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Edited by

David A. Frenkel, LL.D., Adv.
Emeritus Professor, Guilford Glazer Faculty of Business and Management
Department of Business Administration
Ben-Gurion University of the Negev, Beer-Sheva
Israel

Norbert Varga, Ph.D.
Associate Professor, Deputy Dean of General Matters Department of Hungarian Legal History, Faculty of Law and Political Sciences
University of Szeged, Szeged
Hungary

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List of Contributors

Che, Jayoung

PhD, Visiting Professor, Department of Greek and Bulgarian Studies, Korean University of Foreign Studies, Seoul, South Korea. Head, History Unit, Athens Institute for Education and Research (ATINER), Athens, Greece.
E-mail addresses: jayoung@bufs.ac.kr or paparuna999@gmail.com

Frenkel, David A.

M.Jur. (Hons.); LL.D. Emeritus Professor, Guildford Glazer Faculty of Business and Management Department of Business Administration, Ben Gurion University of the Negev, Beer-Sheva, Israel. Fellow, Royal Society of Public Health (UK). Head, Law Unit, Athens Institute of Education and Research (ATINER), Athens, Greece. Member of the Israeli Bar.
E-mail addresses: dfrenkel@bgu.ac.il or david.frenkel@gmail.com

Lachner, Višnja

PhD, Docent, Faculty of Law Osijek, Josip Juraj Strossmayer University of Osijek, Osijek, Croatia.
E-mail address: vlachner@pravos.hr

Kasap, Jelena

PhD, Docent, Faculty of Law Osijek, Josip Juraj Strossmayer University of Osijek, Osijek, Croatia.
E-mail address: jkasap@pravos.hr

Krusóczki, Bence

PhD Student, University of Szeged, Faculty of Law.
E-mail address: bence.krusoczki@gmail.com

Pétervári, Máté

PhD, Senior Lecturer, University of Szeged, Faculty of Law and Political Sciences, Szeged, Hungary.
E-mail address: petervari.mate@juris.u-szeged.hu

Szivós, Kristóf

PhD student, University of Szeged, Faculty of Law and Political sciences, Szeged, Hungary.
E-mail address: kszivos@juris.u-szeged.hu

Varga, Norbert

PhD (History); Ph.D. (Law and Political sciences). Associate Professor, Deputy Dean of General Matters Department of Hungarian Legal History, Faculty of Law and Political Sciences, Universitas Scientiarum Szegediensis University of Szeged, Szeged, Hungary.

E-mail address: vargan@juris.u-szeged.hu

Introduction

David A. Frenkel & Norbert Varga

Philosophy of Law are usually divided into three main branches: Dogmatic, Ethical and Historical.[1] However, we should add a fourth branch to the three: Sociological.

The dogmatic branch means the pure principle of the law, without any 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 principle coveting the origin of the law and its developments.

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 difference and changes, compare it to other contemporary legislation, either in the same country or elsewhere.

Another method, which should follow the first, is study and research the reasons that caused the legislation and its amendments; to learn what and how political, cultural, economic, moral and social interests and trends 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 into consideration the possible effect 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 changes in laws, and laws, cause changes in daily life. Law and life are reflections of each other. Law is the mirror of life and life is the mirror of law. Once cannot separate them. 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

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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.

location but also the international trends and political pressures. Likewise, it is impossible to understand and follow social and political trends, without being acquainted with and understanding the law of that time.[1]

History is the present of the past. The present of today will be the past and history of the future. Likewise, future will be the present of tomorrow and the past and history of the future. Time does not stop. 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 foundation.

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

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 on the Law and History issues.

The following will briefly present the different contributions.

The book commences with **Jayoung Che**'s essay *Socrates Was Not a Criminal, even if Executed.* In ancient law including Roman and Hellenic codes, the proportion of criminal to civil law is exceedingly different - the civil part of the law has trifling dimensions as compared with the criminal. Criminology was a modern product when the authority of state more or less increased. It did not exist in the free civil society in ancient Greece and partially even in the medieval ages. In ancient Greece, the authority of citizen group was available instead of the modern government. Then freedom means the liberation from the government power, and free citizens constituted a jury of the court instead of bureaucratic judiciary. This conflict of rights among free citizens is often the same as that of our civil trials, and does not refer to the concept of 'crime'. Thus, even though executed, Socrates was never a criminal. *In the structure of political power, ancient Athens are is completely opposite to the bureaucratic modern state. In the latter with a more or less centralized power structure, the judicial bureaucracy plays a role in defining citizens as criminals*. The concept of crime itself is usually connected with the denial of existing social order.

Norbert Varga is the author of the next contribution *Provisions on Arbitration Proceedings Set Down in Cartel Agreements Based on the First Hungarian Cartel Act.* The characteristics of the twentieth century cartel movement deemed it contradictory to free trade, because the measures that limited fair trade were the direct results of free trade itself, and thus

[1]Ibid.

the only way to oppose it and protect the consumers' interests was to guarantee free competition. Specifically, he examines the role arbitration courts played during dispute settlements between concerned parties before the first Cartel Act of Hungary came into effect in 1931.

The third essay *The Status and Organisation of Croatian Townships under the Act on the Organisation of Town Districts of 1895* has been written by **Jelena Kasap & Višnja Lachner.** The authors analyse the legal framework of status and organisation of Croatian townships in the Croatian-Slavonian territory in the period of validity of the Act on the Organisation of Town Districts from 1895. The law had limited active electoral right by abolishing the active electoral right for women that existed under the previous law of status and organisation of Croatian townships.

Máté Pétervári is the author of the fourth essay - *The Bankruptcy Act in Hungary in the Interwar Period.* The bankruptcy act in 1881 was a modern regulation, and it was appropriate to the requirements of the economic life. This Act remained in effect until after the Second World War, and it determined the Hungarian economy. The First World War changed the economy and the economic thinking. The author examines how the bankruptcy act functioned in Hungary during the First World War.

The role of the Budapest Chamber of Commerce and Industry regarding unfair competition authored by **Bence Krusóczki** is the next essay. It deals with the history of competition law, including the first substantive competition law of Hungary - Article V of 1923, which contained provisions regarding unfair competition. The essay focus on the arbitral tribunals of the Chamber and the practice of the jury since the fact that the duty and practice of these two bodies were highly significant for the application of the law in that era.

The author of the final essay in this volume is **Kristóf Szivós**. In his essay *Tools of the Case Management in the First Hungarian Code of Civil Procedure,* he points out Case management has been recognised as essential to securing the right to a trial within a reasonable time in a number of European jurisdictions. *Much of the control over the proceedings that was with the parties and* their lawyers has over the last decades been transferred to the court. the main aim of the new Code of Civil Procedure of 2016 is to concentrate on the proceedings, which has two addressees: the parties and the court. The author examines the historical basics and tools of this latter legal institution in accordance with the first Hungarian Code of Civil Procedure, the Act I of 1911 enacted after almost thirty years of codification.

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 volume are those of the authors of the essays and neither represent nor are they intended to represent the views of any other individual or body.

Socrates Was Not a Criminal, Even if Executed

Jayoung Che

According to Maine[1], the ancient law including Roman and Hellenic codes, the proportion of criminal to civil law is exceedingly different - the civil part of the law has trifling dimensions as compared with the criminal. As an example, he argues that the traditions which speak of the sanguinary penalties inflicted by the code of Draco seem to indicate that it had the same characteristic. However, the features of ancient Greek Law can never be concluded from the code of Draco. This is why it was immediately abrogated by Solon and never be pragmatically applied to. Criminology was a modern product when the authority of state more or less increased. It did not exist in the free civil society in ancient Greece and partially even in the medieval ages. In ancient Greece, the authority of citizen group was available instead of the modern government. Then freedom means the liberation from the government power, and free citizens constituted a jury of the court instead of bureaucratic judiciary. This conflict of rights among free citizens is often the same as that of our civil trials, and does not refer to the concept of 'crime'. Thus, even though executed, Socrates was never a criminal. In the structure of political power, ancient Athens is completely opposite to the bureaucratic modern state. In the latter with a more or less centralized power structure, the judicial bureaucracy plays a role in defining citizens as criminals. The concept of crime itself is usually connected with the denial of existing social order, not to speak if it is fair, equivalent.

Keywords: *Ancient citizenship law; Ancient Greek law; Code of Draco; Abuse of bureaucratic judicature; Regional distribution of powers; Public and private interests; Athenian jurors; Classical, Critical, and Positive Criminology.*

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[1]Maine (1917).

Introduction

According to Maine,[1] the ancient law including Roman and Hellenic codes, the proportion of criminal to civil law is exceedingly different, that is, the civil part of the law has trifling dimensions as compared with the criminal. As an example, he argues that the traditions which speak of the sanguinary penalties inflicted by the code of Draco seem to indicate that it had the same characteristic.

However, the features of ancient Greek Law can never be concluded from the code of Draco. This is why it was immediately abrogated by Solon and never be pragmatically applied to. Its content also has not been transmitted except the law concerning unintentional killing, which Solon let be survived to be used. Then, according to the survived Draco's law on unintentional killing, it is austerely prohibited to avenge with any sanguinary method by the side of victims, and the procedure of negotiation between the sides of offender and victim. Thus, absolutely different from the argument of Maine, Draco's law on unintentional killing neither refers to the concept of criminal nor sanguinary penalties.

According to Maine, Law of Persons, which is nothing else than the Law of' Status, are merged in common subjection to Paternal Power, as long as the Wife has no rights against her Husband, the Son none against his Father, and the infant Ward none against the Agnates who are his Guardians. And the greatest gap in ancient civil law will always be caused by the absence of Contract. In succession, Maine says, there are no corresponding reasons for the poverty of penal law, and accordingly, even if it be hazardous to pronounce that the childhood of nations is always a period of ungoverned violence, we shall still be able to understand why the modern relation of criminal law to civil should be inverted in ancient codes.

The critical flaw that Maine was accused of is that he identified patriarchy as the most ancient constitutional principle of social organization. But his theory has been thoroughly criticised by lots of anthropological literature which argues that the matriarchy prevailed.

In my opinion, however, the flaw of Maine's theory of patriarchy has to be found in quite different direction, that is, not in relation to matriarchy but contradictive power structure between free citizens and the state power which used to retrain people's freedom.

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[1]Maine (1917) at ch.10.

Maine understood that the period nations are not fully developed is always of ungoverned violence. Maine was a kind of social Darwinism, and he defined ancient Greek democracy as a stupid, demagogic ochlocracy.

My argument, however, is in opposite direction of Maine's argument, largely in two points.

1) Ancient Greek polis was not of a patriarchy, but just a community where every member was relatively equal [men - polites and women –politis; infant in ward and guardians in duty). And, as a more important point, citizens of ancient Greece were free from the state power, as there was no authority of government organization.
2) Modern nations (states) are not a symbol of well-governed state, but of oppression to free citizens.

Counterarguments to Maine's View on the Law of Sanguinary Penalties and Patriarchy

Draco's Law on Involuntary Murder Irrelevant to Sanguinary Penalties

Maine argues that the traditions of sanguinary penalties inflicted by the code of Draco show the characteristics that the civil part of the law has trifling dimensions as compared with the criminal. But his argument is not available according to Draco's Law on involuntary murder survived until today, which was newly inscribed on the stone by the momentum of rearrangement of Athenian law in 411 B.C.[1]

It is said in Draco's Law[2]that the 51 *ephetai* recognise (*gnōsi*) involuntary murder (*akonta ktēnai*) in the 17th line. And in the 27th line, murder in self-defence, '*amynomenos ktēnei*' is referred to. The text is as follows.[3]

"[…] If there is a father or brother or sons, pardon is to be agreed to by all, or the one who opposes is to prevail. But if none of these survives, and if he killed unintentionally and the fifty-one, the *ephetai*, decides that he killed unintentionally, let ten *phratry* members admit him to the country and let the fifty-one choose these by rank. And let also

[1]For the following arguments cf. Che (2008) at 1~20.
[2]*IG*, I[3], 104 /*IG*, I[2], 115, l.12~13.
[3]English translation from Gagarin (1986), 87.

> those who killed previously be bound by this law. A proclamation is to be made against the killer in the market place by the victim's relatives as far as the degree of the cousin and the cousin's son and by sons-in-law, fathers-in-law, and phratry […]"[1].
> […] If anyone kills the killer or is responsible for his death, as long as he stays away from the frontier markets, games, and Amphictyonic sacrifices, he shall be liable to the same treatment as the one who kills an Athenian; and the *ephetai* are to judge the case.[2]

Demosthenes also referred to Draco's Law, according to which an involuntary murderer is not always to be set free, but can be accused as guilty, which is described as '*akousios phonos*.' Demostenes says that the culprit of '*akousios phonos* (ton *halont' ep' akousiōi phonōi*)' should leave (*pheugein*) by the prescribed way and inside the date arranged.[3]

In Demonsthenes[4], it is shown that the culprit of '*androphonos*' is discussed in a different context from the killer who is innocent (*katharon einai*) by way of self-defence. What do all our laws most carefully guard against? What but these vengeful murders against which our especially appointed protector is the Council of the Areopagus? Now Draco, in this group of laws, marked the terrible wickedness of homicide (*autocheir*) by banning the offender (*androphonon*) from the lustra water, the libations, the loving-cup, the sacrifices and the market-place; he enumerated everything that he thought likely to deter the offender; but he never robbed him of his claim to justice; he defined the circumstances that make homicide(*apoktinnynai*), even if he acts(i.e. does injury)(*drasēi*), justifiable and proclaimed the accused in such case free from taint (*katharon einai*).

Thus, contrary to Maine's argument, it can neither be said that Draco's Law used to inflict the sanguinary penalties to the criminals, nor that the civil part of the law has trifling dimensions as compared with the criminal. This is why in the process of judicature the phratry members as well as the victim's relatives, as far as the degree of the cousin and

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[1]Line 13 and ff.

[2]Line 26 and ff.

[3]Demosthenes at XXIII, 72. Cf. Although '*pheugein*' has various meanings, for example, to be defendant, to run away to avoid trial, here it means 'leaving' anywhere (cf. *ibid.* 73), and it refers to '*exelelythotes*', that is the exiled to the lawful procedure, who are different from the 'exiled(*pheugontes*)' having run away to avoid trial. Cf. Che (1992) at 35~46.

[4]XX, 158ff.

the cousin's son and by sons-in-law, fathers-in-law, played decisive roles

Decentralised Structure of Athens not matching Maine's Arguments on Patriarchy as well as preponderate Criminal Law

In 451 BC Pericles proposed the Citizenship Law. By this Law only those who have both their parents as citizens (*astos, aste*) were to be qualified for taking part in the polis' affairs.

In *Athenian Constitution* Aristotle says the Citizenship Law introduced by Pericles[1]:

> "[…] in the year of Antidotos, owing to the large number of the citizens an enactment was passed on the proposal of Pericles restricting the eligibility of participation in the affairs of polis to persons of citizen birth on both sides. […]

The Citizenship Law, which grants suffrage to children whose parents are both citizens, lasted to the period of Aristotle, except for a while in the late 5th century B.C.[2]:

> "The present form of the constitution is as follows. Citizenship belongs to persons of citizen parentage on both sides, and they are registered on the rolls of their demes at the age of eighteen. At the time of their registration the members of the deme make decision about them by vote on oath, first whether they are shown to have reached the lawful age, and if they are held not to be of age they go back again to the boys, and secondly whether the candidate is a freeman and of legitimate birth; after this, if the vote as to free status goes against him, he appeals to the jury-court, and the demesmen elect five men from among themselves to plead against him, and if it is decided that he has no claim to be registered, the state sells him, but if he wins, it is compulsory for the demesmen to register him".

From these texts, it is proved that in classical Athens women were

[1]Aristotle's Atheneum Politea (Athenian Constitution) at 26.3.
[2]Ibid, at 42.1.

also qualified as citizens (*aste, politis*).[1] This is because mother as well as father must be a citizen so that their children can have suffrage. And before the enactment of the Citizenship Law, even if only one of both parents was a citizen, the child still had the right of participation in government. Different from Maine's opinion, women in classical Athens cannot be defined as being absolutely subordinate to patriarchy but of an independent legal personality.

