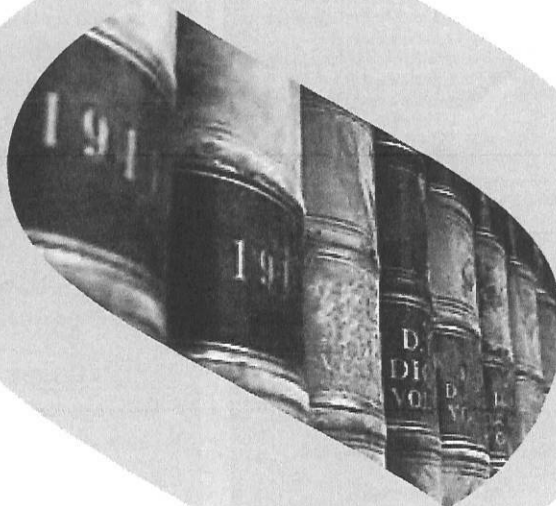


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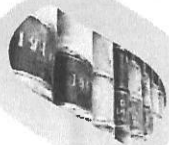


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# JOURNAL ON EUROPEAN HISTORY OF LAW



VOL. 11 / 2020 NO. 2

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e prefiggendosi pertanto di capire, nelle varie scansioni storiche (qui interessa il periodo tardo classico), fino a quanto tempo prima si risaliva nella lettura dei predecessori e da quando, invece, si accettasse di citare i giuristi ancora più risalenti nella mediazione che i posteri ne avevano fatto.

Non posso trascurare di informare il lettore che la nostra conoscenza di tali opere della giurisprudenza tardo classica sarà nei prossimi mesi arricchita dalla pubblicazione di volumi concernenti le opere in questione oppure in generale gli stessi giuristi tardo classici, nell'ambito del progetto di ricerca europeo *Scriptores iuris romani* (un prodromo si è già avuto relativamente ai primi libri *ad edictum* di Paolo, ai primi libri delle *institutiones* di Marciano e relativamente in genere all'opera di Callistrato): ebbene, sarà a mio avviso indispensabile che nel commentare analiticamente queste opere gli autori moderni di tali ricerche ricostruiscano le catene testuali in questione e non penso in sincerità che alcuno di loro tenterà di applicare il metodo proposto da Stepan.

6. Occorre ribadire ancora una volta – doverosamente – l'acume, la capacità di analisi e, in una parola, la propensione alla ricerca universitaria di Stepan.

Alla luce delle osservazioni di cui sopra (§ 5) spiace pertanto dovere formulare un giudizio sostanzialmente negativo della monografia di esordio del giovane romanista tedesco.

Stefano Barbati\*

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## The Research of Hungarian Cartel Supervision

"The signs of getting through the Great Depression are visible all around the world. There is a rise in production, and also in consumption, and there is hope everywhere that the betterment of the current economic situation shall continue". Using the words of Aurél Hallai as a stepping stone, it will become apparent for each and every researcher that economic combination went through such changes during the first half of the 20<sup>th</sup> century that necessitated the appearance of cartel supervising organisations as a result. During the time period between the two world wars, economic and political systems had significant effects on society, to which law answered with the regulations of existing legal institutions which were not yet codified at the time. In the current phase of the research on cartel law, the purpose is to introduce the operation of cartel supervision organisations (the Cartel Court, the Cartel Committee, ordinary courts and courts of arbitration) within the framework of the János Bolyai Research Scholarship (BO/00198/18/9), its dissemination supported by ÚNKP (Supported by the ÚNKP-19-4 – Bolyai+ New National Excellence Program of the Ministry for Innovation and Technology).

By guaranteeing contractual freedom and the freedom of association and the emergence of fair trade came the result that the members of economic life used every available legal tool to take advantage of the economic situation and form organisations with the specific purpose of hindering the competition in order to optimise production and to increase prices and with that, profits, as well. The point of the cartel movement of the 20<sup>th</sup> century should be looked for in the self-contradictory nature of free trade, for measures that limited fair trade were the direct results of free trade, and the only way to fight for the interests of consumers was to guarantee free competition, which meant nothing more and nothing less than the basic enforcement of public interests, public economy and public well-being. This is why I deemed important to elaborate upon the development history, codification and practice of our nation's cartel law via deductive methods, and after the dogmatic discussion of general rules, the description of legal practices shall make the description of the cartel movement, especially cartel formal law, meaning the regulation and operation of cartel supervision organisations thorough.

