém vármegye; 233. 28463/1873.-Moson vármegye.

[4]MNL BM K150 117. 21272/1871.-Doboka vármegye; 22026/1871.-Felső-Fehér vármegye; 21800/1871.-Fogaras vidék; 20826/1871.-Sáros vármegye; 118. 22592/1871.-Bereg vármegye; 32032/1871.-Gömör és Kis-Hont vármegye; 23891/1871.-Hunyad vármegye; 22187/1871.-Közép-Szolnok vármegye; 22336/1871.-Veszprém vármegye; 233. 28463/1873.-Moson vármegye.

[5]MNL BM K150 117. 21272/1871.-Doboka vármegye; 22026/1871.-Felső-Fehér vármegye; 21800/1871.-Fogaras vidék; 118. 22592/1871.-Bereg vármegye; 32032/1871.-Gömör és Kis-Hont vármegye; 22187/1871.-Közép-Szolnok vármegye; 22336/1871.-Veszprém vármegye; 233. 28463/1873.-Moson vármegye.

[6]MNL BM K150 118. 22592/1871.-Bereg vármegye; 22187/1871.-Közép-Szolnok vármegye; 30937/1871.-Moson vármegye; 22336/1871.-Veszprém vármegye; 117. 21272/1871.-Doboka vármegye; 22026/1871.-Felső-Fehér vármegye; 20826/1871.-Sáros vármegye.

The salary of the district administrator was decided upon and financed by the counties according to the Municipal Act. This issue caused problems, because the counties had divergent area, population and tax-payer ability. For this reason, the government was unable to carry out this provision of the Act, which regulated that the counties finance the expenses of the public administration.[1] In the future the state would have to pay also the salaries of the public servants of counties.

Summary

The Royal Interior of Ministry realised the unification of the district administration level in Hungary. The division of labour in the Ministry made this work easier because the drafts of the counties in the same subject were examined by same councillors on every occasion. All drafts in connection of districts were confirmed by *László Torkos*,[2] thus he was the public servant who formed the unified concepts for the examined administration level.

I would like to present in my paper that a short provision of the act can have some questions in store, which we can recognise from the archive material. The realization of this part of Municipal Act was successful because the cooperation of the Royal Ministry of Interior with the counties enabled the establishment of a unified district level under the middle level in the whole territory of the country, instead of the particular, feudal public administration. This was an important condition of the modern administration at this period.

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[1]Stipta, I. (1995/b). 159.

[2]MNL BM K150 117. 17731Sz/1871.; 17803/1871.; 18194/1871.; 18839/1871.; 20171/1871.; 21068/1871.; 21161/1871.; 21272/1871.; 21798/1871.; 21799/1871.; 21800/1871.; 22026/1871.; 27079/1871.; 27282/1871.; 27291/1871.; 28287/1871.; 29328/1871.; 29721/1871.; 31267/1871.; 31913/1871.; 32702/1871.; 32776/1871.; 34430/1871.; 118. 22336/1871.; 22499/1871.; 22592/1871.; 23346/1871.; 23816/1871.; 27001/1871.; 28726/1871.; 30172/1871.; 30266/1871.; 31726/1871.; 31986/1871.; 32051/1871.; 33141/1871.

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The *Eventualmaxime* in the Hungarian Civil Procedure - A Historical Perspective

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Abstract

The Hungarian Parliament adopted the new Code of Civil Procedure on 22 November 2016. During the codification proceedings, the gravity of the Hungarian traditions and the achievements of European legal development were emphasised. One of the most notable features of the new Code is the application of the structure of 'divided litigation', which means that the proceedings before the courts of first instance are divided into two parts: the preparatory stage and the main hearing stage. One of the main principles of the preparation is the Eventualmaxime*, which had not been applied as a main rule since 1911, and since 1952 it has not been applied at all. This essay introduces the historical basics of this legal institution. It examines the theoretical features including analysing the definition. It highlights the reasons behind the necessity of the* Eventualmaxime *as well. The second part will introduce the presence of this principle in the Code of 1868, where it became the main directive principle in the ordinary procedure before the regional courts. It will also point out that it was not applied in the proceedings before local courts. During the codification in the late 19th century, the* Eventualmaxime *was revaluated, and as a result it was not applied as a main rule in the Code of 1911. The final part, will focus on those regulations where the Code of 1911 applied this principle to intensify the efficiency of civil litigation.*

Keywords: *Eventualmaxime; civil litigation; Code of 1868; Code of 1911; Hungary*

Theoretical Basics of the Eventualmaxime

The Definition of the Eventualmaxime

The *ius commune* (in German: *gemeines Recht*) had two characteristic features: dividing the proceedings into stages and the application of the *Eventualmaxime*.[1]

The *Eventualmaxime* is 'that rule of the civil litigation which determines the sequence of actions of the parties in such a way that the party is obliged – under the burden of *praeclusio* – to propose all his pleas, statements and proofs together

[1]Oberhammer & Domej (2005) at 108.

in the same term or deadline. It is called *Eventualmaxime* as the parties should propose those facts and proofs that are only needed accidentally (*in eventum*).'[1]

Determination of the Sequence of the Parties' Actions

The civil procedure is a chain of actions. The relations between procedural acts can be different, and they consist of two groups. On one hand, there are several procedural acts which assume other previously made acts. For example, the written statement of defence presumes the statement of claim; a judgment presumes the closure of the hearing; the proposition of proofs presumes the previously made statements. In this case, there is a natural order which determines the sequence of procedural acts (successive address),[2] so as a main rule, the *Eventualmaxime* is not needed.

On the other hand, there are procedural acts which only have a common aim,[3] so they are not interdependent.[4] For example: several witnesses, reasons serving as a ground for the termination of the procedure. An important feature of the *Eventualmaxime* is that it only obliges the parties, since the parties bear the burden of presenting the relevant facts of the case and submitting the respective supporting evidence.[5]

Propose all Statements and Proofs Together

When the written procedure served as the main rule in the civil proceeding, the parties had the opportunity to protract the proceedings by addressing those procedural acts successively which were not interdependent. It meant that the principle of free action provided the base of protraction, which had to be impeded.[6] The main device was the *Eventualmaxime*, which obliged the parties to make all not-interdependent statements (or even those ones which presume another one) to be included in the same document.[7] "When this principle applies in its pure form the parties shall make their allegations at the earliest possible time, as a rule in the initial statement of claim or of defence".[8]

In Eventum

The *Eventualmaxime* forces the party to propose those facts and proofs, which are only needed after the opponent has stated his defence.[9] This feature of the *Eventualmaxime* effects only the proof submission. For instance, in his joinder of

[1]Fodor (1900) at 370.
[2]Ziskay (1872) at 353.
[3]Ibid.
[4]Magyary (1924) at 261; Bacsó (1917) at 98.
[5]Herczegh (1871) at 13-20.
[6]Mariska (1868) at 211; Magyary (1924) at 263.
[7]Magyary (1898) at 101.
[8]Oberhammer (2004) at 226.
[9]Czoboly (2014) at 141; Kovács (1928) at 589.

claims, the plaintiff states the defendant scraped his car and the defendant's dog bit him. He backed up the proofs as well. The defendant, however, confessed he had scraped the plaintiff's car, but denied the other claim. In this situation, the evidence taking for the first claim is unnecessary since a statement of fact may be accepted by the court as the truth if it does not have any doubt regarding its veracity and if it is acknowledged by the party with opposing interests.[1]

In eventum is inseparable from advancement, since the *Eventualmaxime* orders the parties to make all statements and proofs without knowing the reaction of the other party. Therefore, one of the most important traits of the *Eventualmaxime* is the cumulation of proofs, which results in a vast number of documents.[2]

Preclusion

The Principles of Set and Free Action in Litigation

Preclusion is derived from the Latin verb *praecludo* meaning "to exclude". It is important to differentiate between the principles of set and free actions in the civil procedure. The *Eventualmaxime* was used to be called the principle of set action.[3] In contrast, the principle of free actions bears that the party may propose his statements and proofs anytime during a procedure.[4] The principle of free action helps the court to issue an adequate verdict.[5]

The principle of free action was applied even in the appellate proceeding. In contrast, in Austria, Franz Klein attempted to speed up appellate proceedings by forcing the parties to present the *relevant* factual information at first instance. However, they wanted to avoid the *Eventualmaxime* as well.[6]

Types of Preclusion

The previous differentiation means that there are two types of preclusions as well. One is related to the *Eventualmaxime* and depends only on deadlines and terms, which means the parties shall not validly perform a procedural act they omitted to perform, and any belated procedural act shall be ineffective.[7] The consequences of the omission may only be remedied by an excuse.[8] Preclusion is necessarily the sanction of the *Eventualmaxime*. Without this sanction, the *Eventualmaxime* would be rather *lex imperfecta*, since the only tool to impede protraction would be the fine, what has no real preventive force for the parties.

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[1]See section 266 subsection 1 of Act CXXX of 2016.
[2]Herczegh (1891) at 26; Haendel (1932) at 12.
[3]Bacsó (1917) at 98.
[4]Its classical rule was Section 221. of the Act I of 1911.
[5]Bacsó (1934) at 21.
[6]Lewisch (2005) at 579. For the Austrian *Eventualmaxime*, see furthermore van Rhee (2008) at 11-12.
[7]Section 149 subsection (1) of the Act CXXX of 2016.
[8]Section 150 subsection (1) of the Act CXXX of 2016.

The second is connected to the principle of free actions depends on the discretion of the court. Should a party make his statements in the litigation later, even though he had the opportunity to do so earlier, the court has the right to exclude his statements if it aimed the protraction of the proceeding.[1] This right is part of the case management (in German: *materielle Prozessleitung*).

To sum up, the subjective preclusion excludes only those actions which were proposed culpably late. The strict system of the *Eventualmaxime* does not know this differentiation.[2]

The Eventualmaxime as a Main Rule in Hungary

Structure of the Civil Procedure after the Compromise

After the Austro-Hungarian Compromise of 1867, the legislation had good examples in Western Europe for the structure of the judicial system.[3] As a result, its remake was executed immediately.[4] However, it was impossible to reform the civil litigation this early, since the new structure of the judicial system was not stable enough to handle the modern civil proceedings. The legislation adopted temporarily the Act LIV of 1868.

The Act separated the ordinary proceeding and the summary procedure. The former was a written procedure, where only documents could be the bases of the adjudication. The parties were allowed to propose certain number of documents during the process. However, it did not exclude hermeneutic elements form the procedure, since the oaths were oral[5] and witnesses were also verbally interrogated.[6] The litigation pertained to regional courts consisting of *panels*.

The latter one was based on oral hearings and the proceedings belonged to district courts consisting of a single professional judge (so called *sole judge*). The simpler cases were usually dealt with summary procedure.

The legislation got the *Eventualmaxime* through the ordinary proceeding consequently, since without this principle, the protraction of the procedure would have been inevitable.[7] The parties had three opportunities to propose their statements and proofs (so altogether the adjudication was based on six documents).

First Round of Documents

The proceeding began with the *statement of claim*. The plaintiff was obliged to propose the legal basis and the facts entirely, in chronology and clearly, combined with the proofs.[8] The address was ‘entire’ if no facts were left out which

[1]Section 222 of the Act I of 1911.
[2]Rosenberg, Schwab &. Gottwald (1993) at 447.
[3]Magyary (1942) at 10-11.
[4]See Act IV of 1869, Acts VIII, IX, XXXI and XXXII. of 1871.
[5]Section 240 of Act LIV of 1868.
[6]Section 201 of Act LIV of 1868.
[7]Ministerial explanation to the bill on the Code of Civil Procedure 1910 at 305.
[8] Section 64 of Act LIV of 1868.

could have influenced the adjudication of the claim. It was 'chronological' if the progression was kept, in which the relevant fact occurred and 'clear' if the court was able to understand it without further researches.[1] I find it interesting that not every section of the statement of claim had the same importance. The courts did not reject the statement of claim if the proofs were not enclosed.[2]

After the communication of the claim, the defendant had to propose his written statement of defence, in which had to address all pleas and proofs.[3] The defendant's obligatory entering into the action needs to be stressed. It means that the defendant had to propose his formal defence and his defence on the merits together. If he proposed a formal defence only, and the court rejected it, thus he became the losing party ('silent confessor').[4]

The New Code regarding the Written Statement of Defence

In the Code of 1952, the formal defence and the defence on the merits were *alternative*, meaning that the party could propose only the termination of the procedure, and the court decided about it in the first place ("primary role of the formal defence").[5] The defendant was obliged to propose his defence on the merits merits if the formal defence was unsuccessful. However, the court had the right to force him to introduce more than his formal defence according the discretion of the court.

Our new regulation also concusses the defendant to propose his formal defence and his defence on the merits together. However, it applies different measures. If a party fails to include a preparatory statement specified in the Code or requested by the court in the preparatory document, it shall be construed that the party does not dispute the respective statement of fact, statement of law, or evidence of the opposing party, and does not object the respective request or motion of the opposing party being granted, unless he earlier made a statement to the contrary, and he does not wish or cannot submit a statement of fact, statement of law, request, evidence, or motion to present evidence regarding the respective preparatory statement to support his action or statement of defence.[6]

If the written statement of defence submitted by the defendant contains only a formal defence, the provisions laid down in section 203 (2) shall be applied. Moreover, should the party supplement his defence with defence on the merits later, the court shall impose a fine upon him.[7]

As a main rule, the court has discretion to decide whether "the party had the opportunity to do so earlier". However, this discretion is impossible regarding

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[1]Herczegh (1891) at 125.
[2]Fodor & Márkus (1894) at 167; Ministerial explanation to the bill on the Code of Civil Procedure 1910 at 305.
[3]Section 133 of Act LIV of 1868
[4]Sections 134 and 136 of Act LIV of 1868; Herczegh (1891) at 205..
[5]Kapa (2006) at 609. Kiss (2010) at 577.
[6]Section 203 subsection (2) of Act CXXX of 2016.
[7]Generally, the court shall impose a fine upon the party if he makes or changes a preparatory statement, even though he had the opportunity to do so earlier in the preparatory document or hearing during the preparatory stage. Section 183 subsection (5) of Act CXXX of 2016.

the defence on the merits, since the only way to propose it is *in the written statement of defence.*

Sections 183 subsection (5) and 203 subsection (2) together result in the strengthening of the obligation to enter the litigation. It does not depend on the *discretion and decision of the court*, but on the *Act itself.*

Obviously, the defendant does not propose the defence on the merits in all cases, since there are situations, when the pleas can be allocated without doubts. There will be, however, cases as well, when the defendants are uncertain, and "make sure" that they propose a full defence, even though their primary defence tends to the termination of the procedure.