On the other hand, this Citizenship Law proves the alteration of the power structure between the polis and its substructures. The Athenian polis tried to reduce the number of citizens, as it is said that Pericles introduced the Citizenship Law that owing to the large number of the citizens[2]. The Citizenship Law which enacted by the polis was in competition with the authority of polis' substructures, i.e. traditional family (*oikos*), brotherhood (*phratria*), and *demos* (village administrative district). Instead of protecting the family as an infra-structure of polis or the purity of its bloodline which is used to be asserted by some, the Citizenship Law introduced a new function of polis which was in contrast to the authority of traditional blood relationship or regional organization.[3]

The substructures of polis customarily took charge of traditional affairs in the former period instead of the polis. After the Persian War, however, the function of the polis itself, which has to carry out the war abroad, becomes relatively strengthened. It originates from an unprecedented increase of the functions of polis, weakening the political and social weight of the traditional substructures of polis. Actually, not only the Citizenship Law but the allowance for public service introduced by Pericles in the fifth century BC could be discussed in the same context. These measures reflect gradual strengthening of centralized power as well as functions of the polis, which found itself in conflict with the liberal civil society of traditional decentralization. Thus, through the citizenship Law of Pericles, it is proved that there was a kind of tension between decentralization of the traditional local or kinship structure and centralization on the dimension of polis.

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[1]For the laws which prove women were citizens, cf. Carystios at Fr. 11 (*FHG*, IV, 358) and Athenaios, at 13. 577b. In the archon year of Eukleides, Aristophon proposed the law that those born to non-citizen women be bastards (*nothos*), which was the renewal of the famous law of Perikles; cf. Aischines at *Scholia*, I, 39; Demosthenes at 57.29ff: 57.46: 59.122; Isaios at 8. 43f. and Aristoteles *Athenaion Politeia* at 42.1. Cf. Che (2017) at 97-117.

[2]See Aristotle at *Athenaion Politea* at 26.3.

[3]Che (2016) at 59-104.

Nevertheless, the essence of Athenian democracy was based on the regional distribution of power above all, the authority not appropriated by polis, but shared by its substructures, family, clan, brotherhood, demos, and tribe. Even after the introduction of Pericles Citizenship Law, citizenship was fundamentally qualified by initiation of traditional social organization of family, brotherhood, and demos, not by authority of polis.

According to Aristotle, wives as well as children are free persons like their fathers. However, the father is in a political relationship with his wife, and to juvenile children he is like a king, basileus.

A wife is a free person, like her husband, and conjugal relationship is not a patriarchal dependency of one on the other, but a kind of political relationship as if citizens are turning each other to rule and be ruled in a free status:

> "And since, as we saw, the science of household management has three divisions, one the relation of master to slave, of which we have spoken before, one the paternal relation, and the third the conjugal—for it is a part of the household science to rule over wife and children (over both as over freemen, yet not with the same mode of government, but over the wife to exercise republican government (politikōs) and over the children monarchical (basilikōs). It is true that in most cases of republican government the ruler and the ruled interchange in turn for they tend to be on in equal level in their nature and to have no difference at all […]".[1]

Like the free relationship between husband and wife, children either were not in a patriarchal subordination to their father. According to the above text, father is in the same position as the king with respect to his children, but this does not necessarily mean patriarchal relationship. The child has imperfect citizenship simply because he is too young to be listed as a citizen. When a child comes of age, of course, he or she will have full citizenship, outgrowing father's guardianship like a king. In this respect, young children are in the same situation as older people. The latter is too old to be listed as a citizen. It is to be underlined that citizenship refers to the qualification or obligation to judicature and public office or duty, absolutely unrelated to the patriarchal system. Aristotle demonstrates this by the following texts in his *Politics*:

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[1]Aristotle, *Politics*, at 1259a 38-1259b 6.

> "For it is true that not all the persons indispensable for the existence of a state are to be deemed citizens, since even the sons of citizens are not citizens in the same sense as the adults: the latter are citizens in the full sense, the former only by presumption—they are citizens, but incomplete ones. […][1]
> […] but these are only citizens in the manner in which children who are as yet too young to have been enrolled in the list and old men who have been discharged must be pronounced to be citizens in a sense, yet not quite absolutely, but with the added qualification of 'under age' in the case of the former and 'superannuated' or some other similar term it makes no difference, the meaning being clear in that of the latter […]. [2]
> A citizen pure and simple is defined by nothing else so much as by the right to participate in judicial functions and in office.[…][3].

In such kind of decentralisd, free society, Maine's argument that civil part of the law has trifling dimensions as compared with the criminal is not always valid, but rather the contrary to his argument be available. Criminology is a product of modern state of centralised power of domination, which is discussed below.

Ancient Greek Civil Trial Shown in the Execution of Socrates

In Greek polis, especially in the democratic regime of Athens, political authorities were not mostly available other than citizens group. The citizens, not the bureaucratic magistrates, gathered at the people's assembly (ekklesia) resulting in political decisions, and became citizen jury in the court. There was no bureaucratic judicature of the modern state to determine the conviction of or to pass sentence on the defendant.

Socrates' trial shows an example of procedure of the ancient Greek trial. The trial against Socrates who was executed by poison drink was processed by twice. The first trial is to decide whether to be guilty or not. If the defendant is decided not to be guilty, the procedure of further trial does not hold up, but in case of being guilty, the second trial would be held to determine the sentence. In the second trial, the plaintiffs

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[1]Aristotle, *Politics*, at 1278a 2-5.
[2]Ibid, at 14-18
[3]Aristotle, *Politics*, at 1278a 22-24.

represented by Anytos, offered to execute Socrates, and Socrates to pay a definite fine. Among these two proposals, judges of Athens, citizen jury, have just chosen the plaintiffs' proposal.

As to the death of Socrates, some argue that people' direct democracy is fallible and demagogic ochlocracy, as people are stupid not being able to discern the wise philosopher, Socrates. However, these arguments are far from the essence of the issue. It has to be underlined that it is not the citizen jury to Socrates to death penalty, as the jurors of the time did nothing but choose one between the plaintiffs and the defendants' propositions. The fact that Socrates was executed was not due to the wrong judgment of the people but to the fact that the plaintiffs, including Meletos and Anytos,[1] had so vicious hostility against Socrates to propose the death penalty.[2] In other words, the execution of Socrates was not incurred by the citizen jurors, but by the sworn hostility of the opponent.

Athenian trial processed as the dispute between the litigants, and the final sentence was selected between the proposals offered by the plaintiff and the defendant respectively. In the judicial process of a free civil society, there is no room for intervention of coercive judicature of the modern state. Even in the murder case, there was no concept equal to today's crime or public prosecution, and the proceedings of lawsuit were just initiated by the side of the victims. It should be underlined that even the case of murder was not introduced to a lawsuit without the initiation of the victims.

By Socrates' trial it is proved that even the trial of public interest was made in the form of a private suit, the execution resulted in, not by the sentence of the jurors' stupid decision, but just as Socrates was defeated by the opponent party in the lawsuit. Actually the concept of crime, which has developed in the modern state, does not apply to a private dispute in the ancient Greece.

The church state in the medieval ages was somewhat equipped with a bureaucracy, which follows the tradition of the church state in last stages of the Roman Empire on the one hand, and has a common feature with the concentrative power of modern state. The Roman Empire strengthened its military bureaucracy from around the third century and after, which was in conflict with the traditional civil law. And it began to be associated with the Christian religious ideology in the fourth century by Constantine the Great. It can be said that two contradictive tendencies coexisted in the

[1]Plato, *Apologia* at 36c.
[2]Plato, *Apologia* at 29c: 36b.

medieval period, that is, a decentralised feudalism on the one hand, and a bureaucratic organization of the church state on the other, which enforced cannon law and sanction like the criminal procedure of the modern state. In the Medieval Ages, however, there was a mixture of the authority of the church and the opinions of neighbours. For instance, in criminal cases of England, the canon law had adopted the world-old process of compurgation, in which the accused would be innocent by swear of the neighbours. In the twelfth century an archdeacon who is accused of poisoning his archbishop was directed to purge himself with three archdeacons and four deacons[1]. Reversely, there could also be a case that the criminal would purge himself in the court Christian, but a jury of his neighbours would have sworn that he is guilty[2]. Very possibly the lay courts would have prevented them from introducing in criminal cases any newer form of trial. Had any newer form been introduced, it would have been that 'inquisitorial' procedure which historians trace to the decretals of Innocent III[3].

On the other hand, Athenian jurors had the merit which is never found in a small number of bureaucratic judges. The bribery or lobbying by the litigant parties is not working well for a large number of citizen jurors, while it works effectively into one or three minority judges. Thus, the point is not if the people are stupid, but the judicial authority concentrated into the hand of one or minority is prone to be corrupt. Thus the issue has to be switched to the terms of power structure.

Classical Criminology of Beccaria against the Abuse of Bureaucratic Judicature

Criminology is a product of modern states which began in the 18^{th} century. Referring to the modern criminology, three kinds of theory could be discerned from the end of the 18^{th} century to the 20^{th} century.[4]

1) Classical Criminology is to approach the concept of crime for the first time in the late 18^{th} century, explaining that intelligence and rationality are fundamental human characteristics, the basis of

[1] The Letters of John of Salisbury, No. 122.
[2] Pollock & Maitland (1898) at 447.
[3] Fournier (1880) at 262-281; cf. Pollock & Maitland (1898) at 443.
[4] Vold, Bernard & Snipes (2002) at 1-13.

human behaviour, which is disposed towards promoting their own best interests.

2) Positive Criminology is to explain the crime according to the natural science developing since the early 19th century, defining the criminals according to the biological difference among humankind, as it takes the view that the cause of the crime is the criminal himself.
3) Critical Criminology is to identify the criminal phenomena based on critical views of political and social systems. Crime is not a violation of public interest, as the existing theory of mainstream crime argues, but rather a sort of rebellion and individual struggle against unequal, unjustifiable social conditions, which owes structural problem.

Modern theories of criminology, however, do not apply to the ancient Greeks. The penalty for deviant behaviour does not equal the concept of punitive sanction of modern crime. It is no more than the punishment or compensation for the loss inflicted upon the individual or public good, and the procedure assumes mostly a form of private 'lawsuit (dike)'. For example, in the trial against Socrates, the plaintiffs, Meletos, Anytos, and Lycon, and the defendant Socrates were in a quarrel with the accusation of corrupting the youth. And the penalty inflicted on Socrates was irrelevant to the sanction by the court of modern state power, as civil jury just choose one of the sentences proposed by the plaintiff and the defendant respectively. The 'ostracism, which was to ban detestable politicians, also does not refer to the modern concept of crime which should be penalized, but rather the measures for protecting public interest not to be further damaged.

The deviance presented in the status of punished persons depends on which side between free citizens and the government of state power takes the initiative. In Greek polis, not to speak if it is private or public issue, the procedure of trial takes the form of a private suit, but in the modern state the punitive sanction of crime is definitely enforced by the state power. In the latter, however, infringement of human rights by state power can occur more frequently.

Some argued that the benefits of a campaign against deviance are primarily the acquisition of political and bureaucratic power.[1] However, actual situation works in the opposite direction, as bureaucratic power of

[1]Vold, Bernard & Snipes (2002) at 221.

state produced crime and criminology as well as punitive sanction themselves. This kind of difference depends on the structure of power in each state. In ancient Greece, there was no governmental authority of the state, except the initiative of the free citizens. In the modern state, the state power restricted the freedom of citizens, and the deviance of restricted behaviour refers to the concept of crime.

In this point of view, the theory of Cesare Beccaria, the classical criminologist, in the early stage of modern criminology, the eighteenth century, deserves attention. He tried to limit the role of judiciary to mechanically applying definite penalties prescribed by law to each crime, minimizing the room of judge's discretion. The purpose of his theory is to control the abuse and injustice caused by bureaucratic judiciary as well as the state power

Abuse of political and judicial authority is one of the side effects due to the bureaucracy of the modern state. It is not difficult to understand that not only socio-economic inequality in the modern capitalism but the bureaucracy of concentrated government is itself a major cause of crime.

In view of the precaution against abuse of power on bureaucratic government and judicature, the argument of classical criminologist Beccaria needs to be noted in two respects.[1]

First, Beccaria's assertion, that punishment should be inflicted at a rational level corresponding to the degree of intensity of the crime and to the purpose of preventing its recurrence, is an attempt to restrict the discretion of the judge, which was a landmark attempt to reverse the practice of his lifetime. Actually, at the time, while general and superficial laws were enacted, the judge was allowed broad discretion to fill a vacancy in detail. Beccaria, however, tried to minimize the judge's availability of discretion.

In the same context, Beccaria's claim that the criterion measuring the degree of severity of crime should be proportional to the extent of injury to society is quite significant. In my opinion, it also includes the concept of restraining the abuse of bureaucratic power, as the more power a person has, the more likely his deviations cause social injury than that of common individual..

Secondly, Beccaria's criminology is to prevent the recurrence of crime committed by human rational calculation. Then, this rational calculation is universal and applicable to all human beings, which is far from the

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[1]Vold, Bernard & Snipes (2002) at 14ff.

positive criminology of scientific approach, for example, criminal biology or criminal psychology that sorts out a part of humankind as fundamentally being criminals.

Positive criminology regards that the person who commits the crime cannot help being criminals by nature or environment, in which Beccaria's arguments in the "Crime and Punishment"[1] for 'prevention of crime' and 'crime committed on human rational calculation', which does not refer to a part but all human beings, is definitely disappearing.

If typology of positive criminology has certain significance, it should apply not only to a part of human beings who has been committed crime or are regarded as potential criminals but to all. For example, Adolphe Quetelet argues that various environmental or human elements, including inter alia, climate, season, age, and gender, affect crime. In that case, it should apply to all human beings, not to mention peak of upper or lower social classes.

Not only the common of lower classes, but those of upper classes with power and money are actually potential criminals, but the fact is to be noted that, although there is no essential distinction in human personality in view of potential criminal at the same degree. Those who have social background of money and power mostly has not stigmatized to criminals.

In this context, Beccaria's theories of classic criminology carries much weight in that they see humans as universal and do not set any distinctions between them. Beccaria tries to prevent crime, potential contamination of which is exposed to all, on the one hand, and to restrict the room of judge's discretion not to impose excessive but rational punishments corresponding to the degree of injury inflicted to the society on the other. The latter is of much account in the point that Beccaria realised the need to restrict the judicial authority.

The Statue of Justice is not Dike of Ancient Greece

Sometimes it is said that the benefits of a campaign against deviance are primarily the acquisition of political or bureaucratic power.[2] In my opinion, however, the fact is the opposite. Crime does not exist as a truth in itself, not to speak of East or West, as well as ancient or modern.

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[1]Beccaria (1764).

[2]Vold, Bernard & Snipes (2002) at 24-26.

Criminology is a modern discipline, emerged as a modern nation became visible. The more the state power develops, the more the concept of crime is enforced and the more the numbers of crime increase.

The sculpture, ‘Goddess of Justice’ or assumed Greek goddess “Dike” is standing with her eyes covered with blindfold, with a long sword in her left hand and a balance scale in her right hand. Many people mistook this woman as Greek goddess 'Dike', but this woman is certainly not.

First, the Greeks did not use long swords. Usually they had a spear in the right hand, a shield in the left hand and a dagger attached on the waist. So a woman with a long sword is not a Greek 'Dike' statue, but a product of later generations.

Secondly, the ancient Greeks did not need to judge covering their eyes. Citizen jurors who were in charge of the trial were many in number and they were assigned to the court by lottery on the morning of the trial, so they could not know what kind of case they would be in charge of.

Thirdy, the trial by ancient Greek citizen jury did not have to pursue the fairness of equilibrium scales. The sentence was not suggested by the citizen jurors, and they were just to make a choice of one from two propositions submitted by the litigants, the plaintiff and the defendant respectively. Since the litigants themselves proposed a sentence, the judge or the goddess of justice did not have to weigh the appropriateness of sentence with the balance.

The 'Statue of Justice' with its blindfold, long sword and scale is definitely not Greek goddess 'Dike'. It is just a fake pretending Greek goddess, and actually is a product of later generations. And the Justice symbolized by the fake ‘Dike’ or "Goddess of Justice" is no other than what should be, just an ideal orientation, but not a reality.

Conclusion

Criminology was itself a modern product when the authority of state more or less increased. It did not exist in the free civil society like ancient Greece and partially even in the medieval ages. In ancient Greece, the authority of citizen group was available instead of the modern government. Then freedom means the liberation from the government power, and free citizens constituted a jury of the court instead of bureaucratic judiciary.