The analysis of the archival sources is the real deep dive for any research, and according to this, the purpose is to produce research results through which the interested parties shall get a comprehensive glimpse into the paradoxical world of cartel regulation in the 20<sup>th</sup> century. The combined examination of legal science reflexion and judicial practices shall give an overall image on the actual operation of cartel

supervision, courts and government institutions. Therefore, the aim is nothing more and nothing less than what Count Frigyes Korányi stated during the 8<sup>th</sup> May, 1929 session of the Economic Institution of the Hungarian Association of Lawyers, the topic of which was the codification of cartel law. "During this time of post-war chaos, the net of cause and effect should be unfolded with a calm mind and complete clarity; recognise the actual effects of certain functions of economic life or certain business combinations, the necessity and correct amount of regulations, the actual benefits or dangers of legislative and government involvement: can only be done with the contribution of those with the greatest familiarity with practical life and its active factors. As the part of the codification processes all over Europe, the 20<sup>th</sup> Act of 1931 actualised the regulation of cartel law, in essence, cartel public law in Hungary, and within it, national efforts of intervention played the primary role. However, the unified regulation of cartel private law was omitted, and since it was lacking, the general rules of private law, especially trade law served as guidelines for legal practitioners.

The best method to describe the assertion of Hungarian cartel law is according to judicial practices. Since most remaining submissions only contain the verdicts of the courts of the first and second instances, an archival source that contains the whole case file is extremely rare. Because of this, the information found within the mandating and reasoning sections might help in the practical examination of the regulations of material and especially of procedural law. Within the framework of this study, I wish to elaborate upon some procedural regulations based on cartel lawsuits presented to the court of law and the high court of justice. The readers shall gain insight into the procedures initiated because the obligation of presentation was omitted, and the everyday lives of companies after the cartel law (20<sup>th</sup> Act of 1931) came into effect by the aforementioned specific cases. The location of archival sources became even more difficult due to the fact that cartel matters were not remarked in the indices of litigation materials, therefore researchers were forced to check these manually. During my research, the following archival sources were processed. Fragments of the minutes of the Cartel Committee could be found in the National Archives of Hungary, the Archives of the Ministry of Agriculture, subsection K-184 of General Documents. The verdicts of courts of arbitration and the chambers' cases in connection to cartel law were located in the Public Archives of the National Archives of Hungary, within the materials of the Department of Economic Archives (256-V). However, the foundation of the main sources was provided by the source collection known as

The Local Institutions of Jurisdiction (1841-1973) (VII. 1. d.), available at the Budapest City Archives. A certain amount of research was also conducted at some rural archives, namely the Bács-Kiskun County Archives of the National Archives of Hungary (The Local Institutions of Jurisdiction, Courts and Prosecutors' Offices, The documents of the Courthouse of Kalocsa, registry court documents: VII. 2. c.), the Baranya County Archives of the National Archives of Hungary (the documents of the Royal Courthouse of Pécs, litigation materials: VII. 2. b) and the Csongrád-Csanád County Archives of the National Archives of Hungary (the documents of the Royal Court of Szeged 1942/VII. 1.).

Within cartel law, cartel regulation law was unbreakably bound to the cartel supervision power of the government, which also included the civil fine procedures. According to the cartel procedure act, civil fines were penalties to be paid by those who omitted the presentation of a finished cartel agreement or decree without any legitimate reason, didn't fulfil their duties of data publication or impeded the implementation of the act.

In the first two cases, it was the duty of the authorized courthouse to proceed. The authorized courthouse was the one where the limited company, cooperative or the insurance company was registered. If it was registered at multiple courthouses, then the registry court of the main place of business or the national representative of an international

company was considered to be the authorized courthouse. If the company did not appear in the company register at the beginning of the lawsuit, then the last courthouse where the company was registered was considered to be the authorized one. The lawsuit itself began via a request filed to the Legal Director of the Treasury based on the secretary's proposal. In certain specific cases, the specialised court of justice of the Curia known as the Cartel Court could proceed, as well, if meting out the fine was repeatedly unsuccessful or if the purpose of the lawsuit was to irrevocably ban the practice of trade and industry.