The Second and Third Rounds of Documents

The second round of documents was called reply document on the plaintiff's side and rejoinder on the defendant's. It is important to highlight the importance of the statement of claim and the written document of defence, since only those statements and proofs were allowed to be proposed which weakened the opposite party's previous statements. To sum up, the first round of documents marked the content of further documents. [1] The Act of 1868 knew a third round of documents with final statements, where the same rule had to be applied as in the second round.

Apart from this, the Act recognized the difference between the appropriate statements and inappropriate statements which meant the statement and proofs that could have been proposed in the first round of documents (e.g. add another legal basis to the claim).[2] These were excluded from the proceeding. Appropriate statements were allowed if their aim was to weaken the opponent's position.

The Second Round of Documents in the New Code of Civil Procedure

In the new Code of Civil Procedure, after the submission of a written statement of defence against the claim, and depending on the circumstances of the case, the court has discretion whether to order further preparations to be made in writing before scheduling a preparatory hearing, schedule a preparatory hearing, or proceed without ordering further preparations to be made in writing or scheduling a preparatory hearing.[3]

If the court orders further preparations to be made in writing, the written statement of defence shall be served on the plaintiff, and the plaintiff shall be called upon to *submit a reply document* within an appropriate deadline. [4]

Since the party is allowed to propose the reply document or the rejoinder if he was requested by the court or is allowed by an Act to do,[5] the main measure that

[1]Fodor (1900) at 370.
[2]Herczegh (1891) at 206.
[3]Section 187 of Act CXXX of 2016
[4]Section 188 of Act CXXX of 2016.
[5]*Ministerial explanation to the bill on the Code of Civil Procedure.* 2016. Explanation to Section 203.

their content shall be "in line with the invitation of the court." Apart from it, the party may also make a preparatory statement without a specific request.[1]

At first glance, it seems that our new regulation does not know the distinction between appropriate and inappropriate preparatory statements. This would make the *Eventualmaxime* obsolete, since there would be no point applying it if the parties had full freedom in proposing anything. In my opinion, however, it does know a similar distinction as well, but with a different system of consequences.

Adding completely new statement and proofs is appropriate. Adding additional information which could have been proposed in the statement of claim (which was inappropriate after 1868) is also allowed, but it is considered to be an amendment of the action. One of the new features of the Code is the redefinition of the amendment of the action. It now means that a party, in comparison to the statements of fact, statements of law, legal arguments and requests made or presented earlier concerning his claim, including any counter-claim or set-off, invokes a different or additional fact, raises or invokes a different or additional legal argument or right to be enforced, or modifies the amount or content of his requests or any part thereof, or submits any other request.[2]

The statement containing the amendment of the action shall be made with a content *that meets the requirements of the statement of claim*. The court shall reject the statement containing the amendment of the action if the action submitted therein would give rise to the statement of claim being rejected under the Code. The rules pertaining to the rejection of the statement of claim shall apply to the issue of a notice to remedy deficiencies.[3]

Similarly, if the defendant proposes a statement which could have been proposed in the written statement of defence is an *amendment of the statement of defence*. It means that a party, in comparison to the statements of fact, statements of law and legal arguments made or presented earlier concerning his statement of defence, including any statement of defence made against a counter-claim or set-off, invokes a different or additional fact, a different or additional complaint based on substantive law or legal argument, or withdraws his statement acknowledging or not contesting, in whole or in part, another statement of fact, statement of law or request, including the subsequent contestation of a statement of fact, statement of law or request that had been regarded as uncontested or unopposed.[4]

Considering the legal consequences, there is a significant difference between the two amendments. If the amendment of action is deficient, *it must be rejected*. However, the deficiency of the amendment of the defence results in the application of *the general rule of Section 203 paragraph 2*.

Evasion of the Written Procedure – The "Judicial Information"

The trial court consisted of three judges as a main rule: the chairman, the *rapporteur* (who presented the case to the council) and the third member. In the

[1]Section 201 subsections (1)-(2) of Act CXXX of 2016.
[2]Sestion 7 subsection 1 point 12 of Act CXXX of 2016.
[3]Section 185 subsections (2)-(3) of Act CXXX of 2016.
[4]Sestion 7 subsection 1 point 4 of Act CXXX of 2016.

written procedure, only the *rapporteur* knew the whole case, and the parties did not have the opportunity to present their point of view in an oral hearing.

As a result, a new legal institute appeared - the so called *judicial information.* It meant that the parties or their representatives visited the members of the council (except for the *rapporteur* who obviously knew the case[1]) privately and represented their case in orally. This was, of course, morally reprehensible, and was banned in our procedural reforms of 1911 and 1912.[2]

Application of the Eventualmaxime in the Summary Procedure and in the Act I of 1911

Prelude – The Summary Procedure

Even the Act LIV of 1868 regulated the summary procedure, which took place before local courts. It was based on oral hearings, which knew the *Eventualmaxime* only as an exceptional rule.

The Act XVIII of 1893 on the summary procedure was considered to be a transition between the procedural orders of 1868 and 1911. Basically, it provided an opportunity to the courts to experience the procedure, which was based on oral hearings until the Parliament adopted the modern Code of Civil Procedure of 1911. The ministerial explanation also highlighted that "the adoption of the new legislative acts would suit the right judicial policy if the transition did not interfere with the order of jurisdiction (or minimised the interference to the lowest possible measure). The more definite the difference between the current and the new system, the greater the interference would be, which includes the interference in the judicial system itself as well."[3]

Oral hearings do not need the *Eventualmaxime,* since the statement of a party is *followed by the opponent's immediate counter-statement*, and the judge is able to control the process of the procedure with his *materielle Prozessleitung.*

The Act I of 1911 – Raising the Pleas Together

The *Eventualmaxime* was criticised in the 19th century because "it demolishes the healthy law and the truth, whose consequence was that the people hated the jurisdiction."[4] The Code guaranteed the greatest liberty to the party with the (almost complete) abolishment of the *Eventualmaxime* and the unity of the hearing.[5]

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[1]Fodor (1905) at 428; Fodor (1910) at 165.
[2]See Section 88 of Act LIV of 1912.
[3]Ministerial explanation to the bill on the summary procedure 1892 at 46.
[4]Nagy (1885) at 35.
[5]The unity of the hearing means that although the Act knew the divided litigation, the only role of the preparatory hearing was to decide about the question whether the procedure had to be terminated or not. The parties proposed all statements and proofs in the main hearing. Ministerial explanation to the bill on the Code of Civil Procedure 1910 at 310.

The *Eventualmaxime* affected the *proposition of pleas* in both acts, with almost completely same regulation. So the defendant had to propose his pleas *together* after the statement of claim. Its sanction was the *preclusion*, with two exception: on one hand, the exclusion did not refer to those pleas, which had to be taken into consideration *ex officio*. On the other land, the defendant could perform the omitted pleas under the general rule of an excuse. In this case, the reason for the omission and the circumstances substantiating the absence of any fault regarding omission had to be presented in the request for excuse.[1]

Summary

This essay presented the emergence of the *Eventualmaxime* in the Hungarian legal history. It argued that in the written proceedings, this principle was the main rule since without it, the protraction was inevitable. Oral hearings, however, did not require this principle since the judge controlled the process with case management (*materielle Prozessleitung*). Some parts of this essay compared the old regulation with the new one. As a result, the most crucial points are highlighted below:

1. The *Eventualmaxime* always forms a strict and rigid system. It affects the defendant's written statement of defence the most. Being similar to the regulation of 1868, our new Code also *forces the defendant into the litigation*. However, the measures are different. While the Code of 1868 had direct measure, since if the formal defence was irrational, and the defendant did not propose the defence on the merits, *he became a losing party* immediately, the Code of 2016 applies indirect measures. If there is no defence on the merits, the defendant will face a system of consequences. He is not excluded from proposition, but the court shall impose a fine.

If the plaintiff's statement of claim is void, needs to be rejected with the possibility of proposing it again *without any consequences*, since the rejection does not result in *res iudicata*. This system of regulation regarding both parties raises the question: *are the parties in the litigation equal?*

2. The system of the 1868 Code was a *written procedure completely.* As it was mentioned before, our new Code guarantees discretion to the court to decide the way of preparation. However, if the court chose the written preparation, it is not possible to close the preparatory stage based on written documents only, so *in this case, the preparatory hearing of the party is compulsory.* The Act guarantees more opportunities for the parties to propose their statements in the preparatory hearing, which is incorrect theoretically and it makes the *Eventualmaxime* obsolete.

The *Eventualmaxime* fulfils its aim in the written procedure and in those "mixed procedures", in which the parties are not allowed to add more statements in the oral hearing (so they are only allowed to repeat their written statements).[2] To sum up: *the written preparation (and the Eventualmaxime) could only be effective*

[1]Section 27 of Act XVIII of 1893; Section 180 of Act I of 1911.
[2]Magyary (1898) at 102.

if the parties are forbidden to propose more statements than they had in the written preparation. The following two examples are to support this claim:

a) In the system of the Act LIV of 1868, only the written documents (and the *Eventualmaxime*) could be the base of the adjudication. In addition the *amendment of the statement of claim* (which we know today) was not allowed. The essay showed that the parties could not supplement their previously proposed statements, which they proposed in the statement of claim/written statement of defence, in the second round (reply document/ rejoinder), since these were "inappropriate".
b) In the Act I of 1911, when the defendant proposed his formal defence, the court decided about it *separately* (it was a partial judgment). After this judgment became binding, it was the obstacle which made it impossible for the defendant to proposes more pleas in the procedure.

The basic theoretical feature of the *Eventualmaxime* from the examples that *if the civil procedure applies this principle, the statements proposed this way shall be isolated from the other parts of the procedure (the court shall decide about them separately), and the parties shall not be allowed to propose new statements or to change them.* The *Eventualmaxime* closes the documents,[1] with the exception of an excuse, which breaks this strict system.

In the new Code, the legislation *did not respect this basic theoretical feature*, which is supported by two tokens. First, the parties have the right to propose new preparatory statements after the summary of the court.[2] The unity guaranteed by the *Eventualmaxime* is split with more statements, since it is possible to supplement their written documents. Secondly, I find that rule questionable that before the order closing the preparatory stage is adopted, a party may change his preparatory statements without the consent of the opposing party.[3] This rule may result in that the opponent will change his statement as well. Therefore, protraction becomes a threat, even though the main aim of our new regulation was the opposite.

This system raises a question: why does our new regulation apply the *Eventualmaxime and the written preparation as an unnecessary formalistic procedure if any statement could be proposed or changed in the oral hearing?* The *Eventualmaxime* guarantees now the reasonable time for a single act, but not for the whole procedure.

3. In his essay I tried to point out the most important problems in our new Code. It is really difficult to decide a procedural question in a theoretical way, since the law of civil procedure (and the procedural law itself) is the most practical discipline of jurisprudence. Several times, it is almost impossible to answer a question, forasmuch we must see the *complete procedure entirely* to

[1]Herczegh (1891) at 27.
[2]Section 191 subsection 3 of Act CXXX of 2016. In the summary, the court reviews the documents which the parties propose in written form.
[3]Section 183 subsection 4 of Act CXXX of 2016.

find the solution for a tiny problem. In conclusion, our legal practice shall decide whether the old-new regulation makes the civil procedure more effective or not.

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Social Rights in the First Yugoslavia (1918-1941): Tradition, Model and Deviations

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Abstract

Following T.H. Marshall's conception on gradual development of citizenship rights and an argument about 20th century as a century of social citizenship, the essay highlights development of social rights in the First Yugoslavia. In the beginning, the essay deals with various traditions of social rights on the Yugoslav territories before 1918. Then the essay elaborates thesis about normative model of social rights established in the rules of the first Constitution of 1921 and in laws that implemented constitutional principles. In addition, some deviations from that model are pointed out, namely lack of significant rules about social rights in the second Constitution of 1931, non-adequate implementation of regulations on social rights in legal practice, as well as pointing out the important role of municipalities in providing social transfers for the poor in 1930s.

Keywords*: Kingdom of Serbs; Croats and Slovenes; Kingdom of Yugoslavia; Social Rights; Social Citizenship; Poor Relief.*

Introduction

The essay aims to provide analysis of development of social rights in the Kingdom of Serbs, Croats and Slovenes/Yugoslavia in the period from its formation on December 1 of 1918 until its occupation in 1941 during the Second World War.[1] By social rights, we mean rights that an individual has towards the state concerning education, health care, social transfers, etc. The conception of social rights as an important dimension of citizenship is emphasised by T.H. Marshal in his classical study *Citizenship and Social Class*. According to Marshall, there are three dimensions of citizenship: civil, political, and social. By civil citizenship he means "the rights necessary for individual freedom", namely, liberty of the person, freedom of speech, etc.[2] By political citizenship he means "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body".[3] By social citizenship he means "the whole range from the right to a modicum of economic

[1]Banac (1988) at 116-138; Goldstein (2008) at 25-26, 205-212. After formation, official name of the state was The Kingdom of Serbs, Croats and Slovenes. This was changed during in 1929 when the king renamed the state The Kingdom of Yugoslavia, implementing the dogma about one Yugoslav nation. Troch (2010) at 233.
[2]Marshall (1965) at 78.
[3]*Ibid.*

welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society".[1] According to Cohen's interpretation of Marshall, social citizenship includes public education and health care, but also certain degree of social minimum for wide range of populations.[2]

Intensive development of social rights on Yugoslav territories began after the Second World War.[3] Nevertheless, various arrangements of social rights were present earlier and in this the first Yugoslav state partly copied western models.[4] Specific example of interference of state in the area of social rights is the first Constitution of the Kingdom of Serbs, Croats and Slovenes of 1921, the so-called *Vidovdan Constitution.* The Constitution defined various social rights of citizens under influence of the German Weimar Constitution of 1919.[5] Some authors even argue, after comparison of the text of the *Vidovdan* and Weimar Constitutions, that strictly speaking *Vidovdan* Constitution defines social rights in much wider manner.[6] However, social problems and indications of not quite developed system of social rights in Yugoslav reality provokes us to shed light on development of social rights in the Kingdom of Serbs, Croats and Slovenes/Yugoslavia.