In the Greek society, civil law was predominant over the public or penal law, and judicial procedure consisted mostly of private suits. 'Dike' is a dispute around the rights (shares) which refers to embodiment of justice, a kind of arrangement between the two litigants, while ‘adikia’ means the destruction of balance. This conflict of rights among free citizens is often the same as that of our civil trials, and does not refer to the concept of 'crime'. Thus, even though executed, Socrates was never a criminal.

In a similar context, in the ancient Athens civic power overruled the officials of the polis. Free citizens had initiative to monitor the government's power, if any, thoroughly and punish severely doubted officials. Politicians or officials could be ousted with over 6,000 votes cast just on suspicion of misuse and abuse of public power and it does require no evidences of fallacy or corruption attributed to the concerned. Even those who were banished by ostracism were not criminals.

It might be seem more or less unfair for a politician to be banished without even any evidence of fallacy. Nevertheless, it has a pure function as a precautionary measure against the potentially future fallacy, as officials or politicians got afraid and all careful against being banished. Athens' banning system is one of the strongest means of controlling political power by the initiative of citizens.

These features of the ancient Athens are completely opposite to the bureaucratic modern state in the structure of power. In the latter with a more or less centralized power structure, the judicial bureaucracy plays a role in defining citizens as criminals. The concept of crime itself is usually connected with the denial of existing social order, not to speak if it is fair, equivalent, justifiable or not. It deserves attention that the criminals used to be produced from the social classes, frequently lower, and not upper classes.

It has not been sufficiently attended to the fact that criminal frequency differs according to the power structure of a society, even by the stigma theory or critical criminology. Stigma theory argues that through the stigmatization the second habitual offenders are created. The theory focused just on the criminals themselves and not the dominating power structure that is itself a fundamental cause of creating criminals.

On the other hand, critical criminology, basically based on the Marxist viewpoint, starts from the point that the social inequality is due to structural problems, and crime is not a violation of public interest, as the existing theory of mainstream crime argues, but rather a sort of rebellion and individual struggle against unequal, unjustifiable social conditions. Not only workers but all people are selfish, greedy, and thus criminal, but, actually, low-class people used to be stigmatized as committing crimes as the government intensively supervise their behaviours on the premise of criminal justice. On the contrary, the upper classes are permitted the opportunity to pursue legitimately their own greedy desires through business activities.

In this way, critical criminology failed to focus on the negative effect of concentrated power-structure of the modern state, which is itself a fundamental cause of creating the criminals as well as the concept of crime itself.

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Provisions on Arbitration Proceedings Set Down in Cartel Agreements Based on the First Hungarian Cartel Act

Norbert Varga[1]

The characteristics of the twentieth century cartel movement deemed it contradictory to free trade, because the measures that limited fair trade were the direct results of free trade itself, and thus the only way to oppose it and protect the consumers' interests was to guarantee free competition, i.e. the fundamental enforcement of public well-being, public economy and public morals. In this study, I wish to describe the regulations that address the stipulations of arbitration courts by analysing archival sources. Specifically, this paper will examine the role arbitration courts played during dispute settlements between concerned parties before the first Cartel Act of Hungary came into effect in 1931.

Keywords: *Cartel; Arbitration process; Juries and arbitral tribunals; Hungary*

Introduction

Procedural rules pertaining to cartels were significant among the arbitration requirements laid down in cartel agreements. Pursuant to these rules, the parties to an agreement determined how and within what framework any potential disputes would be decided. In the case of rules on the arbitral tribunal, we need to review the relevant provisions of Act I of 1911. By analysing individual cartel agreements, we will also gain insight into the terms and conditions under which parties to various cartel agreements wished to set up their respective tribunals to deal with problem cases, and the manner in which they attempted to pre-empt court proceedings.[2]

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[2]Supported by János Bolyai Research Scholarship (BO/00198/18/9). A Budapesti Kereskedelmi és Iparkamara mellett működő zsűrik és választott bíróságok működése [The functioning of the juries and arbitral tribunals operating in conjunction with the Budapest

Procedural Rules of the Arbitration

One unique feature of the arbitration proceedings was that they were based upon an agreement entered into by the parties. The raison d'être of these proceedings was the principle of disposal; the proceedings were thus a consequence of this principle. A precondition of the proceedings was that an arbitration agreement or an agreement with pertinent provisions had been made between the parties. This agreement was only valid if it was in writing and pertained to a specified case or a dispute arising out of a legal relationship. While the parties were free to agree on the scope of the agreement, this meant that the arbitral tribunal could not proceed in every matter, even if the parties had the right of disposal over that matter.[1]

First, a decision had to be made regarding the identity of the arbitrators. The parties could agree on the arbitrators or designate them in the agreement. If there was no clause addressing this subject in the agreement, each party could select an arbitrator, or they could select arbitrators jointly. However, if they could not agree on the identity of the arbitrators, then the matter was decided by majority vote. In the event of a tied vote, they would draw straws to decide who the arbitrators might be. In addition to an indication of each arbitrator's occupation and address, their choice of arbitrators had to be put in writing, as well as indicating whether the persons chosen as arbitrators had accepted the office. When arbitration was to be implemented, one party could call on the opposing party to exercise the right of choice, for which that party had a period of fifteen days. The identity of the arbitrator had to be communicated to the opposing party by a notary public or the district court.

In the event that an arbitrator could not fill the office for some reason (e.g. death or unwillingness to participate in the proceedings), the party could then exercise the right of choice again. If the party waived this right, they could then withdraw from the arbitration agreement or request that an arbitrator be appointed by a court. In the latter case, the court would

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Chamber of Commerce and Industry]. *Ujság*, 12 and 14 February 1930; on antecedents to civil procedure law, see Meszlény (1911) at 393–402.

[1] Bacsó (1917) at 323.

decide without hearing from that party.[1] For the subject under discussion in this paper, the term *court* should be understood to mean "a court of justice which would have had jurisdiction and competence in the absence of an arbitration agreement." This court could order enforcement based on the judgement or pact. If several courts were competent in the matter, the court to which one of the parties or the tribunal had turned was the one that proceeded with the case.[2]

Once the person selected as arbitrator agreed to the appointment, he had to declare in writing that he had undertaken this duty. This declaration thus qualified as a contract between the parties and the arbitrator. After having been selected, if the arbitrator failed to perform his duty without due cause or did not fulfil his duty in a timely fashion, either party could then submit a petition to the court requesting that the arbitrator be fined. An appeal could be lodged against the decision, and the incurred costs and damages had to be paid.[3]

The grounds for excluding judges were germane for arbitrators as well. In addition to the applicable general rules, the following groups were excluded: women, minors, persons in care or undergoing bankruptcy proceedings, and the blind, deaf and mute, as well as persons who had lost office or were suspended from exercising their political rights as an ancillary penalty. The court would decide on the petition for exclusion in an oral hearing after hearing the arbitrator in question, if necessary, and the court's decision could be appealed.

The arbitration agreement ceased to take effect in the following cases: if any of the arbitrators specified in the agreement failed to undertake the arbitration proceedings, died, could not engage in the arbitration proceedings for some reason, or refused to fulfil their duty.

The parties themselves set down the type of proceedings to be used. They could appoint counsel to represent them, and jointly determine the remuneration made to members of the arbitral tribunal. If they could not make that determination, the tribunal then decided on the matter, and decisions on this matter could be appealed at the court that would have acted as a court of appeal in the absence of an arbitration agreement. The tribunal could hear witnesses and experts, but could

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[1]Kamarai választott bíróság bírája nem kamara köteles perében [An arbitrator on the chamber's arbitral tribunal in a trial not required by the chamber]. *Közgazdasági Értesítő* (30), 1935/8, at 2.

[2]Gaár (1911) at 385–411; Bacsó (1917) at 328; Magyary (n.d.) at 736–737.

[3]Bacsó (1917) at 324–325; Magyary, (n.d.) at 733–735; Falcsik, (1908) at 376–377.

not have trial participants and parties swear an oath. In the event that the tribunal was expected to engage in trial proceedings or actions for which it had no powers, the competent district court was to be approached.

Arbitration proceedings could not be stopped by a claim made by any of the parties that the arbitration agreement was invalid, that it did not cover the matter to be decided, or that one of the members of the tribunal could not proceed on the matter, provided that a binding court decision had not been handed down following a review of these disputes. If the tribunal was delayed in making a judgement, either party could request that the court set a deadline. If the deadline was missed, the arbitration agreement expired for that particular matter. In this case, the court decided after hearing the members of the tribunal. If the tribunal was comprised of more than two members, decisions were taken by a majority voice vote, each and every member confirming its judgement with their signature. While the parties could enter into a pact with one another during the proceedings, the judgement or the pact also had to be forwarded to the competent court.

Once a judgement was passed down by an arbitral tribunal, redress by trial was not an option. The judgement could only be invalidated by lodging a petition with a court in the following cases: (a) if there was no arbitration agreement, if such an agreement was not valid, if it did not pertain to the matter in question and if it expired before the judgement was made, even if the rules on the formation of the tribunal or its adjudication were infringed; (b) if a person who had been excluded by a court took part in the adjudication; (c) if a party was not given a hearing during the proceedings; (e) if rules governing the judgement signing were not observed; (f) if a judgement obliged a party to take illegal action or if the section that provided for this was incomprehensible; and, finally, (g) even if there were grounds for a retrial pursuant to the Act on civil procedure, Sec. 563(5–9).

A pact entered into before an arbitral tribunal could be challenged with a petition before a court. An annulment case could be initiated within 90 days after a judgement was passed down by the tribunal. Once the proceedings were initiated, the court could then suspend the execution of the judgment by the tribunal, even without hearing the party. The court could also withdraw its own decision to suspend the execution of the tribunal's judgement.[1]

[1]Bacsó (1917) at 326–328; Zoltán, (1986) at 472; Dobrovics (1933) at 14.

Bakers Protection Pact

Next, I wish to describe arbitration rules in practice, based on archival sources on cartels. Among the Cartel Committee's materials is the Bakers Protection Pact, containing the provision on arbitration proceedings described below.

Decisions on any disputes and judgement on any claims arising from the legal relationship regulated by the pact were left to the arbitral tribunal. Adjudicating appeals that were referred to the competence of the tribunal in the pact also fell within the jurisdiction of the tribunal.

The pact included information on the composition of the arbitral tribunal, as follows: The president of the tribunal, Adolf Trutzl, was permanent, and his co-presidents were Béla Neumann, Ferenc Holndonner Jr, Gyula Czittler and Sándor Fürst. If the president was indisposed, the first co-president appointed acted in his place. If he was also indisposed, the person who was next in line filled the office of president. If either the president or one of the co-presidents of the tribunal could not undertake this office, then the meeting of members chose their replacement.

The parties set down the following general rules on the proceedings before the arbitral tribunal. For example, if a person wished to lodge some dispute or other claim before the tribunal, the relevant petition, action or appeal was to be submitted to the tribunal. The president of the arbitral tribunal himself undertook the presidency of the tribunal to be formed for a particular case or designated one of his co-presidents as president. If there were no grounds for exclusion against the president or if the president-to-be or co-presidents were indisposed, the president and the co-presidents of the new tribunal set in place to hear the particular case would be appointed by the president of the arbitral tribunal. However, failure to maintain this sequence was not grounds for challenging the legality of the formation of the tribunal.

The president or appointed president notified the claimant and the respondent in writing without delay that they should designate their own arbitrators within 48 hours of the notification and that the arbitrators' statements accepting this appointment should be simultaneously attached. The parties could only designate a member of the pact or a representative as an arbitrator. If one of the parties did not designate an arbitrator by the set deadline or did not attach a statement of acceptance, or if the designated arbitrator withdrew, the arbitrator was then appointed by the president of the tribunal. Members of the board of directors could not be presidents or members of the tribunal. Persons who were members of a committee against which an action or appeal was directed, or that officially dealt with the matter at issue in the case, could not act as arbitrators. Persons involved in an investigative or auditory action were also excluded from the proceedings. An arbitrator was also prohibited from taking on this role if any party raised serious doubts as to that person's impartiality.

In the event that an appeal had been lodged against a decision in a case involving opposing parties, the arbitrator could then only be designated by these opposing parties. If there were more than two opposing parties, each of them could appoint an arbitrator. Several parties on the same side could designate an arbitrator jointly. If parties on the same side could not agree, the president of the tribunal designated their arbitrator.

The arbitral tribunal proceeded with the case in a hearing, where it presented its statements and was free to set the manner of the proceedings. Evidentiary material registered by the audit committee or the consumer protection committee could be used and supplemented by the arbitral tribunal, and it could order that evidence be presented again. A judgement by the tribunal had to be justified, and delivered to the director of legal affairs at the Hungarian Royal Treasury, with a waiting period of at least fifteen days before it could be executed. The tribunal could require the losing party to pay its costs, and appealing against a judgement by the tribunal was not possible.[1]

Sugar Cartel

The Alföld Sugar Company materials contain a draft cartel agreement from 1942, which likewise regulated the arbitral tribunal. According to the draft agreement, the firms signed on to the agreement consented to the exclusive power and competence of a three-member tribunal regulated by Act 1 of 1911, Title XVIII, to decide all disputes and matters of litigation arising from the cartel agreement, with the exception of specific matters expressly referred to another forum. The tribunal could also decide on the validity of the arbitration agreement.

One member of the arbitral tribunal was selected by the party acting as the claimant or, if several parties took part, the selection was made

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[1]Cartel committee materials: MNL. K-148. 1934. 41. tétel. 28720. alapszám, 71729. [National Archives of Hungary. Lot K-148. 1934. 41 No. 28720, 71729]; Szentpáli (1933) at 16.

jointly. The same process was undertaken by the respondent party. Both parties declared that the "tribunal will not merely explain the operation of established law. It will also be authorised to take constitutive decisions on all questions rendered necessary by the inadequacy of the present agreement or for other important reasons. That is, the tribunal will also be authorised to issue judgements regarding the legal relations between the parties to the agreement, which remain valid until such time as the cartel is terminated and which could otherwise only be established based on a statement of will on the part of the parties to the agreement."[1]

The third member of the arbitral tribunal was the president, agreed upon by the arbitrators. If the parties were unable to agree on a third member of the tribunal within fifteen days, the president of the tribunal was then appointed by the chairman of the board of the Budapest Stock and Commodities Exchange.[2] If the president of the tribunal could not fulfil his duties, the vice-president would then proceed to act.

If it was established during the arbitration proceedings that one of the parties' actions or failure to act was in breach of an essential provision of the agreement or was "contrary to the spirit of the cartel", the relevant person could then be issued a fine of 100,000 gold pengős on a case-by-case basis. A performance obligation and compensation could also be ordered in addition to the payment of the fine, which had to be divided between the parties in proportion to the size of their participation. A fine could be imposed several times, if necessary. The sugar companies also agreed that, except in cases of termination, the cartel had to be maintained. "In this regard, the parties shall grant the most far-reaching powers to the arbitral tribunal, supported by the principle that the tribunal, by the shared will of the parties, shall first and foremost bear in mind the continued validity and inviolability of the cartel and the obligation to compel all the contracting parties to adhere to the present agreement."[3]

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[1]MNL. (Gazdasági Levéltár) 256-V. 181. tétel 56. csomó. [National Archives of Hungary (Business Archives). Lot 256-V. 181 Batch 56.]

[2]Fifteen points in the Austro-Hungarian iron cartel agreement refer disputes to the arbitral tribunal for the Budapest Stock and Commodities Exchange. MNL. (Gazdasági Levéltár). Osztrák-Magyar Vas- és acélkartell Z 372. 43–44. tétel. A tőzsdebíróságról, mint választott bíróság szabályozásáról. [National Archives of Hungary (Business Archives). Austro-Hungarian iron and steel cartel. Lots Z 372. 43–44. On regulating the stock exchange tribunal as an arbitral tribunal.] Róth (1901) at 200–202.

[3]MNL. (Gazdasági Levéltár) 256-V. 181. tétel 56. csomó. [National Archives of Hungary (Business Archives). Lot 256-V. 181 Batch 56.]

Sodium Silicate Cartel

Among the material found at Viktória Chemical Works is a cartel agreement that regulates the structure and proceedings of the arbitral tribunal. This agreement stands out because the parties set down detailed rules regarding the tribunal in a separate arbitration agreement.