The examination of the national history of cartel law began first in 2015, then in 2016, courtesy of the application initiated by the Hungarian Competition Authority on the institution's 25<sup>th</sup> and the Cartel Procedure Act's 85<sup>th</sup> anniversary and the research submitted and supported by the Faculty of Law and Political Sciences of the University of Szeged and the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University. It is due to this establishment of cartel law researches that further examination of the history of cartel law may take place within the framework of the János Bolyai Research Scholarship, and the publication of the results of the research is supported by the New National Excellence Program of the Ministry for Innovation and Technology registered under the code ÚNKP-19-4 – Bolyai+.

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## 50 Years of Právněhistorické studie

In 2020, the peer-reviewed professional journal *Právněhistorické studie*<sup>1</sup> (in English Legal History Studies) celebrates an important anniversary. This year, readers have the opportunity to take in their hands the 50<sup>th</sup> year edition of this Journal which focuses on legal history.

First, some interesting numbers. 55 issues in total have been published until 2019. The history of what is today a journal, which was earlier being published as an anthology, began in 1955. The anthology was published irregularly; in certain years there were single issues (continuously in 1955–1967), in some years there were none (1968, 1970, 1972, 1976, 1982, 1985, 1988, 1991, 1994–1996, 1998–1999, 2001–2002, 2004, 2006, 2008, 2010–2011), on the other hand some years saw as many as two (1971, 1989, 2007, 2012). Since 2014, *Právněhistorické studie* were already being published regularly twice a year and newly there are going to be, starting with the anniversary year of 2020, three issues yearly, in April, August, and December.

The pages of these 55 issues of the Journal contain 516 studies and 124 contributions classified as „material“, written by almost three hundred Czechoslovak and later Czech

authors, beside many foreign ones. The editorial department constantly tries to encourage more contributions by researchers from other European countries as well as from outside Europe, in which task it succeeds mainly thanks to close contacts with foreign academic institutions, multinational composition of its editorial staff and by acquiring studies that were originally presented at conferences or were published as result of projects with participation by authors from the Charles University Faculty of Law. Just in the last two years, over a third of authors were from foreign countries (and their studies were therefore published in English, German, and Italian), a trend which continues even today.

Since the issue No. 45/2 there is a special section of students' works which follows on the original historical intention of the editorial board as expressed in the introduction to the first issue from 1955: „On the pages of these Studies, an opportunity has also to a large extent been given to new authors who publish their works for the first time. Thus the contributions here contained are of unequal value; our aim for including them was to introduce the work of young researchers to the scholarly public of lawyers and historians,

<sup>1</sup> ISSN 0079-4929. E-ISSN: 2464-689X.



elicit criticism of their papers and thus allow them further academic growth.<sup>2</sup> Contributions by young researchers are a very important part of the contents of the Journal, as they often offer an innovative perspective on the topic of legal history and carry forward the research on its many questions.

Other traditional sections of the Journal have for many years included, in particular, reports, abstracts, reviews, a chronicle containing, among other things, remembrance of legal historians who are no longer with us; some issues include short essays, discussions, polemics. An indispensable part is the „selected new literature“ section which periodically mentions newly published works from the discipline of legal history with an aim to comprehensively cover Czech and Slovak production. A recent addition are also invitations to conferences, exhibitions related to law and history, or other special events. All issues of the Journal contain in total about a thousand of such texts.

Právněhistorické studie, known to all its readers by the abbreviation PHS, were published first by the Czechoslovak Academy of Sciences Publishing, later, in 1965–1990, by the Academia publishing house, and finally, starting with the issue No. 32 from 1992 until today, by the Karolinum Press. Právněhistorické studie are a open access journal, and therefore meet the main criterion for publication championed in most research projects – the accessibility of their results to the broader public. The Journal uses the Creative Commons licence CC BY 4.0. Starting with the issue No. 43 (from 2013 onward), all content is also available online and can be downloaded for free from the web sites of the Karolinum Press and the Charles University Faculty of Law.