In doing so, we will first examine tradition of regulation of social rights in the period before 1918. In addition, we debate formation of the model of social rights in the first Constitution of 1921 and in adequate regulations. Further, we point out some deviations from the model of social rights, namely significant lack of rules on social rights in the Constitution of 1931, weak application or non-application of some rules in legal practice, and increased role of some municipalities in providing social transfers in 1930s.

Social Rights on Yugoslavian Territories before 1918: Tradition

Legal system of the First Yugoslav state was very complex. In the state, there were six legal areas: Slovenian-Dalmatian legal area, former Hungarian legal area, Croatian-Slavonian legal area, and legal area of Bosnia and Herzegovina, legal area of the former Kingdom of Serbia and legal area of the former Kingdom of Montenegro.[7] Four of these legal areas, namely Slovenian-Dalmatian legal area, Croatian-Slavonian legal area, former Hungarian legal area and legal area of

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[1] *Ibid.*

[2] Cohen (2010) at 82. On connections of social citizenship and welfare state see also Stambolieva (2015) at 381.

[3] On development of social state in the second Yugoslavia (1945-1990) see Puljiz et al (2008) 19-30; In this, the second Yugoslav state partly followed processes of development of welfare state on the West although on different grounds having in mind that the Yugoslav state after 1945 was communist one. On development of social rights in France, Germany, UK but also USA after the Second World War see Fahrmeir (2007) 194-200.

[4] On development of social rights in USA, France, Germany and UK after the First World War see Fahrmeir (2007) at 155-162.

[5] Puljiz et al (2008) 14; Kandić (1969) at 322.

[6] Kandić (1969) at 334.

[7] Čulinović (1963) at 224-227.

Bosnia and Herzegovina, were shaped in the realm of the Austro-Hungarian Monarchy before 1918 albeit all of these legal areas had certain specificities concerning legal development. Slovenian-Dalmatian legal area belonged to the Austrian part of the Monarchy. Former Hungarian legal area belonged to the Kingdom of Hungary. Croatian-Slavonian legal area belonged to the Hungarian part of the Monarchy but enjoyed certain autonomy in the matters of social rights.[1] Bosnia and Herzegovina was *de facto* under Austro-Hungarian rule from 1878 while *de iure* it became part of the Austro-Hungarian only in 1908.[2] Other two legal areas, namely Serbian and Montenegrin legal areas enjoyed independent development until 1918.

On Slovenian-Dalmatian legal area relevant was Austrian law on municipalities which regulated poor relief as an important right of local citizens (*Heimatrecht*).[3] Additionally, Austria introduced systems of state social insurance and in this way strengthened position of central state.[4] The law of 1867 on general rights of Austrian citizens' defined education as one of citizens' rights (§ 17).[5] Education in primary schools was obligatory for all children between six and twelve years old.[6] On Hungarian legal area, there was also system of poor relief.[7] In addition, the state developed programs of social support of poor and unprotected population including children, and programs of protection of workers.[8] The state followed developments in Austria and established systems of insurance of workers.[9] Here there was also compulsory elementary education that was from 1908 free of charge.[10] On Croatian-Slavonian legal area, one can also close connection of social rights with municipalities and the system of poor relief. Croatian law on regulation of local citizenship (*zavičajnost*) of 1880 in its first article states that every member of a municipality *(zavičajnik)* has the right on poor relief in the case of poverty.[11] Furthermore, in the last decades of the Austro-Hungarian Monarchy social rights emerged on this legal area because of validity of Hungarian-Croatian laws in common affairs on this area too. In addition, Croatian-Slavonian authorities in the sphere of autonomy developed its own legislation on social rights.[12] Part of this was the right on elementary education

[1]Austro-Hungarian Compromise (1867) defined Croatia-Slavonia as part of the lands of the Hungarian Crown. In 1868 reached Croatian-Hungarian compromise granted autonomy to Croatia-Slavonia in internal administration, education, religion and judiciary. Internal administration included also health care and other social rights. About system of Compromises, see more in: Gross et al (1992) at 213-238.
[2]Savić (2011) at 228.
[3]Kosnica (2018) at 88.
[4]Zimmermann (2011) at 90.
[5]Bernatzik (1911) at 422-427.
[6]An argument about obligatory education in primary schools in Istria as part of the Austrian half of the Austro-Hungarian Monarchy see in: Pastović (2016) 157-158.
[7]Zimmermann (2011) at 11-45.
[8]Zimmermann (2011) at 48-56, 69-89.
[9]Zimmermann (2011) at 90.
[10]Gyuris (2014) at 537.
[11]Mutavdjić (1894) at 10.
[12]For example see *Zakon o umirovljavanju i obskrbi zemaljskih urednika i službenika u kraljevinama Hrvatskoj i Slavoniji, njihovih udova i sirota [the Law on retirement and living costs allowance of*

which should have been provided free of charge.[1] On legal area of Bosnia and Herzegovina, the most important regulation concerning rights of citizens was the Constitution of 1910. The constitution consisted of Land constitution (*Zemaljski štatut*) and other five fundamental laws that defined electoral rules, organization and work of the Sabor, etc.[2] The Constitution regulated some important civil and political rights of citizens. Concerning social rights, the Constitution contained only one instructive provision about necessity of education of youth in public schools but not stylised in a way that would guarantee free and obligatory education (§ 13 par. 2).[3] In Bosnia and Herzegovina, there were no specific laws about protection of workers but only one decree issued by the Provincial Government of 1909 on protection of artisans.[4] In the Kingdom of Serbia, the Constitution of 1903 contained important rules concerning civil and political rights but practically did not regulate social rights. The only social right regulated in the Constitution of the Kingdom of Serbia of 1903 was the one about free of charge elementary education in state schools (§ 21 par. 2).[5] In addition, the state in 1910 after few unsuccessful attempts enacted the law that regulated basic protection and insurance of workers (*Zakon o radnjama*).[6] In the Kingdom of Montenegro, constitutional regulation similarly did not contain obligation of state to provide citizens with social rights except the right on free of charge education in state elementary schools (§ 138).[7] In Montenegro, there were no regulations about protection of workers.[8]

This very short look at the development of social rights indicates hybridity of regulations and diversity of traditions in regulation of social rights. One can lapidary say that Slovenian-Dalmatian, former Hungarian and Croatian-Slavonian legal areas possessed stronger tradition of regulation of social rights. On the contrary, one can say that the weakest tradition of regulation of social rights was on Montenegrin legal areas. In a way, the most widespread social right on monitored legal areas was the right but at the same time obligation on elementary education. In addition, it is important to note that all legal areas suffer from significant lack of constitutional norms on social rights.

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land officers and employees, and their wives and children, in the kingdom of Croatia and Slavonia]; On some social rights in Croatia-Slavonia see also Kosnica (2014) at 484-485.

[1] § 17 *Zakona o ustroju pučkih škola i preparandija za pučko učiteljstvo u kraljevinama Hrvatskoj i Slavoniji [The Law on organisation of public primary schools and schools for teachers in the kingdoms of Croatia and Slavonia]* (1874); See § 5 *Zakona o uređenju pučke nastave i obrazovanja pučkih učitelja u kraljevinama Hrvatskoj i Slavoniji [The Law on organisation of public primary schools and schools for teachers in the kingdoms of Croatia and Slavonia]* (1888)

[2] Imamović (2011) at 27-33.

[3] Ustav Bosne i Hercegovine iz 1910. godine [The Constitution of Bosnia and Herzegovina of 1910].

[4] Milenković (1981) at 113-114.

[5] Ustav za Kraljevinu Srbiju iz 1903. godine [The Constitution of the Kingdom of Serbia of 1903].

[6] Milenković (1981) at 120-121; On debates about labor legislation in Serbia and enactment of the Law on companies of 1910 see more in: Kaclerović (1952) at 5-38.

[7] Ustav Kneževine Crne Gore iz 1905. godine [The Constitution of Montenegro of 1905].

[8] Milenković (1981) at 120.

Normative Model of Social Rights Established in 1920s

After formation of the Kingdom of Serbs, Croats and Slovenes on December 1 of 1918 the authorities of the new state, following the principle of legal continuity, at first accepted existing regulations. However, at the same time the authorities took regulation of some social rights, namely protection of workers.[1] On 28 June of 1921 the authorities enacted the first Constitution.[2] The constitution defined state as Unitarian and as a monarchy and contained significant rules about social rights.

The Constitution defined the right and at the same time the obligation of citizens on elementary education provided by the state (§ 16 par. 6). The education in state elementary schools should have been free of charge (§ 16 par. 9). The Constitution also contained specific provision about state protection of all citizens in choosing vocational schools (§ 22). In addition, the state committed to regulate financing of education of competent but poor children (§ 22). Another important part of the Constitution are rules which commit the state on improvement of health conditions, health of population, especially mothers and children (§ 27). The state also promised that it would provide poor citizens with free medical care and free medicaments (§ 27). The Constitution contained provision on protection of workers and in this, special protection for women workers and children workers (§ 23). It committed the state authorities to enact the law on protection of workers and about number of working hours (§ 23). In the Constitution, the authorities also promised enactment of the law about insurance of workers in cases of accidents, illness, unemployment, old age and death (§ 31). In addition, the authorities had to enact special law on regulation of agricultural insurance (§ 30). The Constitution provided state protection of sailors. This should include enactment of special law on protection of sailors in the case of illness, old age, etc. (§ 34). The Constitution contained rule about state protection of disabled persons, was orphans, war widows, poor and for work incapable parents of dead soldiers (§ 32).

Conducted analysis of the text of the Constitution of 1921 enables us to detect four groups of social rights regulated by the Constitution. One of them is education, another is health care, and the third group is protection and insurance of workers, agricultural workers and sailors while the fourth group are rules about victims of war.

After enactment of the Constitution, the authorities took significant efforts in regulation of social rights provided by the Constitution. Following earlier development on each of legal areas and tradition of free and obligatory elementary education on many of them, the authorities promoted the concept of free and obligatory elementary education.[3] In 1922, the authorities enacted the law on protection of population from infectious diseases and providing free medical

[1]Milenković (1981) at 126-223.
[2]Ustav Kraljevine Srba, Hrvata i Slovenaca [The Constitution of the Kingdom of Serbs, Croats and Slovenes].
[3]*Zakon o narodnim školama [the Law on national schools]*; Krbek (1932) 381.

assistance.[1] This law stated that in the institutions provided for protection of population from infectious diseases, medical assistance is free of charge (§ 2). Another law of 1922 provided free medical assistance in hospitals.[2] The law of 1930 on hospitals, although enacted after abolishment of the Constitution of 1921, followed this tradition and stated that every hospital had to have special policlinic provided for treatment of the poor.[3] Very soon after enactment of the *Vidovdan* Constitution, the minister of social policy on October 25 of 1921 issued a regulation about hygiene and technical protection measures in companies.[4] Next year the National Assembly accepted and the king approved the Law on protection of workers.[5] The law contained important rules on limitation of working hours, daily rest, night work, working of expectant mothers, etc. Another important regulation was the Law on social security of workers of 1922.[6] By this law, the authorities regulated protection of workers in cases of illness, situations when workers are unable to work anymore, old age, death and an accident (§ 1). However, the law did not regulate protection of workers in cases of unemployment (§ 2). The central government in Belgrade regulated that issue only in 1927 by the decree in which it provided financial help for jobless workers, excluding those working in agriculture and excluding workers who work for daily allowances.[7] The authorities further regulated rights of war volunteers in the Law on war volunteers of 1922.[8] The law regulated material rights of volunteers unable to work, and members of their families (§ 4-17).

Mentioned rules of the Constitution of 1921 and the following laws, indicate that the authorities, at least at the normative level, aimed to establish order that would guarantee important social rights to specific groups of population and in doing so, they installed the state as the central agent who will provide these rights. Such improvement of social rights in the new state was result of few important factors. One of them would be disastrous experience of the Great War. Another was communist threat from abroad but also within the state. Abroad it was the revolution in Russia in 1917, and formation of the communist Hungary in the neighbourhood in 1919.[9] Internal pressure could have been results of the Communist Party on local elections during spring and summer of 1920 on which it achieved very good results and won in two biggest cities, Belgrade and Zagreb.[10] Another pressure on political elite and the king

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[1] *Zakon o osnivanju posebnih sanitetskih ustanova za ispitivanje i suzbijanje zaraznih bolesti i davanju besplatne lekarske pomoći [The law on formation of special ambulances for detection and suppression of infectious diseases and providing free medical assistance]*.
[2] *Zakon o besplatnoj lekarskoj pomoći u bolnici [The law on free medical assistance in hospital]*.
[3] Krbek (1932) at 391.
[4] Radničko zaštitno zakonodavstvo (1928)at 3-106.
[5] *Zakon o zaštiti radnika [The law on protection of workers]*; Radničko zaštitno zakonodavstvo (1931) at 1-48.
[6] *Zakon o osiguranju radnika [The law on social security of workers]*.
[7] Kolar-Dimitrijević (2005) at 105.
[8] *Zakon o dobrovoljcima [The law on war volunteers]*.
[9] On influences of Russian revolution of 1917 and formation of the communist Hungary in 1919 on social movements in the Kingdom of Serbs, Croats and Slovenes see Čulinović (1961) at 184-188.
[10] Čulinović (1961) at 316.

could have been results of the Communist party on the elections for the Constitutional Assembly in November of 1920 on which it was the fourth party according to achieved votes, and the third party according to achieved mandates.[1] Therefore, the ruling elite partly saw the enactment of the Constitution and following regulations on social rights as an instrument that would suppress possible revolutionary treats.[2]

Deviations

Normative model of social rights established in 1920s suffered from some important deviations. First concerns long-term instability of constitutional norms. The *Vidovdan* Constitution lasted only until January 6 of 1929 when the king Aleksandar Karađorđević abolished the Constitution and proclaimed dictatorship. For next almost three years, the king ruled without formal constitution. Although previous laws initially remained in force, in this period the system of social rights did not have any more support in constitutional norms. In addition, the next Constitution of the Kingdom of Yugoslavia of 1931 practically did not contain rules about social rights and in this way significantly retreated in comparison to the Constitution of 1921.[3] The only rule concerning social rights in the Constitution of 1931 was about free and compulsory elementary education in state schools (§ 16 par. 2). An explanation for such diminishing of social rights can be the context of the Great Depression and lack of funds.