The parties to the cartel agreement (Drucker Dezső Pallas Chemical Plant, United Light Bulb and Electric Company, Dr Helvey Tivadar Chemical Plant, Rosenberg Miklós Chemical Plant, Rudas Ernő Concordia Chemical Company, Soroksár First Sand Lime Brick Company and Viktória Chemical Works) stipulated that they recognise and agree that "in excluding the court, [we] submit to the exclusive competence and unappealable judgement of a three-member arbitral tribunal"[1] to settle all disputes arising from the agreement and adjudicate and collect all claims. The tribunal was assembled in cases of dispute pertaining to escrow agreements and in adjudicating and collecting related claims.[2]

The cartel agreement entered into by the firms listed above decreed that the parties and the Hungarian Industry and Trade Monitoring Bank had entered into an agreement regarding the exclusive sale of sodium silicate on commission as well as on providing control and escrow services, based on which the bank undertook an order to make such sales on commission and to provide such control and escrow services. The bank's powers included deciding disputes arising from or pertaining to legal relations, especially compensation claims, and to setting fines. The parties to the agreement likewise left the decision to the arbitral tribunal to appeal decisions taken at cartel sessions regulated in the cartel agreement. In this case, the tribunal was comprised of three members. The claimant or claimants before the tribunal notified the respondent by registered mail, while simultaneously designating the arbitrator on the tribunal and forwarding the statement of acceptance from the arbitrator. The respondent had to designate their choice for the arbitration tribunal within eight days of receiving the notification and send a statement of acceptance by registered mail. In the event that several parties entered the lawsuit on the side of the claimant or the respondent, an arbitrator

[1]MNL. (Gazdasági Levéltár) Viktória Vegyészeti Művek Rt. Z 341 Ügyvezetői-igazgatóság iratai 2. raktári szám, Kartell ügyek. [National Archives of Hungary (Business Archives). Viktória Chemical Works. Z 341. Managing director's documents, Stock No. 2, Cartel cases.]

[2]Ibid.

could then be selected by a simple voice majority. The president would be jointly selected by the two arbitrators appointed by the claimant(s) and respondents(s). If the respondent did not designate an arbitrator within eight days or if no agreement could be reached regarding the identity of the tribunal president, these decisions would be made by the president of the National Association of Hungarian Industrialists or, if he was indisposed, by his deputy.

A judgement by the arbitral tribunal had to be justified, and no appeal could be lodged against this judgement. Provisions of Act XX of 1931 had to be observed during the arbitration proceedings, with the judgement to be delivered to the director of legal affairs at the Hungarian Royal Treasury. The claimant had to place the sum of the costs set by the tribunal on deposit. The provisions of the Act on Civil Procedure were to be applied to the formation of the tribunal and the arbitration proceedings, provided that the parties had not regulated these areas in the agreement.[1]

Ice Cartel

Not every cartel agreement contained an arbitration clause. The Budapest Ice Sales Company and the Huszár József István Ice Company, situated in what was then the separate town of Újpest, entered into an agreement to regulate the ice trade in Budapest, Újpest and Rákospalota, wishing to lay down a unified and joint regulation in the agreement. They specified the terms of ice distribution, the maximum distribution amount and the fine to be paid in the case of overproduction, and dictated the prices and procedure that was to be followed against resellers. They also set down that any disputes arising from the agreement should be settled by the Budapest Central Royal District Court or the Budapest Royal Court of Justice, depending on the court's jurisdiction based upon the value of the lawsuit.[2]

It becomes clear from the provisions on the arbitral tribunal that the structure was regulated in an essentially identical manner. The parties wished first and foremost to settle legal disputes among themselves. This is why they attempted to lay down the rules of procedure in the

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[1]Ibid.

[2]MNL Budapest Főváros Levéltára XI. 1105 1. kisdoboz 1 Kartell jegyzőkönyvek, megállapodások 1927–1943 [Budapest City Archives, National Archives of Hungary, Folder XI. 1105 1, Cartel minutes of meetings and agreements 1927–1943].

cartel agreements in as much detail as possible, with an eye to Act I of 1911 on the civil trial process as a background law.

A judgement passed down by the arbitral tribunal could only be overturned by the Cartel Court.[1] For this reason, the manner in which the effect of the judgements by the tribunal was regulated was particularly significant. "There would be no purpose for the provisions of the Act on cartels if one could manage to enforce judgements by ignoring the intention of the Act on cartels and stipulating involvement by the arbitral tribunal."[2]

The Cartel Court had jurisdiction over lawsuits of public interest, impositions of temporary measures, impositions of fines as penalty, disqualification, the annulment of any arbitration award and the suspension of the execution of any arbitration decision.[3] This Court could only order the dissolution of a cartel and prohibit its further operation if the cartel had engaged in conduct that was detrimental to the public interest and if that conduct could not otherwise be terminated.

The Act gave the minister the right to request the dissolution directly from the court without recourse to other means. However, exercising the rights of dissolution could also constitute a restriction of fundamental rights. Specifically, it could restrict the exercise of the freedom of association. Yet, constitutional rights could only be restricted by way of exception and only if the act was authorized by a statute. In any other case, the judicial measure would have been unlawful, as it would have been determined by an arbitrary exercise of law.

With the dissolution of the cartel, the court usually prohibited the cartel and its members from continuing to operate. The dissolution of the cartel did not preclude the members from keeping up the cartel's operation by acting in unison. This meant that the sentence could only be enforced if the court also prohibited the cartel from operating.

It was possible for a cartel that had been dissolved, to later be re-established. This was not explicitly prohibited by the law, and so, in practice, the court's decision concerned only the dissolution and prohibition of the operation of the cartel involved in the action. The new

[1]A kartelbíróság első ügye [The first case before the Cartel Court]. *A kartel (2),* 1933/4, at 31. A Kartelbíróság megsemmisít egy választott bírósági ítéletet [The Cartel Court annuls a judgement by an arbitral tribunal]. *A kartel (2),* 1933/5, at 39–40. Ranschburg (1931) at 119–124; Magyary (n.d.) at 743–744; Kovács (1930) at 1700; Szabó (2016) at 79.

[2]Kelemen (1933) at 17.

[3]Harasztosi (1936) at 546-547. See more on this topic: *A Kartelbíróság újabb ítélete*. [*The Cartel Court's new ruling*], A Kartel [The Cartel] (3) 1933/1. at 8.

cartel, if it was formed as the result of a new agreement, was not covered by the previous decision. New legal action had to be initiated against the operation of the new cartel, and new evidence was needed to demonstrate that its operation was against the public interest. However, in urgent cases, the minister could consider taking provisional measures.

If the abuse committed by the cartel could be terminated by enforcing an agreement or a decision, then the court ordered the enforcement of the relevant agreement or decision. A similar decision was taken when the claim was filed for the dissolution of the cartel. On the other hand, if a claim was made for the prohibition of an agreement or a decision, the court could not pronounce the dissolution of the cartel in its ruling. Otherwise, the court would have gone beyond the scope of the claim, which would have been incompatible with Act I. of 1911 on the Code of Civil Procedure. The termination of the operations or the conduct of the cartel was only requested if the cartel's conduct could not be demonstrably linked to an agreement.

In the following case, legal action was brought to the Cartel Court because of the invalidity of the cartel contract and of the arbitration clause contained therein, and because of a failure to present the cartel contract to the minister. The contract, including an arbitration clause, established commitments regarding goods in a manner that restricted competition in terms of turnover and price formation; therefore, it fell within Sections 1 and 2 of Act XX of 1931. Commercial associations also participated in the formation of the agreement, which, according to the Cartel Act, had to be recorded in writing and presented to the responsible minister in office for registration. The presentation was regulated by special rules, because the contract in question had been drawn up before the Cartel Act came into effect (October 15, 1931); therefore, according to Section 16 of the Cartel Act, its presentation should have been performed within 45 days after it came into effect, namely until November 29, 1931.[1]

The Cartel Court found that the presentation had not taken place, and for this reason, pursuant to Section 2 of the Cartel Act, the agreement was annulled, and the arbitration clause included therein, "as an additional part of ancillary nature of the main agreement, sharing the fate of the main agreement, also became invalidated; therefore, the arbitral tribunal that

[1]A kartelltörvény hatálybaléptetésről szóló 5381/1931. M. E. rendelet. [Prime Minister Decree 5381 of 1931 on The Enforcement of the Cartel Act. P. IV.] 3013/1932. In: Nizsalovszky, Petrovay, Térfy, Zehery, (1931-1932) at 577.

gathered on the 9th of February in the year 1932 based on this invalidated contract could not have been instituted in a legal sense."[1]

Enforcing the performance of obligations based on invalid agreements through decisions of arbitral tribunals was unquestionably against the law; as a result, the legal directorate of the Treasury, acting upon the order of the minister, could ask for the invalidation of the decision of the arbitral tribunal pursuant to Section 13 of the Cartel Act. The co-defendant's reasoning that the claim in question would fall under the jurisdiction of an ordinary court instead of the Cartel Court was unfounded because Section 2 of Section 13 of the Cartel Act stated that the legal claim could be filed at the Cartel Court exclusively. Based on the aforementioned grounds, the Cartel Court dismissed the judgement of the arbitral tribunal.

In another case, the Cartel Court reached a similar decision when, due to the failure to present the agreement, the arbitration clause, which formed part of the annulled agreement, "sharing the fate of the main agreement, also became invalidated."[2] The Cartel Court declared that the Cartel Act did not contain any provisions that would have allowed the minister to decide on appeals attempting to justify the failure to present the required documents.

In the case at hand, the co-defendants of the second and third degrees concluded an agreement on December 28, 1928, and January 1, 1929, for the period between January 1, 1929, and January 30, 1932. The agreement contained mutually binding provisions regulating the acquisition of firewood, coal, coke and smithy coal; their sale in and around the town of P. (Pápa), the determination of sales prices and sales conditions of products, the handling of the turnover of goods and the related accounting, and mutual customer protection. The aim of this agreement between the co-defendants of the second and third degrees was to determine the actions of the parties for a longer period of time, rather than to regulate the occasional conduct of their transactions. The obvious purpose of the mutual commitments included in the agreement was to regulate economic competition in terms of the said products in connection to turnover and price formation. In its decision, the Cartel Court ruled that "such an agreement, regardless of its personal, economic or geographical scope,

[1]P. IV. 3013/1932. In: GDt. vol. XXV, at 577.

[2]P. IV. 5261/1932. GDt. vol. XXVI, at 740-741. In the same decision, the Cartel Court also stated that an action of public interest can be brought "even if public interests are not threatened but one of the other criteria set out in the Act is violated." Egy elvi jelentőségű ítélet, [A Principled Decision] *Pesti Napló*, 18 August 1932, at 7.

falls within Section 1 of the 20th Act of 1931."[1] Some commercial associations were contracting parties of the agreement; therefore, because of the reasons set out in the aforementioned case, the agreement should have been presented to the minister, but this had never happened. The agreement was set aside pursuant to Section 2 of the Cartel Act, and it was not altered by the fact that, after the invitation of the minister, the secondary co-defendant fulfilled its obligation to present the agreement on September 1, 1932. "For a case that was invalidated due to the failure to adhere to a legally pre-established deadline, cannot be made valid again by belated compliance."[2]

The arguments of the defence claiming that the validity and scope of the arbitration clause did not necessarily coincide with those of the main contract were also deemed invalid, "because the 'public interest' nature and the special (law enforcement) nature of the regulation of the legal relationship under discussion, and also, the purpose of the adoption of Act 20 of 1931 warrant equal evaluation of the substantive law and the procedural law effect of the cartel agreement."[3]

In this case, too, the arbitration clause of the agreement was invalidated after the deadline for presentation had passed, therefore, based on the invalidated clause, the arbitral tribunal could not have been formed legally. As a result, the arbitral tribunal could not even have reached a conclusion that affected the rights and commitments of the parties originating in the period of time when the cartel agreement was (lawfully) in effect. The Cartel Court held that "both those provisions of the main agreement that are closely linked to each other and the 'inseverable amendments' […] added later constitute a unified, single legislative act (document), which has no clauses that could be valid on their own, without a (cartel) agreement drafted in accordance with Section 1 of Act XX of the year 1931. As a result, although the defendant argued that, under Section 11 of the Act, the arbitral tribunal had legal rights to adjudicate […] on claims that were related to the contract and that could be judged as valid despite the fact that the cartel agreement itself was invalidated, this

[1] A szénkartel vesszőfutása a kartelbíróság előtt, [The Ordeal of the Coal Cartel in Front of the Cartel Court] *Pesti Napló*, 21 December 1932, p. 6. Kőházi (1934) at 8-9.

[2] The Cartel Court quoted the following case: P. IV. 3013/1932. In: P. IV. 5261/1932. GDt. Vol. XXVI. pp. 740-741.

[3] P. IV 5261/1932. In: GDt. vol. XXVI, p. 741.

argument was declared to be without merit."[1] Based on all of these, the Cartel Court dismissed the judgement of the arbitral tribunal.

Conclusions

Act XX of 1931 considered the assertion of the public interest key in judgements by the arbitral tribunal. In the event that one of the parties protested the cartel agreement as being contrary to the public interest during a proceeding, the tribunal then had to suspend the proceedings and transfer the matter to the competent minister. In the event of a breach of the public interest, at the minister's request and with a petition from the director of legal affairs, a public interest trial could be initiated, which then terminated the arbitration proceedings.[2] The protection of the public interest against private interests was powerfully asserted through the cartel agreements. This kind of intervention in private law on the part of the state stemmed from the altered economic conditions of the twentieth century.

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[1]P. IV 5261/1932. In: GDt. vol. XXVI, p. 741. Co-defendants had to pay the litigation costs according to Section 9 of Act XX of 1931. and Section 425. of Act I. of 1911.

[2]Ibid. at 18.

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The Status and Organisation of Croatian Townships under the Act on the Organisation of Town Districts of 1895

Jelena Kasap & Višnja Lachner

The purpose of this paper is to analyse the legal framework of status and organisation of Croatian townships in the Croatian-Slavonian territory in the period of validity of the Act on the Organisation of Town Districts from 1895. By analysing the legislation framework, the author has concluded that the above mentioned act on the Organisation of Town Districts had significantly reduced municipal self-government, but also that the towns in the status of the county gained the powers that enabled them the self-government of the broad spectrum. This law introduced a provision that the Government can dismiss the City Council if it worked against the Government's intent and set up a commissioner with powers of City Council and mayor. As before, supervision of the city's self-government was conducted by a „great city county prefect", as a representative of the executive power. According to this law most of the cities were subordinated to the county government, and only the larger ones (Zagreb, Osijek, Zemun and Varaždin) remain directly subject to the Land Government for the Kingdom Croatia and Slavonia. Also, this law had limited active electoral right, ie abolished the active electoral right for women that existed under the previous law of status and organisation of Croatian townships. For analysis the author has used relevant literature, laws, regulations and archival sources.

Keywords: *Croatian townships, 19th century, Károly Khuen-Hedervary, self-government, Government.*

Introductory Remarks - Reign of Karoly Khuena Hédervarya (1883-1903) and Adoption of the Law on the Establishment of Municipalities in 1895

After the ban Ivan Mažuranić was relieved of his duties, the union leader Count Ladislav Pejačević (1880-1883) was appointed to this duty. During his reign, in 1882, the unification of Military Frontier with Croatia was proclaimed. In September 1883 King cancelled the duties of Ban Pejačević and instead of the new ban he appointed General Hermann Ramberg as his royal commissioner in Croatia, which meant that the constitution was put out of force. At the beginning of October, it was again expected to have a constitutional state established, i.e. removal of the commissioning and the naming of the ban, which would allow the Parliament to continue its work. Thus, in December 1883, the king abolished General Ramberg's duties as a royal commissioner and appointed Károly Khuen-Hedervary the ban (1883-1903), who, through election manipulation and rigid Hungarian politics, managed to protect the policy of the Hungarian ruling circles. His reign was marked by restrictive procedures and amendments to many liberal laws, mostly created during the reign of ban Ivan Mažuranić, namely: suspension of guarantees of independence of the judiciary, passing of the electoral law with extended mandate of the Parliament for five years, restriction of press freedom and suspension of re-enactment. Ban Khuen Hedervary ruled with the help of the parliamentary majority made by the Unionist People's Party, most of which came from the top of the land administration and the bureaucracy. However, under his administration in Croatia there was economic progress, accompanied by an increase in the number of employees in crafts and the establishment of a large number of banks and savings banks. In Croatian historiography, journalism and memoirist he and his politics were evaluated as "strong hand"[1], "the iron hand" [2], "the arrogant feude"[3], and "khuenovština"[4] has become a mark of rule through persecution, violence and corruption.