As time went by, the visual appearance of the Journal also changed, the rather drab colours of the original design giving way to the characteristic bright green, replaced since 2018 by softer, darker green with a new element of a black and white photograph on the cover, changing with every new issue in order to suit its themes.

Content wise, studies continue to be traditionally oriented towards a broad range of legal and historical topics, defined either by territory – Czech and Czechoslovak legal history, legal history of other European and non-European countries (usually USA, China, etc.); by time period – from Roman law and its reception, to medieval and early modern period developments, to modern legal history of the 18<sup>th</sup> – 20<sup>th</sup> century; or by content, i.e. public and private law and their branches. Naturally, it can not be denied that in the past many contributions were necessarily biased in order to conform to political ideology. However, those times are now long past and the freedom of scientific enquiry is evident also on the pages of Právněhistorické studie.

Editors of Právněhistorické studie have several times created thematic or semi-thematic issues. As an example, we might mention studies dedicated to the 500<sup>th</sup> birth anniversary of Viktorin Kornel of Všebrdy in the issue No. 7 (1961), special issue No. 39 titled “The present state and perspectives

of legal history” from 2007, the Tribute in Honour of professor Jaromír Čelakovský (1846–1914) in PHS 45/1 (2015), the issue No. 48/1 which contains in large part studies focusing on the topic of tourism, and last but not least the theme of „The Frost Comes out of Kremlin“ that concentrates on post WWII legal developments in GDR, Poland and Czechoslovakia with special focus on comparing legal provisions on selected private law issues, which can be found in issue No. 49/2 (2019).

We should also mention prominent personalities who contributed to the establishment and development of PHS. Its first editor-in-chief was Václav Vaněček who established the Právněhistorické studie anthology in the year of his own 50<sup>th</sup> birthday. First science editors were Jaroslav Houser and Jiří Kejř (who are also, together with Valentin Urfus and Václav Vaněček, the most active contributors in the history of PHS), who were later gradually joined by other famous legal historians (e.g. Jiří Klabouch, Jaromír Kincl, Martin Vietor and others). In 1967, in addition to the editor-in-chief (then Václav Vaněček), a position of executive editor was created and first assumed by Karel Malý, relieved in 1974 by Jaromír Kincl. Another change came in 1987, when Jaromír Kincl became chief of editorial board with Karel Malý once again executive editor, which he remained until 1991. The institutions responsible for the anthology were first the Cabinet of Legal History of the Czechoslovak Academy of Sciences (ČSAV), then the Institute of State and Law of the ČSAV. From 1992, the editorial department of the anthology was moved to the Institute of Legal History of the Faculty of Law of Charles University, with the position of chief of editorial board assumed by Karel Malý and that of executive editor by Ladislav Soukup who remained until the beginning of 2018. After another reorganization of the editorial board, Jan Kuklík has become its chief, Petra Skřejpková has been appointed to a newly created position of chief editor and Kamila Stloukalová has become executive editor. Other members of the editorial board are legal and history experts either directly from the Charles University Faculty of Law (Vladimír Kindl, Karel Malý, Pavel Maršálek, Michal Skřejpek, Ladislav Soukup, Michal Tomášek), or from Masaryk University in Brno (Ladislav Vojáček), from the Institute of History of the Czech Academy of Sciences (Jan Němeček), but also from Slovakia (Tomáš Gábriš, Comenius University in Bratislava), Hungary (Ivan Halász, Corvinus University of Budapest), Poland (Franciszek Longchamps de Berier, Jagiellonian University in Kraków; Maciej Jońca, John Paul II Catholic University of Lublin), and Austria (Thomas Olechowski, University of Vienna). The Institute of Legal History of the Faculty of Law of Charles University merged in late 2019 with the Department of Legal History of the same faculty which continues to ensure the editorial work.

Individual issues of the Journal, as well as further information for readers and authors, can be found at the website: <https://karolinum.cz/casopis/pravnehistoricke-studie>.

*Kamila Stloukalová\**

<sup>2</sup> Právněhistorické studie. Praha: Nakladatelství Československé akademie věd, 1955, p. 5.

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