Another argument that highlights deviation from the normative model of social rights established in 1920s is the one about significant discrepancy between constitutional principles and legislations and its implementation in legal practice.[4] Subject of such criticism can be the Law on social security of workers of 1922. This is due to weak implementation of the law in practice. The implementation of the law started only in 1937 and the authorities started to pay pensions only during the Second World War.[5] There was also a limited protection of victims of war in practice.[6]

Another argument concerns proclaimed role of the state in providing social transfers. As we have already mentioned, the central government issued a decree in 1927 about financial help for jobless workers.[7] However, in parallel some cities developed social programs to support workers. One such a program for support of workers unable to work, their wives and orphans, was created by the authorities of the city of Zagreb in 1930. Its basic perquisite was that a worker should have worked in the city of Zagreb for at least ten years.[8] Therefore, providing social transfers for workers was partly in domain of local authorities.

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[1]Banac (1988) at 363, 367.
[2]The same argument see in Puljiz et al (2008) at 14.
[3]Ustav Kraljevine Jugoslavije [The Constitution of the Kingdom of Yugoslavia].
[4]For this argument see Petrović (2011) at 124.
[5]Puljiz et al (2008) at 15.
[6]Petrović (2011) at 123-124.
[7]Kolar-Dimitrijević (2005) at 105.
[8]Kolar- Dimitrijević (1983) at 182.

Additional argument that highlights important role of municipalities in care for the poor are, in part of the country, still valid rules on poor relief. These rules were valid on Slovenian-Dalmatian legal area, former Hungarian legal area and Croatian-Slavonian legal area. Although practical relevance of these rules was very limited during 1920 it still implied possible influence of municipalities on social transfers.[1] The new regulations about municipalities (1933) and city municipalities (1934) accepted institution of poor relief and therefore regulated poor relief as an important right of local citizens (*zavičajnici*).[2] Besides, municipalities had to support poor patients, if there were no other persons obliged to do it by the law provided that person was resident at least five years in a municipality.[3]

Conclusion

Elaborated tradition of development of social rights on the territories that became part of the first Yugoslavia indicates significant diversity in regulation of social rights. The diversity existed among legal areas that were part of the Austro-Hungarian Monarchy but also among these legal areas and the legal areas of the Kingdom of Serbia and the Kingdom of Montenegro. Here especially indicative is significant lack of regulations about social rights on the legal area of former Kingdom of Montenegro. On the other hand, important common ground in regulation of social rights was regulations about right of citizens on elementary education.

After formation of the Kingdom of Serbs, Croats and Slovenes in 1918, the authorities took significant efforts in providing social rights. The main reasons for such development were internal and external pressures, namely threat of communist revolution but also consequences of the war. Therefore, the political elite in the first Constitution of the Kingdom of Serbs, Croats and Slovenes enacted numerous rules about social rights. In addition, the authorities enacted a number of laws by which they implemented constitutional principles. The proclaimed principles of social rights defined the state as the central agent in providing social rights. Established normative model of social rights represented significant improvement in comparison with inherited traditions. Although the level of improvement should be judged considering each of legal areas, for all legal areas the improvement was constitutional regulation of social rights.

However, the established normative model of social rights suffered from significant deviations. The deviations are suspension of *Vidovdan Constitution* in 1929 and lack of significant constitutional rules about social rights in the Constitution of 1931. Another deviation was not full implementation of model of social rights in legal reality. Finally, the analysis indicates still important role of municipalities in providing social support for workers and poor population which

[1]About limited use of poor relief in practice in 1920s see Mirković (1924) at 161.
[2]See § 22 of the Law on Municipalities of 1933 in Tolić (1933); on § 18 of the Law on city municipalities of 1934 see Zakon o gradskim opštinama (1934).
[3]Krbek (1940) at 30.

was not completely in accordance with proclaimed dominant position of central state in providing social rights.

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Legal History of the Development of the Process of Forced Execution of Claims in Croatian Law

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Abstract

Although modern legal science, both Croatian and comparative, recognises a specially defined legal institute for enforcing claims that is realised in the framework of a special procedure governed by the Enforcement Act, the historical context of the development of the mentioned institute, although undisputable, was not so uniform. It is well known in numerous legal-historical researches that the emergence of the first forms of compulsory settling of the claims can be found in antique legal systems, but features inherent to that institute suitable for modern legal interpretation begin to be individualised in medieval law. When it comes to Croatian mediaeval law, it should be borne in mind that the determination of the mentioned institution cannot be interpreted by means of unique legal sources. For this reason, the subject of analysis in this research will be the provisions of the medieval statutes of our coastal cities and the customary law that was valid in the area of Slavonia and a smaller part of Croatia through the Werbőczi's *Tripartitum***.** *Bearing in mind that solutions used to enforce compulsory settlements in some research sources that we are dealing with in this research are marked by the common features (along with some variations) in the content of the research we are going to describe and critically analyse the provisions related to the composition and authority of the bodies that have conducted the procedure, the order of settlement and the consequences of not granting a claim in a special proceeding. The purpose of this research is to realise the filling of obvious gaps in Croatian legal-historical science when it comes to the development of enforcement proceedings. This will set the safe foundation for studying the institute in contemporary law.*

Keywords: *Customary Law; Process of Forced Execution of Claims; Croatian Mediaeval Law; Enforcement Proceedings; Compulsory Settlements.*

Introductory Remarks

The fundamental purpose of the relationships in the field of the law of obligations, the fulfilment of the obligations assumed, occurs at the time of the proper and orderly fulfilment of the obligatory performance. By completing the act, the debtor's obligation and the correlative subjective right of the creditor cease

to exist.[1] Voluntary fulfilment of the obligatory performance is the most desirable way of terminating the legal relationship and as such it is in accordance with the principle of disposability according to which the mandatory relationships arise, change and cease by the will of the parties. In normal circumstances, which imply the willingness of parties to realise the content of legal relations in the course of which they are committed to certain activities, there are almost no problems with the termination of obligations upon their fulfilment. The problem arises if a debtor to whom an obligation was established either by the contract or by the court order refuses or is unable to fulfil the obligation. Since the period of antiquity, the fulfilment of the obligations incurred was sought to be solved through the use of an institute directed against the person or property of the debtor. Determined principles of personal enforcement of debtors in the case of non-fulfilment of obligations are also a feature of medieval law. Since Croatian medieval law in terms of rules of fulfilment of obligations largely reflects the reciprocal rules of Roman law, the following will be attempted to establishing the legal nature of compulsory settlement of claims in the statutes of Croatian medieval communes as well as Croatian-Hungarian law that was legally relevant in the continental Croatia. By the entry into force of the unique legislation in the area of Austro-Hungary in the 19th century, a uniform regime of forced settlement of claims was achieved, the means of personal enforcement inherited from medieval law were abolished, and forcible settlement became a regular procedure under the jurisdiction of the courts. The aforementioned legal development of the institute of compulsory fulfilment of the claim will attempt to illustrate the systematic and comparative analysis of available legal resources that have greatly influenced the development of modern rules of enforcement law and procedure.

Arrangement of the Problem of Enforcing the Claim in Antique Law

It is recognised in numerous legal-historical studies that the emergence of the first forms of compulsory settlement of claims can be established in antique legal systems, i.e. from the very beginnings of civilization. Accordingly, the provisions governing the institute of debt slavery are already found in Hammurabi's law, which came into being in the 18th or 17th centuries BC.[2] In addition to the fact that Hammurabi's law prescribed debt slavery, the mentioned institute also referred to the debtor's family, but with certain limitations. Namely, if the father of the family sold or pledged his wife, son or daughter, the duration of the debt slavery was limited to three years.[3] So there was a common (solidarity) responsibility of family members for debt settlement.[4]

Similar legislative solutions are also true of other major civilizations, and most of all in Egypt. At the time of the dynasty of Egyptian Pharaoh Bakenrenef

[1]Klarić & Vedriš (2014) at 456.
[2]See articles 115-117 of the Hammurabi's Law in Bartulović (2014) at 25.
[3]Article 117 of the Hammurabi's Law in Bartulović (2014) at 25.
[4]A similar provision can be found in the English law applicable in Lombarda, where the debt settlement of one of the groups concerned all members. See Louis (1918) at 230.

(Bocchoris) (725-720) and perhaps much earlier, it was found that in the case of debt, the means of securing a debt was a debtor's property and not his body. Unlike Pharaoh Menes (around 3150 BC), who, as a means of securing a debt, determined pledging of the body and even the mummy of the debtor or his father, Pharaoh Bocchoris forbade debt bondage because the bodies of the subject belonged to the state.[1]

Under the aforementioned provisions of Egyptian law, there was an Athenian law at the time of Solon, who abolished the traditional Athenian practice of debt slavery in the event of debt failures. Namely, to the archon of Solon, the fulfilment of the obligations was secured by a personal guarantee.[2] By abolishing the debt slavery, (595/4 BC) Solon solved the socio-economic crisis and largely determined the new social order (social/"socialist").[3] The proofs of the debt slavery can be seen in the oldest preserved European law, the so-called 'The Gortyn Code' of the 5th century BC. Pursuant to the provisions of the Code (Table 1, Column II), debtors slaves are those who have been assigned to a lender based on a court judgment (*nenikamenos-addictus*) and who have pledged their body for the debt (*katameimenos-nexus*).[4]

The biblical books also contain provisions proving that there was an institute of debt bondage. [5] However, on the other hand, it is alleged that at least at the time when the Israelis came into contact with Egypt, debt servitude was not known. According to the Book of Exodus, it seems that slavery was known only in the case of a thief who had not returned the stolen property of his victim.[6] In the Book of Exiles (Book of the Alliance - the Covenant Act) it is stated that the debt service was limited to six years.[7]

Arranging the Problem of forced Settlement of the Claim in Roman Law

The legal procedure governing the relationship between creditor and insolvent debtor existed in Roman law even before the time of Roman emperors. According to this system, creditors also had the power over the life and assets of the insolvent debtor.[8] The main purpose and subject of this forced execution was the borrower as a person.[9] However, such a mode of enforced execution of a person had developed into a system where debtors' assets had become the main object and subject of custody. This transition lasted several hundred years, and we can

[1]Bartulović, Bodul, & Vuković (2013) at 913.
[2]Kurtović (1987) at 100.
[3]Erent-Sunko (2007) at 1013.
[4]*"Do not punish the one who takes the man who pledged himself or was convicted for debt"*at http://webcache.googleusercontent.com/search?q=cache:JJNP4bRYCQ0J:www.ius.bg.ac.rs/drakitic/gortinski_zakonik.doc+&cd=1&hl=hr&ct=clnk&gl=hr
[5]2 Kings 4, 1.
[6]Louis (1918) at 230.
[7]Louis (1918) at 230; Exodus 21, 1.
[8]Gratzer (2008) at 20.
[9]Cowell (1980) at 95.

distinguish at least two levels: a) Old Roman law under the XII Table; and b) weakening the creditor's authority through *Lex Poetelia* and *Lex Iulia*.[1]

In the earlier legislative period, under the Code Table XII, it was customary for a future debtor to pledge himself, his family and property as a guarantee to repay the debt to the lender. There was a possibility prescribed for solving the problem of a debtor who could not fulfil his obligation to pay the debt[2] with special legislation *per manus injectio* (so-called Verdict Order, circa 450 AD).[3] Namely, if the debtor could not fulfil his obligation to pay, he became the creditor's slave, and the creditor even had the right to kill him or cut him into pieces or even to sell him into a foreign country.[4] Although it was not clear to what extent this law was implemented, the debtor always ended up in debt bondage and he and his family could be sold as slaves. So the borrower was understood as a thing (*res*) due to the principle of *pact sunt servanda*, i.e. for delinquent or contractual liability.[5]

Over the time, the subject of the debt was becoming more and more the property of the debtor and less the body of the debtor. This form of development has been realised through the Lex Poetelia Act, 326 BC according to which it is determined that non-fulfilment of the obligation by the debtor becomes a criminal offense and that the unlimited right of the creditor to the life, property and family of the debtor is limited.[6] Accordingly, this law has renounced the right to kill, abuse or sell debtors and their families to slavery.[7] However, the debtor still had to pay the debt, with forced labour, and where the personal deprivation was replaced by debt forgiveness. If the debtor settled his debt, he regained his freedom.