Adoption of the Law on the Establishment of City Municipalities in 1895

Regardless of all the above mentioned laws, a new administrative reorganisation was soon under way, which would require the town planning to be in line with the new constitutional system. The 1881 Law on the Urban Planning of Municipalities proved to be inadequate in practice, and the main objection was to a large number of cities directly subordinate to the National Government, for which there was no justified

[1]Šidak (1973) at 119-121.
[2]Gross (1978/79) at 129–133, 140–142.
[3]Bogdanov (1958) at 715-728
[4]Polić (1901

reason in view of their territorial scope and the number of inhabitants. So there was a need to reduce the number of cities as stand-alone municipalities, as this harmed good management.

All of this influenced the Government in the spring of 1894 to begin preparations for more extensive measures in this law. In the spring of that same year, the opposition received the first announcement of upcoming changes, and in early May, Zagreb's newspapers Obzor, in its introduction, brought forth bad feelings of the opposition in connection with the ever-mentioned announced changes in the law. The clear reason for Obzor's introductory commentary was the rumour that the Government had decided to propose amendments to the Act at the first session of the Parliament, and within which it was addressing and questioning the active electoral right for city elections. From the introductory comment it can be seen that nothing positive can be expected from the legal basis, that is, a consistent continuation of the government's legislative activity can be perceived: "the information that is widespread make us understand that in this new reform, the government will stick to the same principle it has held for the past ten years when bringing various political laws, i.e. the only laws that are good are those beneficial to the one in power. This principle governs the laws on political governance, as well as the Electoral Law on the Parliament. This principle honours and sanctions the constitutional absolutism ... [1]" Shortly afterwards, the unsigned author commented on the upcoming July session of the Parliament, and found the cause of this immediate occasion in the Government's intentions to accelerate the revision of the Law on Organisation of Town Units to prevent the possibility of the opposition's taking over in Zagreb. The amendment of the Act was entrusted to prof. Franjo Spevec, who, in agreement with the Government, had already completed the relevant Basic Law. [2]

Over the course of the forthcoming period throughout the country of Croatia, there were protests against any encroachment of the government in the "city" law, except for the city of Osijek, which was in general a loyal regime. The purpose of the protest was clearly directed against the announced changes to the laws that sought to undermine the autonomy of the cities of Banska Croatia.

Although it was unknown in which direction the law would change, from the words of Ban Khuen-Hedervary, quoted in the Parliament, as

[1]Obzor (1894a) at 1.

[2]Obzor (1894b) at 1.

well as in the experience of "decisive factors" who systematically sought to limit freedom in Croatia, it can safely be argued that the final goal of the government changing the electoral order is to ensure the supremacy of the bureaucracy in the city's representation, and therefore the pro-regime majority, as it had in the Parliament.[1] Also, there was a rumour that the Government, by amending the Act, seeks to deprive the right of representation by appointing a mayor, who would have been directly nominated by the Government.

At the beginning of December 1894, the content of the Government's Basics of Law became public, and the number of critics, reviews and scripts that followed the publication of the Essentials content were smaller and were more common than those that occurred in the previous period. Namely, the Basics of Law was criticised more in principle, and the Government specifically neglected only certain provisions, such as denying the status of the city of Karlobag, Ivanić, Kostajnica and Ruma and the retention of the transferred scope, while the general rating stated that the Government wanted to have a decisive influence on the public life of cities. So, it is clear that the Government's Basics of Law was still far from the bad feelings of the opposition.

At the beginning of January 1895, the Osijek daily newspaper Die Drau reported that, with two votes of the majority, the Osijek town council at its session held on 28 December 1894, at the suggestion of Dr Dragutin Neuman, leader of the Osijek opposition, accepted the conclusion condemning the "novelties" of the new Basics of law. Among the minorities who did not support Neuman's proposal were Mayor Antun Rotter and President of the Parliament Vaso Đurđević. That is why the city of Osijek was surprised by many that opposed the revision of the Law, and it

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[1]At the session held on July 24, Josip Frank asked the ban whether he intended soon to announce the Basis of the Law on Changes in the Law on Urban Planning, so that the represenatatives had enough time to study it. The ban proposed the Fundamentals for Autumn, and stated that it was not true that the government intended to resolve this issue as quickly as possible, but that he himself also held that the discussion should be better deferred for the autumn session of Parliament, when there would be more time. He added that he personally wanted to take advantage of this time to better study the legal basis ("... to study and review the institutions that are being promoted, and to better justify the intentions set forth in the law"). The stenographic records of the Parliament of the Kingdom of Croatia, Slavonia and Dalmatia, five year periodical 1892-1897, vol III, Zagreb (1895), at. 1619.

irritated the Osijek newspaper Die Drau as well as other pre-eminent circles.[1]

Ban Khuen-Hedervary submitted the Basics of Law on the Establishment of Town Halls in Croatia and Slavonia to the Parliament at the end of November, and at the session held on November 30, the representatives accepted the proposal of Vaso Đurđević, the President of the Parliament, that the Committee for the Internal Land Administration to whom this Legal Basics is referred to, extends ad hoc to the Board of 6 members because of the importance of the Basics.[2]

Before voting on the election of members to this committee, Eugen Kumičić asked for a word and said that the relevant Legal Basics "is a true assassination of the constitutional development of the Croatian people". He also said on behalf of the lawyer's representatives that even then "at the time, when the first steps for the realisation of this fundament are being made", they want to mark their standpoint and that they were not to be elected into ad hoc Committee.[3] Eventually, five representatives of the People's Party were elected to the Ad hoc Committee (Mirko Kršnjavi, Dr Milutin Kukuljević-Sakcinski, Dr Vladimir Nikolić-Podrinjski, Antun Rotter - the mayor of Osijek) and 1 non-party representative (Milan Amruš).[4]

This Report on the Basics of the Law was submitted by the Committee in early February 1895[5], and the main parliamentary hearing was held from 15 to 20 February.[6] On behalf of the Committee reported Dr. Franjo Spevec and said at the beginning of his speech that he would try to prove that all the "ado" that was raised about the Basics of Law in numerous conferences, committees, city councils and newspapers, long before it was known, was unfounded. He drafted a new Act which he justified as the necessity of alignment with the public administration organisation that was reformed in 1886.[7] He defended all the provisions of the Basics of Law, including Article 34, which determined that selectors can elect representatives only from there selecting unit. Rejection of this provision was also sought by the Osijek branch in one of the items in its

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[1]Die Drau (1895) at 1.

[2]The stenographic records of the Parliament of the Kingdom of Croatia, Slavonia and Dalmatia (hereinafter SZS), five year periodical 1892-1897, vol III, Zagreb, 1895, at 1644.

[3]SZS, five year periodical 1892-1897, vol. III, Zagreb, 1895, at. 1659.

[4]SZS, five year periodical 1892-1897, vol. III, Zagreb, 1895, at. 1676.

[5]SZS, five year periodical 1892-1897, vol. IV, Zagreb, 1895,at. 2065.

[6]SZS, five year periodical 1892-1897, vol. IV, Zagreb, 1895, at. 2079-2205.

[7]SZS, five year periodical 1892.-1897, vol. IV, Zagreb, 1895, at 2079

remonstrance. It is particularly interesting that Vladimir Nikolic-Podrinski, a member of the Parliamentary majority, objected to this institution during discussion at the Committee.[1] At the end of his speech, Spevec addressed the remonstrances of six cities (Osijek, Križevci, Požega, Brod, Kostajnica, Ivanić) to the Parliament. He said that the complaints contained in these submissions were partially respected by the remedies proposed by the Committee, and partly rejected as unfounded (complaints by towns to subordination to counties, Kostajnica and Ivanić complaints about the loss of the status of the city, and the other).[2]

On behalf of the Government the proposal of the Law was explained by the Head of Department of Internal Affairs Dane Stankovic. Ban Khuen-Hedervary personally defended the Basics of Law on behalf of the majority and rejected all opposition objections. He also commented in a ridiculous and triumphant manner numerous criticisms of the opposition that preceded the release of the Basics of the Law: "When it became apparent that this draft would be released, it was published that the last pillars of the constitution would be destroyed as it was thought that as I was considered the man to destroy everything that is valid, I would draft such a law that would bring everything down - and when the gentlemen read that, I think, they were disappointed, and when it was read in the Committee and edited, I think they were even more disappointed."[3]

After a special hearing held at the session of the Parliament on 21th February, the Basics of the Law was finally adopted at a session of 11th March and sent to the Government for submission to the confirmation.[4] As As the opposition did not participate in the third reading and drafting of the Laws, it cast doubt on the validity of the act of proclamation, arguing that at that time there was not enough representatives in the parliamentary assembly. Namely, at the beginning of the session on March 11, the presence of 35 representatives was established, which was sufficient for the conclusion, but Pavle Jovanović later argued that Jovanovic had left the Parliament before the third reading and that he was not present at the voting for the Basics of the Law. The majority of the

[1]This provision is also retained in the sanctioned law in Art. 3.
[2]SZS, five year periodical 1892.-1897, vol IV, Zagreb, 1895, at 2091-2092.
[3]SZS, five year periodical 1892.-1897, vol IV, Zagreb, 1895, at 2152.
[4]SZS, five year periodical 1892.-1897, vol IV, Zagreb, 1895, at 2209, 2262.

Parliament rejected these objections, and the King confirmed the Basics of the Law on 21th June the same year.[1]

Legal Position of Cities and City Authorities according to the Law on Organisation of City Municipalities of 1895

There were two types of municipalities in Croatia and Slavonia, and their legal status was different: rural or administrative municipalities and city municipalities or cities. The legal status of the rural municipalities was regulated by the Article on Municipal and Commercial Organisation of 1870.[2] The status of the cities, as already mentioned, was regulated by the Law of 21 June 1895 on the Structure of City Municipalities for the Towns of Croatia and Slavonia.[3] The Law of 21 June 1895 on the structure of city municipalities established three types of cities with different legal status: cities of 1st, 2nd and 3rd category.

The cities of the 1st category were the capital of Zagreb, then the towns of Osijek, Varaždin and Zemun. They were outside the existing counties, i.e. they were able to do the work of city municipals themselves and were directly subordinated to the Land Government. While the counties were led by their great prefects as the highest representatives of the Land government in the county, the highest representative of the capital of Zagreb was the supreme mayor, and the rest of the cities of the first category were ruled by the city prefects who were appointed by the king.

Cities of the 2nd category (Senj, Bakar, Sisak, Karlovac, Petrinja, Koprivnica, Bjelovar, Križevci, Požega, Brod, Mitrovica, Karlovac and Petrovaradin) were within the counties in which they were located and were subordinated to taxation and all administrative affairs if the jobs were not within the government's jurisdiction. In the work of the transferred field of activity, they had the first-instance administrative authority, so in that respect they were coordinated in the district administration area. Territorial changes of these cities were possible only by county assemblies in the sense of the Act of 5th February 1886 on the organisation of counties and the organisation of administration in the

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[1]SZS, five year periodical 1892-1897, vol. IV, Zagreb, 1895, at. 2275-2276, 2302-2303, 2360-2367, 2426.

[2]The Collection of Laws and Orders of the Kingdom of Croatia, Slavonia and Dalmatia (hereinafter SZ), Zagreb, 1871, No. 4.

[3]SZ, 1895, No. 34.

counties and districts, while these changes in the case of the 1st category cities were possible only on the basis of the law. The internal organisation of the cities had to be regulated by the City Statute approved by the Department of Internal Affairs of the Royal Croatian-Slavonian-Dalmatian Land Government.

Cities of the 3rd category (Karlobag, Kostajnica, Ivanić and Ruma) were regulated according to the regulations that apply to rural municipalities and were subordinated to administrative affairs in the county districts. Therefore, these were just the titular cities; otherwise they had the position of rural municipalities.

Residents of the municipal community were divided into indigenous residents and non-indigenous residents. This Law stipulates that the indigenous resident of the city municipality is any Hungarian-Croatian citizen who belongs to the same municipality. The status of an indigenous person is regulated by the Law of 30 April 1880 on the Settlement of Homeland Relationships in the Kingdoms of Croatia and Slavonia.[1] A non-indigenous person is a citizen who is not an indigenous one by the law but resides in the municipality and pays taxes or does not reside in the municipality but owns real estate on which he pays the direct tax. Citizens are those who are entitled to citizenship in the municipal community, or who will acquire it in the future under this law. Citizenship could be granted by a city council only to the indigenous person of the city municipality who enjoys the electoral right under this law and is law-

[1]SZ, 1880, No. 49. By this law, domicile law was acquired by birth, marriages, settlements, permanent settlement in the public service and reception. Women acquired indigenous rights in the municipality where this right was enjoyed by their spouse, and permanently appointed clerks in the service of the land government, municipalities and public institutions gained that right in the municipality where their office was headquartered. Local law was related to citizenship, so the loss of nationality implied loss of that right. No one could renounce the indigenous rights until he had obtained it in the prescribed manner elsewhere. Every citizen had the right to reside in another municipality, but the municipality could deny the settlement to persons under investigation for some punishable offenses. It could be also denied to those whose legal consequences of the sentence already imposed had not yet expired or to those who would fall on the burden of the municipality due to the inability to financially support themselves. It was considered, however, that a person who moved to another municipality after four years renounced his indigenous rights of the former municipality and obtained domicile in the new municipality unless a person participated in the financial obligations of his earlier municipality during that entire period. Acquisition of new domicile was under the jurisdiction of the municipal council, i.e. the representatives of the city municipality. Milušić (1970) at 131.

abiding. A female person could not acquire citizenship, but in case of marrying a citizen she would become a beneficiary of a citizenship. Should she become a widow, her status would remain the same. Municipal residents, as well as foreigners, had the right to request personal and property protection from the municipality within the municipal boundaries as well as to be entitled to use city institutions. Municipal residents were guaranteed the right to reside in the municipality, the use of municipal assets and the right to elect municipal representatives. As well as foreigners, they were obliged to bear the municipal expenses proportionally.

Responsibilities of municipal districts included works such as the adoption of a statute, city property business, budget adoption, communal affairs, city traffic, maintenance of city health and social institutions, supplying the city and so on. The bodies that perform the activities of the city community are: the city council, the city mayor as the head of city representation and the city council and the city council. The city council was composed of 12 to 50 members. The number of members of the city council was differently established, thus the city of Zagreb had a city council consisting of 50 members, Osijek of 40 members, and the cities of Varaždin and Zemun of 30 members. In other, smaller cities, the number of members of the city's representation depended on the number of inhabitants, so that cities with up to 2000 inhabitants had members of 12 members, cities of 2000 to 4000 inhabitants of 16 members, cities of 4000 to 6000 inhabitants of 20 members, and cities with over 6,000 residents could choose a 24-member council. Active voters' right to select city representations was limited by censuses. In this case, this right was given to municipal residents, Hungarian-Croatian citizens over the age of 24, however, indigenous and non-indigenous peoples' right was under different conditions. Indigenous people, i.e. persons who, according to the Law on Homeland Relationships, gained membership in the municipality, had an active electoral right if they paid at least 10 forints of direct state taxes in the city municipality per year. Regardless of the payment of taxes, if they were indigenous people, this right was given to members of some professions: active or retired state, land and municipal clerks, then principals, professors and teachers of state, land, municipal and religious schools, docents and PhDs of all faculties, members of the Yugoslav Academy of Science and Arts, then constantly appointed priests and rabbis, head of monasteries, attorneys, notaries, engineers who acquired a degree at an Austro-Hungarian school, naval captains of merchant ships and retired officers and military officers. Non-indigenous people had an active right to vote if they paid at least 20 forint of tax in the city municipality per year. Regarding the exercise of active voter right of members of domestic co-operatives, the same rule was applied as for the election of municipal committees in rural municipalities. Namely, at home co-operatives, the rightful vote had the master of the house. However, members of public and commercial companies exercised the active right individually, as well as co-owners of real estate, if each of them fulfilled the conditions regarding the amount of tax. [1]

An active right to elect the city's representatives was not given to persons accused or convicted of a crime or other punishable act against public morality or acts of greed, as long as legal consequences persist, as well as a person whose property is in bankruptcy. In the cities, active voters' rights could not be exercised by persons under paternal authority or under guardianship, then those who received social welfare, day labourers and, in the end, officers, military officers and soldiers in active military service.[2]

The passive voter's right to the municipal assembly was given to every ingenious resident of the municipality who had the right to choose according to this law, if he lived permanently in the area of the city municipality. It was narrower than the active voter's right, because only the indigenes had it, while the active voters' right, as we have seen, was given to non-indigenes as well. Passive voting rights for city councils were denied to all persons who were excluded from active voters' rights. In addition, the following residents could not be elected into the city council: city clerks, officers and teachers; persons in lawsuit with a municipality; renters and entrepreneurs of city goods and income; persons entrusted with the administration of urban property or any city institute until they submitted a report on their administration; the negligent debtors of the city municipality and those who did not settle for the last quarter of the due tax; dismissed public officials for misdemeanours made of greed or against public morals; persons who have been convicted of crimes or misdemeanours that was committed in the interests of public good or public morality, after the legal consequences of the imposed sentence ceased and the illiterate persons. [3]

In the provisions on active and passive voter right, the civic class character of the electoral system for the local representative bodies in the

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[1]Law on Organisation of City Municipalities of 1895, Art. 25-26.

[2]Law on Organisation of City Municipalities of 1895, Art. 27-28.

[3]Law on Organisation of City Municipalities of 1895, Art. 29-30.

cities of Croatia and Slavonia is fully expressed. While all active persons who had been living exclusively from vacant labour or social welfare support were excluded from the active voter's right, passive voter right was denied to all illiterate persons, i.e. the largest part of the population, was excluded from passive voting rights. A system of interest elections for the choice of city representations was applied here. Namely, voters in the local elections were divided according to their economic strength or belonging to a single profession in three or two elective classes, within which they chose a certain number of representatives in the local representative body.

Regarding the cities of the 1st category, i.e. Zagreb, Osijek, Varaždin and Zemun, it was determined that the voters of these cities were divided into three elective classes, according to the level of direct tax they were paying. At the same time it was also prescribed how many city representatives in these cities were elected in a particular electoral class. Thus in Zagreb, the first electoral class elected 16 representatives, the second 20 and the third 14 representatives. In Osijek, the first electoral class elected 12, the second 16, and the third 12 representatives. In Varaždin, the first electoral class elected 12, the second 10, and the third 8 representatives, and in Zemun the first and second electoral classes elected 12 representatives, and the third electoral class 6 representatives. There were also certain conditions (tax minimum) that voters had to meet in order to be included in one of the electoral classes, and they were different for each city. The first electoral class in Zagreb included voters who paid at least 500 forints for direct taxes. At least 280 forints in Osijek, 250 forints in Varaždin, and 150 forints in Zemun. The second electoral class was consisted of voters who paid annual taxes in Zagreb in the amount of 100-500 forints, in Osijek 50-280 forints, in Varaždin 70-250 forints, and in Zemun 30-150 forints. Third electoral class consisted of voters who paid less than 100 forints in Zagreb, less than 50 forints in Osijek, less than 70 forints in Varaždin and less than 30 forints in Zemun.[1]

Ivan Beuc notes that the constituencies in the cities of Croatia and Slavonia were formed so that the minority ruled over majority.[2] This is

[1]The Act of 22 December 1902, which amended certain provisions of the Law on the Establishment of Town Halls in Croatia and Slavonia, also established provisions in the city of Karlovac, which, by this law, acquired the right to a township of 30 members, also three elective classes. The manner of their formation was the same as in the 1st type cities. Apart from Karlovac, in the cities of 2nd types are formed only by two elective classes or by the electoral service., SZ, 1903, No. 2

[2]Beuc (1969) at 195.

best expressed in the cities of 2nd category, where the first and second electoral classes were chosen by the same number of representatives although there were a much lower number of voters in the first class than in the second electoral class. For example, in the first electoral class, there could be three times more voters than representatives to be elected. Likewise, if we analyse the election in the 1st category cities, we come to similar conclusions. There, the first two electoral classes, which had a smaller number of voters on a regular basis than the third elective class, chose a predominant number of city representatives, and this was, in effect, less than two-thirds of the total number of representatives of the city.

The elected city councillors were obliged to accept the election in the city council, under threat of fines. This electoral system did not know the institution of the recall of elected members of local representative bodies. The law contained an explicit provision according to which elected city councillors could not receive any instructions from their voters. They could not leave their position, and if they did, they could be punished with a globe of 100-200 forints and loss of the voting right for the next six years. So there was a clean system of representative mandate applied.

Electoral mandate for city representatives lasted for six years, providing that half a city representatives were elected every three years. The work of a city representative was performed free of charge, but for the affairs outside the districts the city council could pay for the travel expenses. The city council was chaired by the mayor of the city, and if he was prevented, he was replaced by a deputy mayor. The city's mayor and deputy mayor were elected by the city council if at least two-thirds of the representatives were present and the elected mayor was considered the one who received the absolute majority of the votes of all the city's representatives. In Zagreb, the city councillors elected the city mayor among themselves, while in the cities of 1st and 2nd category a town representatives also elected the city mayor among themselves, but upon the nomination of the nomination committee, which was chaired by the city prefect in the cities of 1st category and prefect and deputy prefect in the cities of 2nd category. There were another six members of the municipal assembly, three of whom were elected by the city council, and three were appointed by the president.[1]

In the area of its own sphere of activity, the city council was the concluding body and it supervised the work of the city government as its

[1]Law on Organisation of City Municipalities of 1895, Art. 43-52.

executive body. The City Council was competent to carry out the following tasks: organisation of administrative bodies, appointment, retirement and dismissal of municipal officials and clerks, care of the management and use of municipal property and rights, municipal real estate disposal, performing contractual affairs, issuing municipal budget related to municipal foundations and institutes, regulation of fees and borrowing, performing other civil and financial affairs, changing the municipal territory, drafting local statutes, exercising custody rights, resolving issues of homeland and citizenship, caring for police and health care institutions and addressing the needs of the city government with regard to public administration, the care of the poor supply and supply of the city, the exercise of the right to petition in municipal affairs, the resolution of objections against the decisions of the city government regarding the affairs of its own sphere.

It did not have the executive power, and the conclusions of the municipal assembly had to be submitted to government approval in the following cases: when the existing municipal statute is passed or changed; when the status of the staff of the city government is changed; when municipal property is acquired or disposed of in value more than 2000 forints in the cities of up to 5000 inhabitants, 4000 forints in the cities of 5000 to 10000 inhabitants, 6000 forints in the cities of 10000 to 15000 inhabitants, and in the cities over 15000 inhabitants 10000 forints; when lease contracts are concluded; when borrowing or taking over guarantees, for the sums mentioned above; when introducing new or increasing existing municipal budgets or where the direct tax burden exceeds 20% of the direct tax; when the municipal city budget is formed and when there is a need for expenditure not foreseen by the city budget.

If the government's decision on the case did not arrive within 14 days of the receipt of the document, the city council's conclusions could be reached. Regular sessions of the city council were held in accordance with the provisions of the City Statute, or they could be convened as extraordinary ones by the city's mayor or his deputy, and by the great prefect in the cities of the 1st category.[1]

The Land Government was the supreme state supervisor in all city affairs. Thus, the Land Government could "for important reasons" dissolve the city's representation, but in that case it had to call for the elections for a new representation within three months. The elections for the new city council had to be conducted one month after their announcement, i.e. they

[1]Law on Organisation of City Municipalities of 1895, Art. 71-85.

had to be held in four weeks after the announcement. While the city government did not work, the government had to appoint its own trustee who dealt within the jurisdiction of the city council and governed the work of the city government.

The city mayor was head of the city government, which consisted of the city mayor, deputy mayor and executing, vocational and auxiliary staff. [1] It did the work within its own sphere of activity (internal municipal affairs) and the tasks of the transferred field of activity (public administration affairs). The city government carried out internal municipal affairs as an executive body and under the supervision of the city council. The City Mayor was obliged to make legitimate conclusions of the City Council. However, if he considered that some conclusions were illegal or detrimental to the interests of the municipality, he was obliged to suspend their execution and submit the case to the government.

The activities of the public administration were performed by the city administration independently in accordance with the Law of 5 February 1886 on the organisation of counties and the management of the administration in counties and districts with the responsibility of the city mayor. This primarily concerned the following tasks: the implementation of public order and peace; ensuring that the laws and orders of the Land Government and other areas are accurately stated and executed; settlement of *urbarium* cases assigned by a special law; works of public administration in construction, conducting discussions for the construction of roads, bridges, fortifications of the shore, dam construction, soiling and drainage of the soil, etc. It was also in charge of the construction of churches, parish dwellings and buildings, schools, cemeteries, etc.; issuing documents for housekeeping and passports; permission to collect items for charitable purposes; settlement of land-related objects; determination of forgiveness for engagement and the granting of a marriage permit if such permits are necessary; issuing a licence for the right of ownership of rivers and public waters, if the issuance of such a permit is not within the competence of the Land Government; issuing licences for weekly fairs (Article 41). [2]

The city government took account of the financial side and the state of the city's revenues and expenditures, so at the latest by November 15, each year it had to submit the budget proposal for the next year to the city council for discussion and approval. Also, at that date, the city mayor had

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[1]Law on Organisation of City Municipalities of 1895, Art. 49.-55.

[2]Laws and Orders on the Administration of Town and Country Municipalities in the Kingdom of Croatia and Slavonia. In Žigrović-Pretočki (1897) at 11-12.

to report to the city representation on the economic and financial condition of the city, the state of trade, commerce, traffic, public teaching, orphanage, public security as well as the overall work of the administration body and the conclusion of the town council's conclusions. In addition, the city government was obliged to conduct control of the state of the city's cash registers, offices and bureaus twice a year, and with this regular control, the city mayors or city councils could also require extraordinary control.

From the content of this law, as a novelty, we can mention the establishment of the so-called nominating committee on whose proposal of three members a city mayor and city clerks were elected. This committee was made up of the city's great prefect as president, then by six members of the city council, with three of them being elected by the city and three by the city prefect. Unlike the 1881 Municipal Assembly Arrangement Act, with this law the government could have been involved either in the election of a city mayor or in the receiving of city officials.

In addition to the city mayor, an important role in the 1st category cities, including Osijek, was held by the city captain who was a police reporter. He was nominated by the Ban, and the chosen person had to be loyal to the crown and the government in Budapest. A police reporter mostly carried out duties of state administration. At the same time, he was also the organ of the city government and as such was responsible and subordinate to the city mayor.

The Law on the Establishment of Town Halls in the Kingdoms of Croatia and Slavonia of June 21, 1895, stipulates that the administrative committees for the taxation, disciplinary and trade union affairs of these city authorities are to be established in the capital of Zagreb and in the free royal cities of Osijek, Varaždin and Zemun. The members of the board of directors are: high city prefect, city mayor, deputy mayor, two editors of the autonomous areas appointed by the government and four members elected by the city council. In tax matters, a member of the board of directors is the royal financial director, or his deputy. The chairman of the board of directors is a high city prefect, and the city mayor as his deputy. [1]

The scope of work of the board of directors in tax affairs is set out in a joint law on the regulation of public taxes. Tax affairs are subordinated directly to the Minister of Finance, and the Board is obliged to execute the provisions of the Minister of Finance, and the Minister of Finance sends his decisions to the Management Board through the financial director in

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[1]Law on the Establishment of Municipalities in the Kingdom of Croatia and Slavonia June 21, 1895, Art. 103-107.

Zagreb. In the tax affairs in which a financial inspector invokes an appeal against the conclusions of the board of directors, that conclusion is suspended until a finance minister's decision is reached. The joint law on legal affairs stipulates that the board of directors makes a decision in the second instance when it comes to tax affairs.[1]

The authority of the board of directors in disciplinary proceedings falls in the first instance against regular members who are public editors, with the exception of the supreme commander or the city's great prefect. Disciplinary proceedings are conducted by the board of directors. As a disciplinary area of the second instance there is an administrative board which acts in cases against the disciplinary decisions of the city's mayor and the city's disciplinary board. It is allowed to appeal to the Land Government against the disciplinary decisions of the board of directors pronounced against the editor, in the first or second degree, which is the right of the parties and high city prefect. Disciplinary authority is conducted through a commission of five members. Members of the committee are two public editors who are nominated members of the Board of Directors by the Land Government and two members elected by the Board of Directors among the members of elected city representatives. The president of the disciplinary committee is the supreme mayor or the high city prefect. Also, the board of directors was competent in the first instance to deal with trade union complaints against city officials and civil servants.[2]

Regarding disciplinary responsibility, the provisions of the Act of 5th February 1886 on the disciplinary responsibility of editors and officers, appointed at county and district authorities, shall apply. According to these provisions, every officer and editor who violates an official duty or behaves in the service or outside of it as being unworthy of his profession shall be considered guilty of a breach of disciplinary responsibility. Disciplinary penalties that could be imposed in these cases were reprimand, fines, prohibition of promotion, transfer to another workplace and dismissal (Articles 1-30).[3] The City Mayor could pronounce a reprimand or a fine of up to 50 forints to all city officials and officials who hurt official duties. In case of dismissing city officials, Disciplinary Committee consisted of two deputies, two officials and city chiefs in the first instance, the county administrative board in the second, and the government in the third (in

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[1]Law on Organisation of City Municipalities of 1895, Art. 109-112.

[2]Law on Organisation of City Municipalities of 1895, Art. 113-119.

[3]Laws and Orders on the Administration of Town and Country Municipalities in the Kingdom of Croatia and Slavonia, in Žigrović-Pretočki (1897) at 50-55.

the cities of the second category). In the cities of the first category, i.e. for Zagreb, Osijek, Varaždin and Zemun, the board of directors is competent to deal in the first instance against their regular members, except for the supreme mayor or high city prefect. City clerks and civil servants were responsible for any damage they had caused by their guilt, breach or neglect of their official duties.

In order to supervise the work of the city representative as a self-governing body, certified transcripts of the minutes of the municipal assembly session should be submitted to the Land Government within 14 days, if these were the minutes of the sessions of the city council of the first category. On the other hand, the minutes of the session of the town representation of the cities of the second category should be submitted to the competent county authority. However, the supervision of the tasks of the city administration and public administration tasks transferred to the scope of the city government departments in the cities of Osijek, Varaždin and Zemun was performed by the high city prefect, and in Zagreb the supreme mayor. Thus, as the representatives of the most state authorities, they were at the head of these cities. The function of a great prefect of a particular county was not compatible with the function of the high city prefect, so the great prefect could be the high city prefect in his county. Likewise, he was authorised to convene a session of the municipal assembly and preside over but did not have the right to vote. The supreme mayor and the high city prefects were appointed by the king at the ban's proposal. In order for the high city prefect to perform a supervisory function of self-government, the Department of Internal Affairs of the Land Government determined that the city authorities should regularly and timely send the daily agendas and times of the town council's session to the high city prefect as well as certified transcripts of city council sessions. He also had the right to give orders to the city mayor and other chief executive offices. In the event that the city mayor could not execute an order from the high city prefect, he could send a petition to the Land Government within 24 hours, which the high city prefect was obliged to hand over to the government within that deadline for resolution.

Thus, the Land Government had the right of supreme state control directly or through its organs. That is why, each year, it was mandatory to submit a copy of the established budget, annual accounts and municipal property statements to the Department of Internal Affairs of the Royal Land Government. It could also request insight into other acts.

The Main Features and Significance of the Law on the Establishment of Municipalities in 1895 – Concluding Remarks

The most important novelty of the new Act was a division of the former cities into three groups: the cities of Zagreb, Varaždin, Osijek and Zemun had the position of the counties and were still directly subordinated to the Government, thirteen smaller cities (Senj, Bakar, Sisak, Karlovac, Petrinja, Krizevci, Koprivnica, Mitrovica, Brod, Požega, Petrovaradin and Karlovac) became districts and subordinates to the counties, while Karlobag, Kostajnica, Ruma and Ivanić lost the status of the city. They were subordinated to districts and regulated according to the legal article on the regulation of municipalities and communes from 1870.[1]

Likewise, this law not only did not accept the democratisation of electoral rights, in the sense that city representation could elect all adult persons without distinction of sex, class and taxes, but was a step back because it restricted the electoral right to men, i.e. it abolished an active women's right to vote. Passive voter right was denied to illiterate persons. Further, the electoral right was limited by the tax census, and the voting method remained completely unchanged in the new Act, so the voting continued to be public and in writing, with the possibility of oral voting. The number of members of the municipal assembly was predominantly proportional to the number of population, so Osijek, as it used to have before, had forty city representatives. The new law abolished the possibility of special election for the honourable citizens, and the cities retained the transferred scope. Also, the legislator regulating the competence of the city community continued to maintain the enumeration system. Supervision over city administration as had been done was executed by the high city prefect, as a representative of the executive branch. By introducing this facility, the government has gained the right to positive control over city municipalities.