One step further from the personal enforcement of the debtor over his property as a custody case (property sanction) was the adoption of *Lex Iulia (cessio bonorum).*[8] Under this law, the debtor had the opportunity to declare his inability to pay (insolvency) and voluntarily hand over his assets to creditors. Thus, Roman law separated the debtor as a person from his property and introduced the principle of equality between the creditors.[9]

Accordingly, we can conclude that at the beginning of the development of the Roman law the obligation (*obligatio*) did not consist in the legal duty to carry out the act, whose failure to fulfilment resulted in the possibility of the lawsuit, but it was the *obligatio* (*ligare* – to tie) that indicated that the borrower was materially and physically bound and subjected to the creditor's authority until the performance of the obligation.[10]

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[1]Gratzer (2008) p. 20.
[2]Omar (2004) at 4 et seq.
[3]Bartulović, Bodul, & Vuković (2013) at 914.
[4]"He who cannot pay with his purse pay with his skin." Brissaud (1912) at 564; Bartulović, Bodul & Vuković (2013*)* at 914.
[5]Cowell (1980) at 95 et seq.
[6]Gratzer (2008) at 20.
[7]Romac (2002) at 94.
[8]According to some interpreters the passage of this Law is attributed to Caesar and to the Augustus.
[9]Brunstad Jr. (2000) at 499.
[10]Proso & Štambuk (2008) at 901.

Institute for Forced Settlement of Claims in Croatian Medieval Rights

Since the study of the legal regulation of the institute of forcible settlement in the Croatian territory before the entry into force of the Allgemeines bürgerliches Gesetzbuch (ABGB) has an object that encompasses sources from different legal and political areas, it is important at the outset to distinguish their affiliation.[1] The basic feature of the medieval Croatian legal system is the image of imbalance and legal insecurity since a certain legal issue is often difficult to interpret because sometimes the sources refer to it only indirectly or not at all. Therefore, in order to identify the essential features of the Forced Settlement Institute in the period under consideration, this research will attempt to carefully interpret the sources of the statutory rights of the Slavonian and coastal cities, as well as the sources of customary and feudal rights where the issues of the title remained outside the scope of the urban law regulation.

Determining the basic features of the forced settlement of claims that are constant in Croatian law requires access to an analysis of that legal issue from the point of view of the substantive elements of that legal relationship. This is primarily the question of the authority of the organs who conducted the fulfilment of claims and the modalities of compulsory fulfilment, that is, the objects over which the forcible settlement was initiated. Under the influence of the Roman rule of law, which was valid in the Croatian medieval law, in some of the provisions of the city's law, the lender was authorized to arrest the debtor until he did not fulfil his obligation.[2] Such principles of execution of the fulfilment of the claim on the debtor’s personality are partly left under the influence of the glossary when leaving the private custody institute and the judicial bodies become competent for the procedure of enforcing the claim.[3]

Compulsory Settlement of Claims on the Debtor's Property

Research of medieval obligatory and legal relations on the territory of Slavonia, compared to earlier comment legal sources, has already been aggravated by the circumstance that the existing legal and historical literature was not further treated. Margetić considers this to be a consequence of the strong influence of Hungarian law that can often be interpreted through the privileges of the Slavonian

[1]At the end of the 16th century, the name of Croatia included the medieval area of Slavonia, where significant influence of Hungarian law was evident, albeit in the case of private law regulation. On the other hand, the area of Istria and Dalmatia was marked by the importance of statutory rights that was primarily aligned with the interests of the Venetian Republic, while the Republic of Dubrovnik, thanks to the autonomous status over a period of several centuries, succeeded in establishing a recognizable legal system known in the legal history as a statutory right of the medieval Dubrovnik municipality. See Kasap (2016) at 77-78; Beuc (1989) at 19 & 208.

[2]Beuc points out that private deprivation in Langobard law has also been conducted against the debtor, but also against the message, i.e. the guarantor to fulfill the debtor's obligation.; Beuc (1989) at 290.

[3]Ibid.

cities.[1] Furthermore, the investigation of this legal system in the area of medieval Slavonia cannot be accessed without the interpretation of Hungarian law, since in Croatia, Dalmatia and Slavonia there was no single system of legal rules governing mandatory relations before the entry into force of the Allgemeines bürgerliches Gesetzbuch (ABGB). Relevant sources for the interpretation of non-binding relations in the territory of continental Croatia are the provisions of the Slavonian Statute of 1273, and the Ilok Statute of 1525. The problem of forced compulsion is explicitly regulated by the *Tripartitum* provisions. After the entry into force of Werbőczi's Tripartitum in 1514[2] valid Croatian-Hungarian law can be interpreted by *Institutiones iuris Hungarici*[3] by the author Imre Kelemen from 1818, which in a certain way also provide insight into the peculiarities of the legal institute. Decisions of the Slavonian Parliament are one of the oldest Croatian documents from the medieval era and one of the few sources through which it is possible to interpret listed legal customs of Slavonia, for the most part procedural and criminal law.[4]

The provision of the Slavonic Statute of 1273, is important to determine the characteristics of a debt prison institute as a measure directed against a debtor who did not fulfil his obligation. This provision implicitly indicates in its content also the order in which the seized borrower's assets were accessed in order to ultimately reach the creditor's claim. It was forbidden to close a debtor who owns money or real estate. This way it was primarily necessary to seize the debtor's money to fulfil the creditor's claim, and only if he was not able to pay to seize his property. Suspiciously, the measure of debt was applied only in cases where the debtor did not have the goods to pay off his debt.

The particularities of the enforcement proceedings can be read out from the contents of Werbőczi's *Tripartitum*. Order point to a coherent and well-regulated procedural institute both in terms of judicial jurisdiction and in the order of settling the creditor's claim on the debtor's property. The enforced person could not have been taken away a larger amount of property that was equivalent to the amount the

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[1]Margetić (1992) at 25.

[2]Lanović (1929).

[3]Kelemen (1818). For more details look up at *Caput 24, De executione et aestimatione*.

[4]Similarly, the question of the debtor's liability to settle a creditor's claim was a regulated by the provisions of German customary law, which, by means of certain sources, undoubtedly left the influence and arrangement of this problem in the statutes of medieval Hungarian and Croatian towns. Thus, the provisions of Sachsenspiegel's debt service were recognised as an institution that obliged the debtor to fulfil the creditor's claim. In the provisions of Sachsenspiegel, the creditor was entitled to retain the debtor, provide him with food and allow him to make his debt. Specifically, this provision is in granting the creditor the power to detain the borrower by tying his legs. Such an arrangement was valid in the area of the German countries until the adoption of the rules of received Roman law. Blomeyer (1975) at 81. It can be observed in the provisions of the customary law of the Holy Roman Empire of the German Sachsenspiegel nation from 1225 at Kaller (2002). See provision: Book 3, Chapter 39, § 1-3: "Wenn *einer eigene Schuld vor Gericht fordert gegen einen Mann, die dieser nicht bezalen noch Bűrgen dafur setzen kann, den Richter soll ihm den Man ausantwrten fur das Geld, den soll er gleich seinem Gesinde mit Speise und mit Arbeit halten, will er ihn mit einer Fussfessel festbinden, das kann er tun; anders soll er ihn nicht peinigen*."

convicted person was convicted for.[1] If the creditor's claim was secured by a mortgage and the creditor was claiming it after the debtor's due date, the debtor was obliged to surrender. In cases of equal value, the enforcer had the right to choose the subject of the execution of the enforcement order. As mentioned above, if the settlement of the debtor's property was left without results, it was permissible for the debtor to be arrested on the condition that it had been contracted so earlier, the lawsuit sought for such conviction was allowed.[2] Settlement was always resorted to things in the borrower's estate. In the procedures regulated by the provisions of the *Tripartitum* law, the securing of future settlement of the loan claim was provided for. In such cases, the things that were pledged had been assessed earlier, when the obligation was incurred, and in line with the real value of things.[3] When it comes to the peculiarities of compulsory settlement of claims in the area where Croatian-Hungarian law was validated by indirect analysis of the institute of the general part of the obligatory law, i.e. securing the settlement of the claim by pledging the movable or immovable property, it is possible to conclude the characteristics of the forced settlement of the claim. Thus, the pledge of movable property to secure a debtor's obligation, according to Kelemen, is the real accessory agreement according to which the movable property was surrendered during the transfer of loan money, providing that it had to be returned *in specie* at the time of the settlement of the debt.[4] In the event of a failure, the pledge was sold and the creditor used the value of the pledge. On the other hand, when it comes to pledging of immovable property, Margetić doubts whether it was a pledge or a sale agreement for a certain time. Regardless of the legal nature of the immovable property, the forced settlement procedure was initiated by selling the property and the creditor's claim with the obligation to return the remaining value to the debtor (if any).[5]

German customary law is a legal source that undoubtedly influenced the development of Hungarian customary law, which was also true in Slavonian territory. The issue of the order of settlement of a creditor's claim in the aforementioned customary law is standardised by the same solutions as those from Slavonian medieval sources. In the event that the debtor was obliged to pay the sentence determined by the verdict, he initially had to confiscate the movable property and if the timing of the debt was insufficient to settle the claim, there was the possibility of pledging the debtor's immovable property. If the borrower did not cancel the pledge within one year the landlord would become the owner of the pledged real estate.[6]

Furthermore, although when it comes to the Slavonian area, the Ilok Statute, which regulated the legal system of a free royal city from 1525, i.e. from the period in which the provisions of the *Tripartitum* law were legally relevant in the

[1]Withdrawal of a larger amount of property has regularly led to new lawsuits for the correction of execution *ad correctionem executionis.*; See Werbőczi (1517) at 1723:33 § 3.
[2]See more in: II 68, III 28; Lanović (1929) at 392.
[3]See more in Lanović (1929) at 392.
[4]See Kelemen (1818) at II 537; Margetić (1992) at 31-32.
[5]Kelemen (1818) II 539; Margetić, (1992) at 32.
[6]Sachsenspegel 1, § 53 1-3, 2 § 41, 1-2. See more in Bauer (2009) at 74.

Slavonian area, approached the regulation of this issue in accordance with the principles that we had the opportunity to expose earlier when it comes to the provisions of the Werbőczi's *Tripartitum*. Forced Settlement is regulated in Chapters 7 and 8 of the Book of the Statute and the order of forced compulsion provided the following: "[...] settling in silver, gold or money as the primary way of settling claims within three days after the creditor's claims being filed before the competent court, and settlement in the value of movable property only if the debtor did not have the same thing."[1] In the event that he did not possess movable property the debtor's obligations had to be settled by the value of his real estate in the city area. Real estate was thought to be the value of home and garden, while real estate outside the city (meadows, pastures, arable land) were last in the order of settlement.[2] The Ilok statute is the only legal source that, when it comes to Croatian medieval law, exempts certain things from the system of forced settlement of claims, namely linens, suits and all other things that fall into the category of women's clothing.

According to the above mentioned provisions of medieval sources in the territory of continental Croatia, i.e. Slavonia, it can be concluded that there exist almost identical features of three legal sources in the period between the 13th and 16th centuries when it comes to the order of settlement of the creditor's claim. Initially, the claim had to be settled in cash, then in the value of movable goods (with the exception of the Slavonian statute which does not cover the above provisions) and ultimately upon the sale of real estate. It seems that the Institute of the debtor's protection was not recognised in the provisions of Slavonian customary law governing this issue. The exclusion of the essentially necessary things from the procedure of forcible confiscation of goods for the purpose of rendering the creditor is a feature recognised only in the provisions of the Ilok Statute.

Reflection on the chosen statutes of our coastal cities regarding the order of settlement of claims indicates similar features. In order to make a more systematic processing, the legal regulation of the topic of the title in numerous statutes of Dalmatian cities will be divided into two legal bases, the legal circle of Dubrovnik and Split, the affiliation which depends mostly on the geographical vicinity of smaller island communes.[3] Thus, in the following section, we are going to deal with the statutes of the islands of Korčula, Lastovo and Mljet and Ston, while in the wider area of the Split municipality we are thinking about the legal regulation present in the statutes of the islands of Hvar and Brac and the town of Trogir. The elaboration of the statutory regulation of the Dalmatian municipalities will be analysed as well as provisions of Šibenik and Pag Statutes. The Kvarner area will be analysed through the provisions of the Krk and Rab statutes.

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[1]See in Chapter 7, 5th book of the Ilok Statute (1970) Vol. at 97.

[2]Chapter 8, 5th book of the Ilok Statute

[3]The islands of Lastovo and Mljet had a special position within the Dubrovnik Commune, later the Republic. However, unlike the Dubrovnik area, these islands were self-governed. This is evidenced by the provisions of the statutes that we are dealing with, which are largely different if compared to the Statute of the City of Dubrovnik. See more at Statute of Mljet (2002) at 5.

It is worth mentioning at the outset that the sale of seized items in the Dalmatian communes was initiated in the presence of the municipal authorities and with special legal precautions.[1] Some statutes foresee the presence of fair members of the community in the process of assessing the value of the confiscated property while the value of the seized or sold goods had to be surrendered to the creditor with the presence of the Governor. The process of settling the creditors was sometimes facilitated by public documents, mostly notaries, which contained details of the amount of debt, in which case their execution was very easy by the decision of the noblemen and noble judges.[2] Werbőczi's *Tripartitum* provides for a formal settlement of the creditor's claim. The debates were conducted by the delegates of the first instance courts, with a mandatory announcement to the debtor about the exact time in which the execution was carried out and with the mandatory presence of the witness.

The value of the provisions of Dubrovnik Statute for the determination of debt prison in the event of non-disclosure of the creditor's claim will be further analysed below. [3] For the purposes of determining the order in which the claim is settled, however, the provisions of the statutes that are indirectly referred to the above mentioned issue should be interpreted with caution. Chapter XXXI of the 8th book of the statute directly refers to the settlement of the creditor in the case of the sale of real estate. It states that in the case of a purchase of a real estate the buyer has to pay the full price of the thing, and if he had not paid the Governor, he would have chosen with his court a commission that had to sell the buyer's goods until the price was settled. In case the value of the debtor's assets was insufficient to settle the creditor's claim, the institute of imprisonment was applied.[4] We consider that the provisions related to settlement in the text of the Dubrovnik Statute can be applied to the settlement of other claims, not just those that come from the sale. Unlike the Dubrovnik Statute, which pays little attention to the order of settlement of claims, the Korčula Statute describes in detail the settlement procedure. In the event of the non-existence of a claim previously recognised by the judgment of the debtor's property, they had to be seized in the following order. The first thing to be seized was furniture, then wine from the cellar, and finally the land, and if the land had not been enough, the borrower's house would have been seized. In the case the debtor's assets had not been sufficient to settle the creditor's claim, the debtor would have been imprisoned and was not released until the claim was settled.[5] The Mljet Statute, the Stone provisions, and the Statute of Lastovo do not contain provisions relating to the institutions of forced settlement of debts.

When it comes to the wider area of Split Municipality, further in the text we are going to deal with legal regulations of debt settlement in the statutes of the city of Split and Trogir, as well as of the islands of Hvar and Brač.

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[1]Beuc (1989) at 290. In some statutory provisions the forced settlement procedure is described in details. The example is the Statute of the island of Korčula that in the settlement procedure foresees the presence of the authorities of the municipal government, the chancellor and the governor. See The Statute of Korčula, Ch. CLXV:

[2]The Statute of Trogir (1988) I, 42.; The Statute of Rab, III, 12.

[3]See Kelemen (1818) at II 537; Margetić (1992) at 31-32.

[4]See Gratzer (2008) at 20.

[5]See chapter CLXV of the Statute of Korčula. Cvitanić (1987).

The Statute of the City of Split, referred to below, does not contain provisions which regulates the issue of settlement of claims in more details. The Statute regulates the question of forced settlement of claims in the repression provision.[1] This provision is specific as it concerns the settlement of the claim of a citizen of the city of Split who was robbed outside the city area or was claiming a debt from a foreigner. The specificity of the provision lies in the procedure preceding the forced settlement of the claim. The procedure started by filing a debt with a municipal officer who sought to settle the dispute peacefully in agreement with the civil servant of the commune from which the debtor came from. In the absence of a peaceful solution to the dispute, the Mayor and his courier, along with three judges and six counsellors, were obliged to determine the amount of claims and to request the Grand Chamber of the City of Split to impose a repression against the alien. By a document approved by the Grand Council-*carta repressalliarum* the lender could have demanded the confiscated property of the debtor in order to fulfil his claim irrespective of whether the debtor was a citizen of Split or another municipality.[2]

A more detailed question of settlement of claims is regulated in the provisions of Trogir Statute. In some of the provisions of the statutes related to the regulation of obligatory and legal relations, it is easy to see how a city commune was able to speed up the flow of goods and services and strengthen the trust in contractual relations.[3] The Statute further prescribes the order that must be respected in the case of forced settlement of claims irrespective of whether they were determined by a court judgment or by mutual recognition of the parties. Primary settlement had to be carried out on the movable property of the debtor (except on the bed) and on the animals, and if those things were not sufficient, it had to be resorted to the settlement on the borrower's real estate other than the home where the debtor lived. If even that was not enough to settle the claim, the lender could get into possession of the house and the bed and keep them until the time the claim was settled. In the event of non-payment of the claim, the creditor was authorised to require the detention of the debtor.[4] The specialty of the Trogir Commune is in the appointment of two capable assessors who were obliged to carry out an assessment of the value of the debtor's assets. Such regulation is a special feature of the Trogir commune.

The Statutes of the island communes, Hvar and Brač, do not contain provisions on settlement order, but the regulation of certain issues from the general part of the mandatory law in some cases defines the legal nature of non-fulfilment of the contractual obligation. In order to ensure the fulfilment of the creditor's claim in the notary documents of the Brijuni commune, it is often possible to recognise the provisions on the amount of the contractual penalty prescribed in the case of non-

[1]See book 6, chapter VI of the Statute of the city of Split.
[2]Cvitanić (1979) at 213; The same procedure is foreseen in order to settle claims in other statutes of Dalmatian cities. About the repressions in the Dalmatian statutory see Cvitanić (2002) at 715-722.
[3]See 1st Book of Reformations, Chapter 76.
[4]See: Book 1, Chapter 38 of the Statute of the city of Trogir.

fulfilment of the contractual obligation.[1] Such provisions are undoubtfully penal, and in the first place they sought to protect the trust between the parties, and on the other hand strengthen the meaning of respecting the contractual obligations – *pacta sunt servanda*. The Hvar Statute, other than the other statutes we have mentioned above, especially focuses on the protection of the creditor in forced settlement by directly allowing the choice between means of forcible settlement, settlement on movable property or real estate or debt prison where the order of use of the funds was not conditioned.[2] In small island communities such as Brač and Hvar, forcible settlement of claims between natural persons, even though it was the 14th century, it did not fall into the category of frequently used legal institutes. When it comes to relationships in which the island community appeared as a lender, we should not be surprised by the advantage of the Municipality's claims in relation to other receivables.[3]

When it comes to northern coastal communes, it should be mentioned that the Rab statute from the first half of the 14th century contains (the oldest preserved statute of Rab which was made around 1326, but it is considered that Rab had a statute before that year) and its provisions relating to forced exercise of claims. Thus, it is stated:

> "[...] *if a debtor has pledged to his lender by a public document or a note with a penalty of double (reimbursement) of costs, if the debtor does not pay the debt in due time, we will, if the lender has announced the auction for the property of the debtor, enter into possession of a double charge (reimbursement) of the costs according to the contents of its public document or record of the debtor's property in accordance with the order of Rab 45 days after the publication; If the borrower comes and wants to pay before the expiration of his debt deadline, the lender should receive his principal with a quarter of the penalty and the cost and nothing more [...]. Additionally, if the deadline for some public documents or charts is missed and the period of 10 years has passed, then the punishment remains on the appraisal of the will of the curia of Rab, namely, whether to punish or not.*"[4]

The analysis of the relevant provisions of mediaeval sources in the area of coastal Croatia shows the existence of almost identical features when it comes to ordering the creditor's claim, as well as conducting settlement proceedings. In the provisions of the majority of Dalmatian statutes, the claim was primarily settled in money, then in the value of movable property and ultimately upon the realization

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[1]The institute undoubtedly reminds the Roman institute of a contractual punishment (*stipulation peonage*). See Book 2, guava VII of the Statute. Hereinafter the Statute of Brač cited by the Statute of Brač, Brač Medieval Law (2002). The same provision is found in the Statute of Hvar, Book 2, Chapter XXXXIII, The Statute of Hvar (1991). The identical nature of the provisions of the two island communes is the consequence of the adoption of the provisions of the Brač Statute of 1305 in the drafting of the Hvar Statute of 1331 and the fact that both communes had a common governor until 1420.

[2]See book 2, Chapter XVII of the Statute of Hvar (1991).

[3]See the Book of Reformations 3, Chapter XI of the Statute of Brač (2002).

[4]3rd Book, Chapter 12, see in Marge tic & Strčić (2004) at 135.

of the real estate. Institutions for the protection of debtors who were previously not recognised in Slavonian customary law were applied in the practice of municipal authorities, and the prison as the last instrument against insolvent debtors is evident without exception in all these statutory regulations. Therefore, a special attention is paid to it.

Compulsory Settlement of the Claim on the Debtor's Person

One of the characteristic institutes used against insolvent debtors in enforcement proceedings in medieval law of some Dalmatian communes is a debt prison, previously known from ancient legal systems.[1] Such use of the institute is in accordance with the principle that an insolvent debtor must be imprisoned in a public jail until the moment the debtor has fulfilled his obligation.[2] Often, the provisions of legal sources pointing to the institute of debt prison contained a provision according to which the insolvency debtor was enabled to surrender the entire property to the lender with the list of active and passive assets. [3] The reason why this institute stands out after consideration of the creditor's claim on the debtor's property is the circumstance that the application of this institute in all the sources discussed below is subsidiary, the purpose of which is to emphasise that the institution of a prison sentence could only be applied if the borrower did not have sufficient assets to settle the claim.

One of the oldest sources (from the 11th to 12th centuries) which refers to the use of this institute as a specific means of fulfilling the borrower's obligation is the Supetar capitulary.[4] The provisions of Chapter 214 emphasise the interdependence of the servant and his master who could only cease paying the amount due with the obligation to respect the rights of certain family members of family real estate. The application of the long-term imprisonment, except in the Police area, was also frequent in Slavonia, as evidenced by the provisions of the Regulations of 1273, item 7, according to which it becomes clear that the application of the long-term imprisonment only came into subsidiary consideration against the debtor who did not have money or assets to meet his obligation.[5]

Before the creditor's settlement procedure was standardised by the provisions of the statutory law and was solely devoted to the jurisdiction of the courts, i.e. municipal authorities, there was the possibility of the creditor to independently discharge the debt of the debtor who owed him the fulfilment of the obligation. In notarial documents dating from the second half of the 13th century, as Radić points out, one can see the principle that authorises the creditor that in the event of a claim alone, i.e. without special court permission, not only to arbitrarily seize the

[1]Radić (2005) at 99, with specific reference to the literature listed in fans. 4 and 5.
[2]Beuc (1989) at 289.
[3]Such use of an *cessio bonorum* institute is also emphasised by Beuc. Beuc (1989) at 289.
[4]The use of the institute in the history of Croatian bankruptcy law is also referred to by: Bartulović, Bodul & Vuković (2013) at 930; Provisions of the Supetar capitularies are available in Margetić, Sirotković & Bartulović (1989) at 21.
[5]Margetić, Sirotković & Bartulović (1989) at 31.

debtor's property, but to also personally deprives him of his liberty until full satisfaction is obtained.[1] It should be noted that the self-help institute eventually disappeared, and the institute of forced settlement, as it is stated in the sources, was entrusted to the competent judicial bodies of the municipality.

The use of this institute in the later statutes of Dalmatian cities cannot be directly determined, however, by indirect interpretation of some of the provisions that primarily regulate the remuneration of prison guards in order to perform their duties, there is no doubt that debtors who did not settle their due debts constituted a special category of prisoners of certain Dalmatian municipalities.[2]

Inspecting some of the provisions of the Statute of the City of Split and Trogir it can be undoubtfully concluded that there were two categories of prisoners, those who were deprived of their liberty for debt and those who were closed for some other incrimination.[3] The debt prison did not lead to the termination of the debt obligation, but was applied as a means of coercion that sought to influence the debtor in order to fulfil the obligation in the shortest possible time. In the case of debtors who had the assets needed to fulfil their obligations, the prison ended at the time of a debt settlement, while in the case of a debtor who did not have his or her own property, and no person who would assume his obligation the length of imprisonment was unclear.[4]

Trogir's statute in the above-mentioned case of a debtor without property who disregarded the three creditor's invitations for the fulfilment of the obligation anticipated a special procedure for placing the debtor under the jurisdiction of the town of Trogir for the time which, depending on the circumstances, had to be determined by the mayor and court courier. Whether the debtor would not have reached an agreement with the lender for forced residence under the supervision of the commune or the creditor had been extended.[5] In accordance with the mediaeval views on the protection of creditors from debtors' misuse, the provisions of the statute were attempted to change to ensure fulfilment of the

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[1]Radić (2005) at 102; Barada (1947-1951) [e.g.. I, p. 376, doc. 204: *sua auctoritate sine requsitione curi¸e , possit intrare in bonis … et ipsum (tj. debitorem) capere et (eum) personaliter tenere donec … sibi fuerit integre satisfactum; ali i], passim.*

[2]Radić (2005) at 99.

[3]See provisions: The Statute of Split, (book. II, ch. XLIX); The Statute of the city of Trogir; The Statute of Zadar (1997) (I, gl. XVII-XIX) 19.; The Statute of Zadar: with all reformations, i.e. new provisions passed until 1563 / newly released, with critical apparatus and glossary of people, places and things, translated into Croatian language by Josip Kolanović and Mate Križman, Zadar, The branch of the Matica Hrvatska, Zagreb, Croatian State Archives, 1997: See also the provision of the Statute of Dubrovnik, Book 8, Chapter XXX. The particularity of the Dubrovnik settlement of long-term custody is the circumstance that, unlike other coastal statutes, this statute foresaw the surrender of the debtor to the lender, provided he wished to receive it. Only if the creditor refused to accept the debtor, the governor had undertaken to close it to Kaštela until he settled the debt or reached agreement with the creditor. In the case of a debtor's escape the statute stipulates closing the debtor in prison or in into his room. The Statute of the City of Dubrovnik drafted in 1272, Dubrovnik, 2002; The Statute of the City of Dubrovnik drafted in 1282.(based on the critical editions of the Latin text of B. Bogišića and K. Jireček), adapted and translated into Croatian language by Šoljić A., Šundrica Z., Veselić I., Dubrovnik (2002).

[4]Radić (2005) at 100.

[5]The Statute of the city of Trogir, I, 26.

creditor's claim. With regard to the Reformation of the Trogir Statute of 1425[1], it foresees the forcible detention of a debtor who has no movable property and the debt is no more than twenty monetary units. Another Reformation of the Trogir Statute of 1427[2] sought to elaborate in more details the position of a debtor whose claim was confirmed by the court confession or judgment. Pursuant to the contents of the above mentioned provision, a debtor who did not fulfil his obligation was allowed to attempt to monetise his goods in order to fulfil the obligation. If he failed to do so, he had to be placed in the city's lodge until it was fulfilled. The imprisonment was determined as the final measure against the debtor who refused to be individually placed in the lodge.[3] The prison had to last until the fulfilment of the obligation.