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The Bankruptcy Act in Hungary in the Interwar Period

Máté Pétervári

According to the Austro-Hungarian Compromise Hungary regained the independence and the Hungarian political elite desired to give a boost to development of the economy. The economic policy was determined by the liberal thinking in 19th century which based on the laissez-faire principle. The one of the suitable means to revive the economy of the Hungarian government was the forming of the appropriate legal regulation concerning to the commercial law. In 1875 the Hungarian National Assembly passed the first Hungarian Commercial Code, which supplemented by a new Bankruptcy Act in 1881. The new bankruptcy act in 1881 was a modern regulation, and it was appropriate to the requirements of the economic life. This Act remained in effect until the socialism after the Second World War, and it determined the Hungarian economy, therefore I examine the development of this act. The First World War changed the economy and the economic thinking, because it became possible that the executive power influence the economic life (evasion of price control, unfair competition, cartel law), therefore it is an interesting question, how the bankruptcy act functioned in Hungary in the Period of First World War. I present the practice of this act on the basis of archive material of the Royal Court of Appeal of Szeged.

Keywords: *Hungary, Bankruptcy Law, First World War, Compulsory Arrangement, documents of the Royal Court of Appeal of Szeged*

Introduction

I would like to present the Hungarian Bankruptcy Act which was in effect in Hungary in the period of First World War and its practice on the basis of archival sources from the documents of Royal Regional Court of Appeal of Szeged in this era in my paper. Besides I examine how the state can influence the economic life by means of law-making, therefore I would like also to describe briefly the history of bankruptcy law in Hungary in my paper.

First time, I explain what we mean under the bankruptcy law. The bankruptcy law is a part of the commercial law,[1] it is a special procedure, whose conditions are 1. the debtor has got more creditors, 2. and the debtor is not able to repay debts to creditors.[2] The first condition is an important factor because, if only one creditor was opposed to one debtor and the debtor is not able to repay debt to creditor, the debt recovery law should be implied.[3]

The aim of the bankruptcy law that the assets of debtor are divided among the creditors on the basis of equal treatment principle. A determining interest is that the more assertive and aggressive creditors are not able to receive the whole property of the debtor, and they cannot cause losses to the not so pushy creditors, therefore the state interfered in the private law relations. The goal of bankruptcy law is to assure the creditors, the economic actors, of protect the normal order of commerce.

The History of the Hungarian Bankruptcy Law

The bankruptcy law appeared in the Roman law,[4] but it became a determining legal institution in the Middle Ages. It was widespread in Italian city-states because the commerce was very active in these area.[5] But the commerce as an activity and the merchants were not so respected in Hungary in the feudal era. The Hungarian people did not practice this activity, therefore they left this to the Jews and Ishmaelite[6]. The commerce was not so important factor for the political elite in Hungary in the Middle Ages and in the Early Modern Period;[7] therefore the legislator did not lay a great emphasis on the bankruptcy procedure until the 18th century. The incidental bankruptcy cases were solved by the customary law.[8]

The first legal regulation about the bankruptcy procedure was the Act 107 of 1723 on to be fulfil registration or entry in the land register in the counties and in the cities, but this act dealt only with the registration

[1]Horváth (2006) at 474.
[2]Herczegh (1894) at 1.
[3]Óvári (1871) at 16.
[4]Meier (2003) at 3-19.
[5]Márkus (2018) at 623.
[6]It was the collective designation of the Muslim people in Hungary
[7]Császár (1847) at 23.
[8]Kállay (1992) at 377-379; Apáthy (1887) at 41.

of claims. This claims could be fixed by the creditors in a register which connected the debts with the lands. This register was the ancestor of the land register. This act did not imply a detailed bankruptcy procedure, it regulated only that the registered claims came before the other debts in the classification of creditors.[1]

The Planum Tabulare which was a collection of the Hungarian Supreme Courts' binding precedents gave a direction for the bankruptcy procedure in 1769. The precedent related to bankruptcy law was the 36th order entitled *Liquidorum debitorum*. This regulation ordered the classification of the privileged claims.[2]

The first whole bankruptcy regulation in Hungary was involved code of procedure which was introduced by Joseph II on 1 May 1786.[3] He extended the regulation of hereditary provinces to Hungary. But the emperor withdrew his decrees concerning Hungary before his death, therefore the code of procedure became invalid from 1790. From this change, the Hungarian courts proceed again on the basis of the Act 107 of 1723 and the precedent of Planum Tabulare in the bankruptcy cases until 1840.[4] However the Hungarian courts applied the bankruptcy provisions of the code of procedure as a customary law in the doubtful issues.[5] This solution was not so unusual in the Hungarian implementation of law because the most important Hungarian legal source, Tripartitum, which was a collection of the private law provisions, was also applied as customary law for more than four centuries.

Act 22 of 1840, the First Bankruptcy Act with Hungarian Origin

Hungary was an agricultural country with feudal traditions at the beginning of the 19th century, but the Hungarian political elite desired to boost the economy and the science after 1825. This period was called by the historians the Reform Era. Ferenc Deák, one of the most important Hungarian politician in the Reform Era, initiated the creation of the commercial acts in 1833, when first time he was elected as deputy to the National Assembly in Zala County. But the National Assembly did not

[1]Jung (1818) at 89.
[2]Czövek (1825) at 280; Georch (1808) at 152-159.
[3]Csázár (1789) at 53-77.
[4]Szlemenics (1823) at 207.
[5]Horváth (2006) at 478.

discuss this question in this session, because the emancipation of serfs by means of the voluntary manumission compensation was more important question on this session, than the commercial acts.

Nevertheless, the National Assembly dealt with the topic because Zala County which was represented by Deák initiated again to place the commercial acts on the agenda in 1839.[1] Ferenc Deák was an expert of the commercial law therefore he had got a big role during the discussion in connection of the commercial acts in the National Assembly. The deputies worked out the proposals in two and a half months. They desired to support an international expert of this question, therefore Ignaz Wildner who was a university professor of commercial law in University of Vienna, called to commission's aid.[2]

The National Assembly passed the commercial acts for the development of the economy in April of 1840.The two most important commercial acts were the Promissory Note Act and the Bankruptcy Act, because these two acts protected the money circulation. The promissory note was a non-conditional promise of payment in writing with determined formalities, in which one party assumed to pay a determinate sum of money to the other.[3] It was the simplest instrument to borrow some money in this period, therefore this act was the basis of the modern economy.

The first Hungarian Bankruptcy Act was created by the Act 22 of 1840. The Hungarian name of the procedure was "csőd", the origin of which was the Latin "concursus creditorum".[4] This term means that the crowd of creditors gathered, because the creditors collected before the court with the purpose of enforcing their rights, and they asserted their claims against the bankrupt's estate. This term is same, like the Konkursrecht in German. The first Hungarian bankruptcy procedure based on the German bankruptcy law.[5]

The most important novelty of this act was the equality before the law for merchants in the commercial cases. It was a big achievement because the nobility, the citizens of cities and the serfs were separated in Hungary in the first half of 19th century, especially before the courts. But on the basis of the acts, the registered merchants had got same rights and duties independently of the estate positions during the bankruptcy procedure.

[1]Wildner (1841) at 9.
[2]Wildner (1841) at 10; Wirkner (1879) at 105.
[3]Márkus (2018) at 607.
[4]Kallós (1865) at 1036.
[5]KI X. (1879) at 55.

This exception was concerned only the registered merchants, the competent courts in the other cases depended on the estate positions of the people.

The Hungarian state organisation and legal system changed significant after the defeat of the Hungarian War of Independence in 1849. The Habsburg emperor issued the Silvester Patent whose aim was the elimination of the Hungarian autonomy, and the Hungarian state was integrated into the Habsburg Empire on the basis of the hereditary provinces' models.

Within the framework of these efforts, the government of the Habsburg Empire reorganised also the Hungarian legal system, and it introduced the Austrian Bankruptcy Procedure in Hungary in 1853.[1] Franz Joseph I. strove for the legal unification of the whole empire. It was faster and more modern procedure, than the Act 22 of 1840. But the October Diploma restored the Hungarian public administration and jurisdiction in 1860, this was the end of the neoabsolutism. In 1861, the Conference of Lord Chief Justice was summoned with the purpose of examining the relation of the Hungarian acts before 1848, the April Acts and the decrees of neoabsolutism.[2] This conference created the Provisional Rules of Jurisdiction, which reinstated the Hungarian law on the basis of acts before 1848 and April Acts, but they kept some decrees from the neo-absolutism.[3] They reinstated also the Act 22 of 1840 concerning the bankruptcy cases in Hungary, but the act was modified, because the April Act established the whole equality before the law.[4] The land register which introduced in 1855 during the neoabsolutism, remained by the conference in effect, therefore the bankruptcy act was adjusted in compliance with land register too.[5] This legal source was applied by the Hungarian courts on the basis of customary law.

The Period of the Austro-Hungarian Compromise of 1867

We can see that in 1867, when the Austro-Hungarian Compromise happened, the former, not so efficient Hungarian bankruptcy act was in effect again. Hungary regained again the independence by the Compromise in connection of legislation, therefore the National Assembly was able to

[1] Szeniczey (1854) at 5.
[2] Králik (1904) at 7.
[3] Homoki-Nagy (2018/a) at 434.
[4] Szeniczey (1862) at 1.
[5] KI I. (1861) at 25.

form the Hungarian society.[1] The agriculture, the industry and the bank sector were made a quick progress after the Austro-Hungarian Compromise. This period was the "Gründerzeit" in Hungary because many companies and factories were established by the Hungarian and international businessmen in this era. The economic policy was determined by the liberal thinking which based on the laissez-faire principle.[2] This thinking extended from England, where Adam Smith, John Stuart Mill or David Ricardo represented this view. The idea of these scholars was that the mission of state was only the establishment of the legal frames for the economy, and the economic actors ran the economy on the basis of the principles of market.[3] In Central and Eastern Europe, the political elites had to correct these principles because the economic actors were not enough strong financially for the expensive investments, for example the railway or the development of heavy industry, therefore the state supported these sectors of the economy. But the private sector ruled the economy in this period, therefore we can declare that the economy was able to function independently from the state.

The Hungarian government desired to strengthen the Hungarian economy. It was necessary because in 1873 happened the stock market crash in Vienna which produced an effect on the Hungarian banks. The Hungarian government did directly not want to interfere in the economic life because of the liberal economic politics therefore it decided to work up the new acts on the basis of the modern economic requirements.[4] As the first step of this decision, the Hungarian commercial minister charged István Apáthy with creating of the commercial code in June of 1872. The Hungarian commercial chambers and chambers of industry requested the government that the German commercial code was considered for the model of the new act.[5] That's why, István Apáthy adjusted the German commercial code to the Hungarian circumstances during the codification of the new commercial act. The motive of this method was that the Hungarian economy was entwined with Germany, therefore the similar codes made to ease the commerce in both country.[6] The ready proposal was discussed by the law journals and commercial chambers, the

[1]Mezey (2018) at 280-283.
[2]Hetényi (2002) at 356.; Kovács (2016) at 14-15.
[3]Kaposi (2002) at 205-206.
[4]Menyhárd (2018) at 169.
[5]KI XXV. (1875) at 196.
[6]Horváth (2018) at 223.

chambers of industry and the lawyer. Finally, a commercial commission examined the draft, when it arose, that it would be enough, if the German commercial code was translated for Hungarian commercial code instead of Apáthy proposal. But the majority rejected this idea.[1] The National Assembly passed the commercial act as the Act 37 of 1875.[2] It was especially important in Hungary because the Civil Law Code was missed from the Hungarian legal system.[3]

The government continued the commercial reforms with the promissory note act. The National Assembly gave the act's reasons, that this is the basis of the international commerce because the promissory notes are able to substitute the cash. This proposal was made by István Apáthy again. He was commissioned to make this draft in 1873, and his model was again the German sample, but this act was not a translation of the German act, either.[4] The Hungarian promissory note act was the Act 27 27 of 1876.

The last commercial act was the main topic of my paper, the new bankruptcy act. Tivadar Pauler, the Hungarian Justice Minister initiated the creation of the new bankruptcy act in 1873, and he made further request to István Apáthy. He finished the proposal in the next year,[5] and the experts of the topic and the economic factors began to discuss about the proposal. But Tivadar Pauler left his ministerial position in 1875, and the bankruptcy act became not so important question for the new Minister, Béla Perczel, because he urged preferably to make the first Hungarian Criminal Code which was completed in 1878. Pauler returned to the top of Ministry of Justice in 1878, and he gave new stimulus to the establishment of the bankruptcy act.[6] The National Assembly passed the new bankruptcy bankruptcy act as Act 17 of 1881.

How did the New Bankruptcy Act Change the Bankruptcy Regulation?

The codificator ignored the Hungarian bankruptcy legal tradition during the creation of the new bankruptcy act, because according to

[1]Kilényi (1875) at III-V. ;1-2.
[2]Nagy (1904) at 23.
[3]Homoki-Nagy (2016) at 41; Homoki-Nagy (2018/b) at 183-184.
[4]KI XXII. (1875) at 104.
[5]Apáthy (1874).
[6]Apáthy (1887) at 47.

Apáthy, the Act 22 of 1840 was not an original Hungarian legislation product, only a reception of the German bankruptcy law. The new bankruptcy act was mainly based on the new German bankruptcy law, especially on Draft of German Bankruptcy Procedure from Prussian Ministry of Justice (Entwurf einer Deutschen Gemeinschuldordnung).[1] The economic actor and the National Assembly agreed with this solution, but Lajos Králik who was an expert of the bankruptcy law criticised the solution of Apáthy. The legal terminology was the subject of criticism. Apáthy adopted the term of public debtor (Gemeinschuldner in German, közadós in Hungarian) from German Bankruptcy Code,[2] but this term is not understandable in Hungarian language. "Közadó" means in Hungarian public tax, therefore this name is very misleading, because the bankrupt had got debt not only for the state, but for the private people too. Králik believed that the correct term would be the "bukott" which means failed person in Hungarian.[3] The Act kept the original term, "közadós", but the former Hungarian terminology also appeared in the clause 1 of the Act.[4]

The other aim was the new bankruptcy act that the debtors were not able to deprive the bankrupt's estate of their certain properties fraudulently. For this reason, the new act ceased the privileged situation of the marriage portion and the promissory notes in the classification of claims, because these was often the instruments of the abuse.[5]

Moreover, the legislation strove to assure the quick and short procedure in the bankruptcy cases, therefore according the new regulation, the creditors did not have to wait with the reacquisition until the finishing of the judicial procedure, because the bankruptcy trustee was able to pay the debts during to the bankruptcy procedure.[6]

The Provisional Rules of Jurisdiction took effect only in Hungarian area without Transylvania in 1861. For this reason, from the Compromise to 1881 the Act 22 of 1840 was used in the Hungarian area, but the Austrian Bankruptcy Act was applied in Transylvania.[7] The Hungarian government

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[1]Meier (2003) at 115.

[2]Vollmershausen (2007) at 246.

[3]Králik (1905) at 67-68.

[4]"The effect of the bankruptcy's declaration extended to the complete executable assets of the pubic debtor – **failed person** – which he possessed at the time of bankruptcy's declaration or he received during the bankruptcy procedure." KI XXI. (1881) at 355.

[5]Apáthy (1874) 4-9.

[6]KI X. (1879) 58-59.

[7]KI X. (1879) at 54.

government wished to solve this problem, because according to the Act 43 of 1868 Transylvania was reunited again with the Hungarian area. This act did not order which regulation of private law or penal law became effect in Transylvania, therefore the legal regulations were not unified in the whole Hungary after the reunion. For this reason, the new bankruptcy act had great importance because this act was able to unify the legal regulation in the bankruptcy cases in Hungary.