The regulation of the position of debtor as the economically weaker side was in favour of the provisions of the Hvar Statute that in the smallest details regulates the process of settlement of the creditor's claim in case the debtor did not voluntarily settle. Once the claim had been established in the proceedings before the competent municipal bodies, the debtor was obliged to surrender the movable property pledge as a guarantee for the future settlement of the claim if the claim was less than five monetary units. Within eight days after the pledge had been given, the creditor was authorised to sell the pledge at the auction to settle the claim if the debtor failed to fulfil his obligation. However, if the debtor did not pledge his movable property, the creditor was empowered within three days after the claim had been established to put the debtor in jail or to self-settle the value of the debtor's movable property.[4] The debtor had the opportunity to set himself free from the prison if he was able to hand over the movable property if the value was one third higher than the amount of the debtor's obligation. [5]

The arrangement of personal enforcement was detailed in another medieval Dalmatian statute, and the Statute of the Municipality of Pag from 1433.[6] The settlement was initiated by the forced introduction of the debtor in front of the Mayor and the Court of Pag where he ought to pay the debt or provide the appropriate guarantee for what he owed. If he did not want to pay, he was kept in the municipal jail until the lender paid the debt. The basic function of the prison was to pay the debtor or hold the suspect. If the debtor was financially fit, then a time limit of eight days was set for the lender's debt payment or he had to hand over the property list in his possession to the court within the same time for their sale at auction. A debtor who did not settle for the debt was held daily under the

[1]The Statute of the city of Trogir, Ref. II, 9.
[2]Ibid, at ch. 14.
[3]The modalities of the long-term imprisonment in the form of accommodation in a town's lodge or prison, as a final measure against debtors who did not fulfill their obligation can be seen also in the provisions of the Hvar Statute. See: The Statute of Hvar (1991) Book II, Chapter XVI.
[4]The creditor's right to settle the value of the debtor's property could only be considered if the creditor's claim was greater than 40 monetary units. See: The Statute of Hvar (1991) Book II, Chapters XV and XVI.
[5]The release of the debtor from the prison was possible even in private disputes between the creditor and the debtor, but also in the case of a dispute between the municipal authorities and the debtor. See: Book II, Chapter XVII of the Croatian Statute
[6]Hereinafter the Statute of Pag is cited by Čepulo (2011) at 7.

municipal jail for as long as he had not fully paid the debt. If the borrower had departed before the full payment of the debt, he should have been kept in the municipal prison until he fully disbursed the debt to the lender. Similarly, if his property was not sold for public debt, the debtor was obliged to remain under the municipal detention until full payment of debt.[1]

In addition to the property sanction of non-fulfilment by the debtor and according to the Rab statute there was an institute of so-called personal pledge (personal custody).[2] Namely, the Statute stipulates that "if someone pledged to someone to the debt or has received custody or trust, and cannot return the thing or mean fully lost the thing he has taken into custody and cannot return it, he or she is liable to the lender personally." This provision concerned only fellow citizens in mutual relationship, and not the aliens. [3] Consequently, the Rab statute explicitly stipulated that if a son is obliged to a foreigner outside of Rab, then his obligation is valid and binding, and for such a debt the curia of Rab will even resort to personal execution against the son-debtor [...*"let the curia keep personally detain him in the area of Rab, until he fulfils the obligation* ... ").[4]

Sources of the rights valid in the area of continental Croatia, which largely date from the 15th and 16th centuries, do not mention personal confiscation as a means of compulsorily fulfilling the debtor's claim but rather focus attention on the order of settlement of claims on the debtor's property. Only the t *Tripartitum* legal provision for the arrest of the debtor is provided, provided that the attempt to settle on his property remained without results. Finally, if we look at the content of the provisions of the comparative Dalmatian statutes, it can be seen that there is no place to doubt that the subject of custody in medieval Croatian law was primarily the debtor's property and only the subordinate of his person.

Concluding Remarks

The analysis of the relevant provisions of medieval sources in the territory of Croatia in the period between the 13th and 16th centuries shows the existence of almost identical features when it comes to the elements of forced settlement of the claim, i.e. the order of settlement of the creditor's claim and the execution of settlement procedure. As in the provisions of the mediaeval sources in the territory of continental Croatia and in the provisions of most Dalmatian statutes, the claim was primarily settled in money, then in the value of movable materials and ultimately upon the realization of the real estate. The imprisonment as the last instrument against insolvent debtors is evident without exception in all of these statutory regulations. However, the instrument is referred to only in exceptional cases, i.e. when the borrower did not really have any assets to settle the debt. Since virtually identical solutions contained in a

[1]Book 4, Chapter 15, see Čepulo (2011) at 261.
[2]Hereinafter the Statute of the Rab commune is cited by: Margetić & Strčić (2004). The Statute of the Rab commune from 14th century. Rab- Rijeka, 2004, The Statute of Rab, III, 11.
[3]Book 3, Chapter 11, see: Margetić & Strčić (2004) at 133.
[4]Book 2, Chapter 18 at 117.

large number of legal sources from different legal areas it can be concluded that legal regulation of this issue must have been taken from the same sources. The basic principles of dealing with insolvent debtors are undoubtedly taken over from Roman law, while the influence of German customary law (which has largely received the Roman solutions) is to a lesser extent represented in sources in the area of continental Croatia. There is a similarity to the provisions of the Slavonian statute of 1273 with the provisions of Sachsenspiegel. Particularities of the statutory regulation of Croatian medieval law are manifested primarily in the protection of the debtor in the form of the exclusion of his personal belongings from the procedure of forcible confiscation of property both in the Slavonian and coastal areas, but also in the repetitions that have frequently been expressed as measures against insolvent debtors in some Dalmatian communes. When it comes to forced labour, it is under the jurisdiction of the municipal judicial organs presided over by the mayor, and it can safely be asserted that it has received a stricter form in the later elections and is characterised by formal and modern legal arrangements.

It can be concluded that the procedure of forcible settlement and in the provisions of medieval sources was recognised as an established instrument which had the same function and content as in modern law, with the only exception, the impossibility of substituting the unpaid obligation of the debtor by imprisonment. That is why we can safely consider it as the forerunner of today's enforcement process.

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Ancient Cypriot Kingdoms: Political and Legal Aspects of Their Regimes (1200 BC to 30 BC)

Charalampos (Harry) Stamelos

Abstract

This article presents the political and legal aspects of the Ancient Cypriot Kingdoms from 1200 BC to 30 BC. It is about the historic period during which the various Ancient Cypriot Kingdoms (there had been twelve at first, but later on they became ten) had to pay taxes to various rulers. These rulers were: the Assyrians, the Egyptians, and the Persians. Alexander the Great established a system of autonomy, expanding the autonomous systems of the previous rulers. However, in 312 BC under the Ptolemaic rule, Cyprus was one province, whilst various local institutions remained unaltered. Finally, in 30 BC Cyprus became a Roman province. Public law was based on the system of the Kingdoms of Mycenae since the Greek Kings and Princes established the Ancient Greek Kingdoms after the Trojan War in 1.200 BC The King had all the powers under his control. Private law also existed and there is a significant written contract, the Tablet of Idalion, being considered as the first written contract in the world. Less evidence exists concerning criminal law.

Keywords: *Ancient Cypriot Kingdoms; Ancient Cypriot Law; Political Aspects; Legal Aspects*

Introduction - The Political Regime of the Ancient Cypriot Kingdoms

The twelve Ancient Cypriot Kingdoms, including a capital city and its provinces, were:

1. Salamis[1];
2. Hytroi (later incorporated into Salamis)[2];
3. Paphos[3];
4. Idalion[4];

[1]Herodotus (7.90) and Strabo (14.6.13) mention that Salamis was established by Teukros the Telamonios from Salamis of Attica. It is estimated that this happened either in 1202 or 1201 BC. Hadjiioannou (1990) Vol. E at 143.

[2]The Kingdom of Hytroi was established by Hytos. Hadjiioannou (1990) Vol. E at 131-139.

[3]Agapenor from Arcadia established Paphos after the Trojan War According to Pausanias (8.5.2). The King of Paphos was also the Head of the Church of Aphrodite (Diodorus Siculus, 20.47.1). See Supplement I.

[4]Idalion was established by Halkenor. See Hadjicosti (1997).

5. Tamassos (later incorporated into Idalion)[1];
6. Kition[2];
7. Kourion[3];
8. Amathous[4];
9. Marion[5];
10. Solon or Soloi[6];
11. Ledra[7];
12. Lapethos[8].

Each Kingdom had its own story.

All these Kingdoms were founded by the Greek Kings and Princes after the Trojan War, at about 1200 BC, based on the model of the Kingdoms of Mycenae[9].

Without entering into details, we examine the main political and legal issues regarding the Kingdoms of Cyprus from 1200 BC to 30 BC, when Cyprus became one Roman province.

Cyprus was known as the Kingdom of Alassia before the 1.200 BC.

Cyprus and later the Kingdoms were obligated to pay taxes to different Kings from various Empires.

From 709 to 669 BC the Kings of all Ancient Cypriot Kingdoms paid taxes to Assyrians.

There is written evidence that in 673 BC (prism inscription from Nineveh, of Essarchadon, King of Assyrians) ten Cypriot Kings paid taxes to the Assyrian King: Akestor of Idalion, Pylagor of Hytroi, Eteandrus of Paphos, Damasos of Kourion, Atmesus of Tamassos, Bususus of Kition, Kisus of Salamis, Eresus of Soloi, Unasagusus (Onassagor) of Ledra, and Damusis of Amathous.

The Cypriot Kingdoms were autonomous during the Assyrian rule. This meant that the Kings were able to organise their Kingdoms in their own way. Actually, the only obligation of the Cypriot Kings was to pay the tax to the Assyrian King[10].

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[1]Tamassos is considered to be one of the oldest Ancient Cypriot Kingdoms. Stamelos (2018) at 3, n. 10. Homer, *Odyssey*, A 184: 'in Tamassos I give iron, to receive copper'.

[2]Stamelos (2018) at 3.

[3]Stamelos (2018) at 3.

[4]Stamelos (2018) at 3.

[5]Stamelos (2018) at 3.

[6]Stamelos (2018) at 3. Herodotus mentions that the city of Soloi was founded on the advice of Solon the Athenian and hence the city was named in his honour. Soloi was one of Cyprus' ancient city-kingdoms. In 498 BC it took part in the revolt against the Persians. Later on, Soloi sent help to Alexander the Great during his campaigns in the east. The city flourished during the Hellenistic, Roman and early Byzantine periods. The city of Soloi was located at the top of a hill overlooking one of the most fertile areas in north-western Cyprus. See Supplement II.

[7]Stamelos (2018) at 3.

[8]Stamelos (2018) at 3.

[9]Cannavò (2008) clearly states that 'The Cypriot Kingdoms are traditionally viewed as a Mycenaean-type institution, introduced on the island by Greek-speaking people who arrived in Cyprus after fleeing the collapsing Mycenaean world during the 12th century BC'. See Supplement III.

[10]Radner (2012).

From 565 to 547 BC the Kings of all Ancient Cypriot Kingdoms paid taxes to Egyptians.

King Amasis of Egypt allowed a regime of autonomy to all Kings of Cypriot Kingdoms.

According to Diodorus Siculus, Amasis was not a hard ruler, but an admirer of the Greeks and Cypriots. Many Greeks were his soldiers and he had a positive view for them. This is why the period of the Egyptian rule did not last long. Again, the Kings could organise their Kingdoms in their own way. During the Egyptian rule, as during the Assyrian rule,

From 546 to 332 BC the Kings of all Ancient Cypriot Kingdoms paid taxes to Persians.

The regime of autonomy during the Persian rule was almost identical to the regimes during the Assyrian and the Egyptian rules. However, Persians were harder rulers than the Assyrians and the Egyptians. This is why the Cypriots and the Greeks attempted many times to throw them away from Cyprus.

In 499 BC an uprising against the Persians in parallel with Ionians failed. In 461 BC Charitimedes, the Athenian, with 200 ships, failed to beat Persians who remained the rulers of all Ancient Cypriot Kingdoms. In 449 BC Kimon, the Athenian, with 200 ships, failed again against the Persians. After two more riots, in 386 BC the Athenians and the Greeks signed the Antalkideios Peace Agreement in Soussa, with the Persian King Artakserksis. Evagoras the First (411-374 BC), King of Salamis, was left alone, and he signed also an agreement with the Persians, whilst he failed to unite all Cypriot Kingdoms.

The three entirely saved speeches of Isocrates ‘Evagoras’, ‘Nicocles’ or ‘Cypriots’, and ‘To Nicocles’ provide us with useful information and evidence regarding the Ancient Cypriot Kingdoms.

In 332 BC Alexander the Great finally won the Persians. Cyprus was under his rule. He allowed autonomy of the Cypriot Kingdoms. Later, Cyprus was part of the Ptolemaic rule (since 312 BC) under the King Ptolemeos the First, King of Egypt and Cyprus. Although Cyprus remained under the Ptolemaic rule, there is evidence that different areas had autonomy and various rulers, mainly different assemblies[1] (like in Ancient Athens) and a governor.

Finally, in 30 BC Cyprus became a Roman province. Later on, the Byzantine rule (330-1192), the Francs (1192-1489), the Italians-Venetians (1489-1571), the Turks (1571-1878), and the English (1878-1959) took control on the island until its independence in 1960. Unfortunately, in 1974 Turkey took 42% of Cyprus and until today the ‘Cypriot problem’ remains an unsolved issue.

[1]Stamelos (2018) at 1-33.3

The Legal Regime of the Ancient Cypriot Kingdoms

Public Law

The King in every Ancient Cypriot Kingdom had the full power to legislate, to execute and to try all important matters. All three powers, the legislative, the executive and judiciary were invested in and held by him. He had unlimited power to set rules, to order the citizens to obey his own rules in his own way, and to be the Supreme Judge on all significant disputes and to dissolve such disputes in the most just way, in his own opinion. This system was not democratic obviously, it was autocratic. Of course, people around him helped him to maintain the control on his subjects. Gerginoi and Promalagges were policemen and interrogators to find out what was wrong or illegal[1].

For example, if someone committed the crime of tax evasion, a trader or a man of commerce, then he had to appear before the King, to explain what happened, and if he had broken the rules, he had to pay all the taxes he owed. But if the policemen applied the rule wrongly, then the interrogators had the power to set the arrested person free, even before appearing in the premises of the palace to apologise before the King.

The King was the leader of the Army and in Paphos the King was the Head of the Church (of Aphrodite). The King was the owner of all the land of every Ancient Cypriot Kingdom, unless he transferred the ownership or the possession of the land to an officer or a person of his choice. The King was the owner of the mines and he could rent them to the persons of his choice to get almost all the wealth out of it. This is why the Kings were so rich. The wealth of the Cypriot Kings was well known in Greece and the example of Kinyras is specifically mentioned as an example of enormous wealth. In that regards, the King had a legitimate wife and a yard of other women along with slaves to work for him. The luxurious life of the Kings was something logic to the minds of all their subjects. Part of taxes was used for the taxes to foreign Kings (Assyrians, Egyptians, Persians), another part of taxes was necessary for ships and walls (defence of the Kingdom, ships were built only in some Kingdoms, like in Salamis and Paphos), and another part of the taxes was used exclusively for the luxurious life of the Kings. Of course, the richest persons had the obligations to fund sport games, theatre plays and building of warships.

However, in Idalion, in Kourion, and in Marion after the communication with the Athenians, some evidence of democratic rules was found.

More specific, in Idalion the Tablet of Idalion was found in 1850 (dated about 480 BC). At this Tablet, which is the first known written contract in the world, the King and the citizens of Idalion (an element of democratic rules) agreed with Onassilos and his brothers to pay him money and give him land in order that he and his brothers provide medical help to the soldiers wounded at the war against the Kitians and Persians[2].

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[1]Isocrates, Evagoras.

[2]See Supplement IV.

Kitians with Persians wanted to conquest Idalion (today the city is Dali, close to Nicosia), as Kition (today the city is Larnaca) was under the control of Phoenicians (the only Kingdom which remained under the control of Phoenicians who arrived in Cyprus much later than the Greeks).

Also, the Tablet is placed in the Cabinet des Médailles National Bibliotheque of Paris (Bronzes 2297) and the true copy made by French artists is placed in the Museum of Nicosia and one more true copy is placed in the Museum of Idalion today in Cyprus.

As Georgiadou states: 'the Tablet attests the first system of social security known so far: Shortly after the war, the City-Kingdom of Idalion had a social organisation that allowed, or forced, the City to take care of the injured citizens by public expense. Even more remarkable is people's participation in the institutions of Idalion in support of the King, who is presented as having the total control over his citizens. In the text, the King and the City (citizens) always appear in association with each other as the two main components that make and execute decisions, having equal responsibilities in front of goods and people. This combination, "King and the City", is mentioned six times in the inscription that is each time when the decision-making authority has to be documented'[1].

In Kourion, there is written evidence mentioning the 'representatives of the people' and in Marion there have been found coins having the word 'Marieon' meaning 'in the name of the people of Marion' instead of having only the name of the King.

This evidence indicates elements of democratic rules in some Cypriot Kingdoms. However, this could not alter the general system of the Ancient Cypriot Kingdoms where the King had all the powers under his control.

Private Law

The right to private property existed in Ancient Cypriot Kingdoms. Strabo clearly mentioned that Cypriot Kings transferred the ownership or the possession of forests to private individuals[2]. The Tablet of Idalion proves that there were certain rules regarding contracts and torts. Written evidence (script) from Pyla (5^{th} or 4^{th} century BC) clearly states that 'Aristodemos used this farmland he for himself and resided in a house belonged to this farmland without paying. So, he must pay for his residence and the use of this farmland according to the law'. This

[1]Georgiadou (2015). The author continues to add the following very important notes: 'Apart from this participation, the people of Idalion possess two more important rights: they appear as the owners of land (lines 8, 17) and they possess their own treasury (line 6). Therefore, except for the royal land and treasury, ancient Idalion also managed public lands and a treasury. This means that the city had two sorts of income-royal and public-each one managed separately. Public property could not be used without the consensus of the people. However, the Tablet also suggests that the agreement of the people was also necessary for the disposal of the royal property: although the payment of the physicians was only based on royal land plots, the donation of those plots was made by the King and the city (lines 7-8, 16-17). This can only be explained on the premise that royal land plots were not part of the King's personal property, but they belonged to the whole community although the King was still responsible for managing this land.'

[2]Strabo, XIV, 6, 6, 684.

means that there was a judgment imposing Aristodemos to pay rental for lease of the land and the house based on law provisions related to lease contracts.

In the area of family law, we assume that monogamy only permitted and polygamy was strictly forbidden. Even the King was allowed to have only one legitimate wife. The yard of women and slaves appeared later, during the Persian rule but still polygamy was forbidden, even for the King).

According to Pseudo-Skylax's[1], Marion and Amathous ports were lifeless. However, in Salamis, Solon and Paphos ship activities were obvious in the respective ports. This is why we assume there were rules of maritime law and of maritime labour law. It is possible that the Rhodian Laws were applied, since such Laws were well known to all Greeks, Romans, and later also to the Byzantines and applied extensively to the entire Greek world at those times.

Sport games and events were taken place in Cyprus. A whole stadium was found in Kourion and a whole gymnasium (gym) was found in Salamis. Cypriot athletes took part in the Olympic Games. Heracleides of Salamis was the winner in track-stadion, 144th Olympic Games, 204 BC, Dimitrios of Salamis was the winner in stadion, 252nd Olympic Games, 229 AD and also in pentathlon he was the winner in stadion and in pentathlon in the 253rd Olympic Games, 233 AD and in stadion in the 254th Olympic Games, 237 AD[2]. The rules and regulations of sports in Cyprus and in Pancyprian Games (in Salamis, Kition and Paphos) probably were similar to the rules and regulations of Ancient Greek Sports Law.

Criminal Law

Orlando stated that 'the Cypriots keramon call the desmoterion'[3]. This means that holding a convicted person was the case as this was in Athens, and perhaps there was also a penalty of imprisonment. We also assume that other penalties were the death and exile or the confiscation of property and fines.

Crimes probably included murder, theft, fraud, bodily harm, trespass, treason and defamation. Unfortunately, we do not have much evidence regarding criminal law there.

Conclusion - Synopsis

As we can see, the history of the Ancient Cypriot Kingdoms was rich and very interesting. We know that the model of the Kingdoms was based on the Kingdoms of Mycenae due to the establishment of those Kingdoms by the Greek Kings or Princes after the Trojan War (1.200 BC). We are also informed that Assyrians, Egyptians and Persians ruled the island and collected taxes. Nonetheless, the autonomy of the Kingdoms was respected until 312 BC, when they officially ceased to exist under the Ptolemaic rule. However, practically they still existed in some way (mainly through assemblies) until 30 BC, when Cyprus became a

[1]Shipley (2011).
[2]Stamelos (2018).
[3]Orlando (2014) E. 387, 1.99-100

Roman province. It is worth pointing out that under the Roman rule, Roman law was applied in parallel with the Hellenistic rules as well as with the customs which had originated from the Greek and Cypriots rules at previous times.

Concerning Public law, all powers, legislative, executive and judicial were held by the King. The King was the Leader of the Army and even the Head of the Church of Aphrodite in Paphos. Policemen and interrogators (Gerginoi and Promalagges) assisted the King to apply the rules. Taxes were collected for the King and for building defence walls and ships (ships were built only in some Kingdoms.

Private law provided for ownership on land and goods as well as for contracts and civil wrong. We assume there were specific rules for contracts and torts, and we assume there were rules regarding labour contracts, maritime issues, as well as sports.

The political and legal regimes of the Ancient Cypriot Kingdoms still draw our attention today and we hope that new evidence may be found and shed more light to our knowledge on those regimes.

Supplement I

Epaphos was the mythic founding father of Paphos. Epaphos was the son of Zeus and of Io. Hera asked Kouretes from Crete to kidnap the baby, but they send it to Egypt (Apollodoros, 2.1.3-4). Epaphos became King in Egypt; he married Memphis, the daughter of Nile. Epaphos and Memphis gave birth to a girl, Libya. Poseidon married Libya and they gave birth to Agenor and Vilos. Vilos had a son, Pygmalion. Pygmalion was King of Paphos and grandfather of Kinyras. The daughter of Pygmalion, Paphos, was the mother of Kinyras[1].

Supplement II

A fertile valley with the river *Potamos tou Kampou* lies along the west side of the hill. In the eastern part of the coastal valley the Swedish Archaeological Expedition (1927) located the city's natural port which was circular in plan. The city's size has been estimated but apart from the ancient Theatre, no other architectural remains have been unearthed. The Soloi and Vounoi excavations were conducted from 1927 to 1931 by the Swedish Archaeological Mission. From 1965 until the invasion of 1974 the city of Soloi was excavated by the University of Laval, Quebec as well as by the Department of Antiquities of Cyprus which excavated several tombs in the area around Soloi. The Roman Theatre at Soloi was excavated in 1929 by the Swedish Archaeological Mission and is dated to the 2nd or the 3rd century AD. The Theatre was built on the north slope of the hill very close to the coast. The auditorium (which was partially visible at the highest point of the hill's downward slope prior to the excavations) was cut into the hill's rock. Between the years 1962-1964 the auditorium was entirely rebuilt. The auditorium is 52m in diameter and it had limestone seats. The semi-circular orchestra was 17m in diameter and was separated from the auditorium by a low parapet of

[1]See also Mitford (1963).

limestone slabs. Its floor was of cement resting on a substratum of pebbles. The stage was rectangular (36,15 X 13,20m) and only its platform survives today. Two entrance passages (*parodoi*) provided access to the auditorium. In 1931 the Swedish Mission discovered '*Cholades'* site (on a hill 250m away from the west gate of the ancient town's designated walls), a large complex of five successive temples dated from 250 BC until the beginning of the 4th century AD. Two of these temples were dedicated to Aphrodite *Horeia*, two to Isis and the fifth to Serapis (beginning of 4th century AD). During the period between 1965 and 1974 Laval University, Quebec, consistently excavated various points in the location known as '*Palaia Chora'*. In the north-eastern part of the hill the mission discovered the remains of an early Christian basilica. The remains of a large paved space (possibly the city's Roman *agora*) were also uncovered and at the lowest part of the hill's north side the remains of various buildings, belonging to chronologically successive periods, were unearthed. On the hill's acropolis monumental walls were excavated and at the necropolis (which is situated to the southeast of the city) 28 tombs were unearthed dating to the Cypro-Geometric up to the Late Classical period. Finally, in 1972 the Department of Antiquities, Cyprus, excavated tombs in the necropolis of Soloi. All the tombs had an irregular circular shape with a rectangular *dromos* and they are cut into the rock. These excavations demonstrated that the necropolis of Soloi was in use between the early Geometric and the late Archaic periods.[1]

Supplement III

This thesis is substantiated by a number of elements: the introduction on the island of the Greek language, with the adoption of a modified form of the second millennium Cypriot syllabic script to write it, goes together with a process of Hellenization of Cyprus which took place during the 12th and 11th c. BC, at the very delicate phase of transition between the Late Bronze and the Iron Age. This is what the archaeological and epigraphic data seem to demonstrate, and even with some uncertainties in the interpretation the key fact of the introduction on the island of a post-Mycenaean civilisation with some of its basic features (like the language) is hard to question. The inclusion of a political organisation among these basic features is something more delicate that needs to be confirmed by some more evidence. Here the textual sources apparently meet the archaeological record: the Greek legends, variously attested in classical authors and in some cases (as for Salamis) of a certain antiquity, ascribe the foundation of some of the Cypriot kingdom capitals to Greek heroes coming back from the Trojan War. 'The dynamic aspect in the history of the Cypriot kingdoms is as or even more important than the questions of origin and definition. The kingdoms in Cyprus were not statically the same for more than half a millennium: their number and extension varied with time, with some kingdoms (for example Kition or Salamis) acquiring an extra-regional importance and some others (like Tamassos or possibly Kourion) losing weight and finally independence in the course of the

[1]Republic of Cyprus, Ministry of Transport, Communications and Works, Department of Antiquities.

Classical Age53. Similar differences in extension and evolution of the individual kingdoms should also be envisaged during what Maria Iacovou calls 'the foundation horizon', that is, the Cypro-Geometric period (between the 11th and 8th c. BC, before the NeoAssyrian intervention)[1]. It is in this phase that the (probably preceding) political organization of the island defined itself as a set of independent kingdoms of regional character. The emergence of the single kingdoms did not take place always at the same time: when some sites, like Palaepaphos or Kourion, could already furnish proof of social stratification and the existence of a rich aristocracy, some others, like Amathus, were still at their beginnings. This is an aspect contrasting with the idea of the Hellenization of Cyprus as a single simultaneous process, and suggesting on the contrary a birth-process of the kingdoms based essentially on the specificity of single sites and their preceding histories.'[2] 'Continuity, cultural and ethnic homogeneity, regional specificity, internal dynamic: these are the basic aspects to keep in mind when speaking about Cypriot Archaic Kingdoms. Many other factors should be taken into consideration that I cannot examine in detail here: for what concerns the external influences on the political organisation of Cyprus, the control of the great Eastern empires (Assyria, Egypt, Persia) over the island should not be overlooked - even when limited and weak, as surely in the case of Egypt and probably in that of Assyria, an external control over such a flexible system as that of the Cypriot Kingdoms could have always some consequences at least in term of stabilisation or redefinition of internal dynamics'[3] The writer says that there were unique characteristics in the political and legal regimes of the Ancient Cypriot Kingdoms. This could probable be true. However, the basic structure was based on the Ancient Greek Kingdoms originated from Mycenae.

Supplement IV 

When the Medes (Persians) and Kitians had the city of Idalion under siege, in the year of Philokypros, son of Onassagor, King Stassikypros, and the city-the Idalians- called physician Onassilos, son of Onassikypros, and his brothers, to treat people who were wounded in battle. And so, the King and the city agreed to give Onassilos and his brothers, instead of payment and additional gratuity, a talent of silver from the House of the King and the city. But instead of that silver talent, the King and the city gave to Onassilos and his brothers land of the King which is located in Alampria[4].

[1]Iacovou (2008) at 54.
[2]Cannavò (2008) at 42.
[3]Cannavò (2008) at 43.
[4]See Georgiadou (2015).

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