The Codificator of the Commercial Acts

I would like to introduce, who was the great codificator, the expert of the commercial law, István Apáthy. He was born in Hidjapuszta in Tolna county on 29 August 1829. His father was a farm manager in the employment of a big landowner and famous liberal politician, István Bezerédj. He participated in the Hungarian Independence War 1848-1849 as lieutenant. At the end of war, he applied for the Faculty of Law at the University of Pest. He received the law degree in 1857, and he worked as attorney until 1870,[1] when he was appointed professor of the promissory note and commercial law in University of Budapest. As I afore-mentioned, that he completed the proposal of commercial acts, therefore he was awarded title of royal councillor.[2] He became correspondence member of the Hungarian Academy of Sciences in 1873, and he was elected regular member in 1884.[3] Moreover, he published many monographs about the commercial law and the bankruptcy law. He tried himself out as politician at the end of his life, because he was representative of National Assembly from 1878 to 1889.[4]

[1]Szinnyei (1891) at 203-205.
[2]Sturm (1888) at 166-167.
[3]Szabó (2016) at 196.
[4]Halász (1886) at 5-6.

The Practice of Bankruptcy Law during and After the First World War

In the second half of my paper, I would like to describe the practice of the second Hungarian Bankruptcy Act in the Interwar period. The economic conditions were changed by the First World War in Hungary, it became possible that the executive power influence the economic life.[1] First time, the Hungarian government issued some decrees about the economic moratorium during the First World War, then the crime of evasion of price control,[2] the unfair competition[3] and the cartel law[4] would be regulated in Hungary during the Interwar Period. For this reason, the former liberal thinking about the free competition was pushed into the background, and the state strove to regulate the market.

In spite of this, the jurisdiction should have continued to imply longer the bankruptcy regulation of Dualism (mainly Act 17 of 1881). I would like to present this changing of the economic life through the practice of the Royal Regional Court of Appeal of Szeged (Szegedi Királyi Ítélőtábla) during and after the First World War.[5] This court was the third level of the Hungarian jurisdiction system. According to the act, the bankruptcy procedure started in the Regional Court, and the parties were able to appeal against the decisions to the Royal Regional Court of Appeal, therefore I was able to examine the appealed cases in the archive.[6]

The Bankruptcy Trustee went Bankrupt

First time, I present a case in connection of the declaration of bankruptcy on which the First World War took a determining effect. We can recognize from this legal case how the war influenced the private law

[1]Kelemen (2016) at 79.;
[2]Varga (2017) at 83.; Molnár (2018) at 24-25.
[3]Stipta (2016) at 60.
[4]Varga (2016) at 85.; Szabó (2017) at 36.
[5]The Hungarian regular judiciary system was composed of four levels. The Royal District Courts (m. k. járásbíróság) and the Royal Regional Courts (m. k. törvényszék) could proceed on the first instance. The less significant cases belonged to the Royal District Courts, and the parties were able to appeal to the Royal Regional Courts, then the Royal Regional Courts of Appeal. The more important cases started on the Royal Regional Courts, and the parties were able to the Royal Regional Court of Appeal and the Royal Supreme Court of Justice (m. k. Kúria). Stipta (1997) at 124-131.
[6]The reason of this method is that the documents of Royal Regional Court of Szeged in connection of private law cases were eliminated, therefore the researchers can examine the bankruptcy cases only from the material of the Royal Regional Court of Appeal of Szeged.

relations in Hungary. The plaintiff was Béla Feller who was the creditor, and the defendant was Arthur Vészi, the bankrupt. The plaintiff requested the court to declare that the debtor became bankrupt, but the Royal Regional Court of Szeged was able not declare the bankruptcy, because the debtor had got not enough assets to cover the costs of procedure. According the regulation of Bankruptcy Act, if the creditors assure the costs of procedure as advance, the court can declare the bankruptcy.[1] The Royal Regional Court of Szeged decided in his court order that the creditors make a deposit 1000 Koronas (crown) for the costs of procedure at the court within 8 days.[2] Béla Feller appealed against the judge's decision.

The Royal Regional Court of Appeal of Szeged was able not to go into the merits of case, because according to the Decree of the Royal Hungarian Ministry of Justice No. 13.300/1914. the bankruptcy declaration which was initiated by the creditors was in recess, therefore the court suspended the procedure until the ceasing of moratorium.[3] The court sent back the documents to the court of first instance with this instruction, that it would be submit to the Royal Regional Court of Appeal of Szeged after the ceasing of moratorium.[4]

The Decree of the Royal Hungarian Ministry of Justice No. 13.300/1914. was the result of the First World War. The Hungarian National Assembly passed the Act 63 of 1912 on the emergency power (kivételes hatalom) which gave the government an opportunity to intervene in the private law relations, if it is necessary in the circumstances of war. According to this act, the Minister of Justice declared moratorium referring to the performance of private law obligations from 15 August 1914 after the start of the First World War, what related to the bankruptcy procedures which were initiated hereupon or by the creditors before 15 August 1914.

The Royal Regional Court of Szeged submitted again the documents to the Royal Regional Court of Appeal of Szeged, because Arthur Vészi came back from the military service and captivity pursuant to official knowledge of the court, and he settled down in Hódmezővásárhely.[5] The Royal Regional Court of Szeged stated that the Decree of the Hungarian

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[1]Zsögöd (1881) at 45.

[2]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal Of Szeged 679. (1979) 16869/1914.

[3]Collection of Hungarian Decrees (1914) at 2005.

[4]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 679. (1979) 4941/1914cs.

[5]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 679. (1979) 2762/1915/18.

Prime Minister No. 2.807/1915. ceased the moratorium, therefore it could decide the case.

The Royal Regional Court of Appeal of Szeged rejected the appeal of plaintiff, but it modified the court order of Regional Court. According to the decision of Royal Regional Court of Appeal, the debtor had got absolutely nothing assets; therefore the court was able to declare the bankruptcy.[1] The court based its decision on leading decision of the Royal Supreme Court of Justice Nr. 254/909.[2] The interesting or comical part of the story that the creditor wanted to indicate only as the property of debtor a fee, which the debtor could receive as bankruptcy trustee (csődtömeggondnok) referring to another bankruptcy procedure. But this claim is unsuitable for bankrupt's estate because his position ceased, if it started a bankruptcy procedure against him. The court ruled that the bankruptcy could not be declared in these circumstances, therefore the plaintiff does not have to make a deposit at the court.

The Bankruptcy as a Crime

The next examined case is a criminal procedure against a bankrupt who made his properties disappear before his creditors. The Hungarian Criminal Code penalized this action named as fraudulent bankruptcy.[3]

The Regional Court of Gyula proceeded on this case in the first instance.[4] The two accuseds were József Alexander and Adolf Alexander, textile-merchants. They were brothers, József Alexander had got a textile shop in Békés, Adolf Alexander in Békéscsaba, which cities are neighbours in Southeast Hungary. József Alexander transported five boxes with textile goods to his brother before his declaration of bankruptcy. His debtors saw this action, therefore they reported him. He confessed that these products were the properties of Adolf Alexander, and he preserved only these. The

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[1]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 679. (1979) P. I. 992/19/1920.

[2]Márkus (1910) at 839.

[3]**Act 5 of 1878 on Criminal Code 414. §** The bankrupt commits the fraudulent bankruptcy crime who causes damages for his creditors with this action: **3.** He satisfied one or more creditors or he provides preferential treatment to some creditor with authorisation of lien or a cession of assets' some part. **415. §** The fraudulent bankruptcy crime is punishable by imprisonment exceeding five years; if the caused damage is not more than 2000 Koronas: it is punishable by imprisonment exceeding three years.

[4]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 676. (1920) B. 611/47/1915.

court rejected this explanation, but it stated that the bankrupt was indebted to his brother, therefore he satisfied his debtor with this transportation, thus he gave an advantage for one debtor, by this means he caused loss to his creditors. Mitigating circumstances of József Alexander were the clean record of the accused, the long term since the perpetration of the crime and the compensation of the majority of the creditors' damages. The aggravative circumstance was missed against the accused, thus he was sentenced by the court to four months in jail as principal penalty and three years banned from practicing of the profession, as well as banned from political rights because of fraudulent bankruptcy. Moreover, his brother was acquitted by the court of the accomplice.

The Royal Regional Court of Appeal of Szeged affirmed the sentence of previous court on the second instance. The court determined that the guiltiness of accused was valid especially because of brotherly relationship with the favoured creditor. The hiding of the estate was a typical action of the bankrupt, and we can see in this litigation that the Hungarian jurisdiction was able to act effectively against this.[1]

The Establishment of Compulsory Arrangement during the First World War

The Hungarian government maintained the moratorium of bankruptcy procedure in 1915, but it desired to order the economic relations However, the Hungarian political elite recognised, if they had immediately restored the effect of Bankruptcy Act, it would have caused an economic shock. For this reason, the Compulsory Arrangement (csődön kívüli kényszeregyezség in Hungarian, das gerichtlichen Zwangsvergleichverfahren zur Abwendung des Konkurses in German) was established with the Decree of Prime Minister No. 4070/1915.,[2] and the moratorium of bankruptcy procedure was ceased just from 1 December 1915. The government hoped, that the merchants and the firms whose had got financial difficulties because of the war could escape on based on the new regulation.

The goal of the compulsory arrangement was that the creditors remitted a part of their claims, or they gave the debtor a delay for the pay. The debtor was able to initiate the procedure with the submitting of compromise offer. If the majority of creditors supported the compromise

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[1]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 676. (1920) B. 391/1920/53.

[2]Collection of Hungarian Decrees (1915) at 1754.

offer, the court could strengthen the agreement, which obliged the minority of creditors who were opposed the agreement.

The Halász and Ritter firm which was probably a paint shop wanted to solve its problems on based on this new procedure before the Regional Court of Szeged. The firm started the procedure because of its recession and a 100 000 Koronas irrecoverable claim.[1] On the basis of debt's report, it had got stock which was valued 64 000 Koronas, and it was opposed to 400 000 Koronas debt. The debtor assumed the payment of 15% of its debts in the compromise offer. The first negotiation was on 12 December 1921, but because of procedural errors this negotiation was delayed.

The next negotiation was held on 23 December 1921. The debtor modified its offer to payment of 50% of debts. For this reason, the court had to notify the creditors of the new compromise offer, therefore the negotiation of compromise was held only on 21 Januar 1921.[2] The court examined the claims of 21 creditors, and it called upon them to vote about the compromise offer.

The result of the voting: Voted for:
Hermina Wertheimer (6.730 Koronas claims)
Antalné Tóth és István Ifj. Csetneky (50.600 K)
István Ifj. Csetneky (180.000 K)
Márton Körösi (16.106 K 20 f)
Donalf Vegyészeti Részvénytársaság (Donalf Chemical Joint Stock Company) (10.509 K)
Magyar /:budapesti/ Hitelezői Védegylet Vegyi, Festék, Fűszer, Gyarmatáru és Rokonszakmák Szakosztálya (Section of Chemical and Colonial Goods, Paints, Spices and Same Professions, Hungarian /Budapest/ Society for Protection of Creditors) (46.2543 K 44 f)

Voted against:
Friedmann Testvérek (Friedmann Brothers) (24.863 K 84 f)
Neumann and Waldmann (4638 K 94 f, not appeared, therefore against)[3]

[1] CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 691. (1922) Ke. 7988/34/1921.
[2] CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 691. (1922) Ke. 7988/34/1921.
[3] If a creditor was not appeared on the negotiation, the court counted as a vote against the agreement.

Géza Herczeg (1759 K 5 f, not appeared, therefore against)
Sárkány vegyitermék vállalat (Sárkány Chemical Goods Company) (6494 K 4 f, not appeared, therefore against)
Vajda Pál és László cég (Company of Pál Vajda and László Vajda) (20.416 K)
Szeged Alsótanyai Mezőgazdasági és Kereskedelmi Rt. (Chemical and Commercial Company of Szeged Alsótanya) (15.600 K)
Egyesült Újpest és Manfalseur Vegyészeti Gyár (Chemical Factory of Incorporated Újpest and Manfalseur) (24884 K, not appear, therefore against)
József Rubin (7000 K, not appear, therefore against)
Galitsenstein (4364 K 20 f, not appear, therefore against)
Müller and Co. (981 K 96 f, not appear, therefore against)
Mór Kohn (56757 K)

The proportion of votes was: claims of 726.488 K 64 f voted for the compromise offer, and claims of 164.295 K 89 f voted against it according to the court's calculations. According to the regulation of decree on compulsory arrangement, if the creditors whose claims reached the two-thirds of all claims, the compromise offer would be accepted. The two-thirds of all claims was 593.855 K 34 f, therefore the supporting votes reached the limit of acceptance. We have to remark that the majority of the creditors voted against the compromise offer, but the creditors with the bigger sum claims accepted the compromise offer, and this factor was the key in the connection of result of this procedure. Finally, the judge approved the compromise offer.[1]

Summary

The Hungarian economy developed the quickest from the Compromise to the First World War in the modern era. The population and the internal revenue increased very fast. Budapest became a metropolis. The new commercial acts could contribute very effectively to the development of economy, because the appropriate regulation helped the influx of the foreign capital to Hungary. For this reason, István Apáthy, the codificator and Tivadar Pauler, the Justice Minister are outstanding figures of the

[1]CSMLSZ VII. 1. Documents of Royal Regional Court of Appeal of Szeged 691. (1922) Ke. 7988/34/1921.

Hungarian history, because they realized that the state is able to influence the function of economy with the effective acts.

But we can see through the examined legal cases, that the First World War changed the economic circumstances, therefore it became necessary the influence of the state on the economy. The establishment of the compulsory arrangement was an efficient instrument to the solve the economic problems because it could save the indebted companies like the company in the examined case.

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The Role of the Budapest Chamber of Commerce and Industry regarding Unfair Competition

Bence Krusóczki

This entry will deal with the history of competition law, including the first substantive competition law of Hungary, i.e Article V of 1923, which contained provisions regarding unfair competition. Currently, unfair competition is the subject of competition law, one of the branches of economic law, which contains regulations regarding the protection of economic competition and the prevention of consumer detriment. The purpose of Article V of 1923 was to offer general protection against any form of unfair competition. The demonstration of each provision of the Article and the detailed demonstration and investigation of their practical implementation is not the topic of the present entry. The present paper will specifically focus on the arbitral tribunals of the Chamber and the practice of the jury since the fact that the duty and practice of these two bodies were highly significant for the application of the law in that era can be clearly concluded from the summary of research results. The central element of the Article could be honest commercial practice which can always be found in the public perception of the commercial and industrial world of a particular era. The jury and the arbitral tribunals were the bodies that could incorporate the morality of the commercial and industrial world.

Keywords: *the unfair competition, specific act, the Arbitration Institute of the Budapest Chamber of Commerce, Hungary, Court*

Introduction

In this paper, I will exclusively focus on the general clause expressed in section 1 of the article. Investigating the practice of Arbitral Tribunal of the Chamber of Commerce and Industry of Budapest and the Jury of the Chamber, I am seeking to know what meant the moral standard to them, based on which they could decide whether a certain commercial conduct was considered unfair or not. The reason I chose the practice of the Arbitral

Tribunal of Budapest Chamber of Commerce and Industry is that they were the bodies of enforcement that made their best endeavour to standardise the practice of law regarding commercial competition with their policies in the era.

I selected the 38 legal precedents in this paper for they contained statements and explanations in connection with section 1 of the article on unfair competition, thus endeavouring to fill the category of honest commercial practice with a wide range of content as possible.

As sources, I mostly used the documents of the Arbitral Tribunal and the Jury of the Budapest Chamber of Commerce and Industry from 1923 - the year the article came into force - until 1933, the first amendment of the article. In addition, I used the decisions of the Curia (the Supreme Court of Hungary) and the verdicts of the Budapest Royal Court. As secondary sources, I used literature on unfair competition and literature on private law.

The General Rules of Honest Commercial Practice and accepted Principles of Morality in the Article on Unfair Competition

Norms always stem from a moral norm accepted by society. We can even say that law and morals are inseparable concepts. This standpoint is supported by Károly Szaladits, according to whom *"with the voluntary conformity of citizens and the disapproval of unlawful procedure, morals largely provide the rule of law as well"*[1] The Hungarian legal literature attributes primarily gap filling functions to the clause on accepted principles of morality and regards it to be *"applicable when and insofar where legal regulation is not applied."*[2]

In most cases, morality as a private law concept arises in connection with contracts, the invalidity of contracts, In the legal literature of the 19th and 20th century, it was typical to discuss the breach of accepted principles of morality within the impossibility of the service.[3] As early as in the 1800s, Ignácz Frank declared contracts not conflicting with the law void because *"they were not compatible with honour."*[4] The legal literature of the interwar period made an attempt to distinguish contracts which were contrary to

[1]Szaladits (1941) at 7.
[2]Menyhárd (2004) at 286.
[3]Ibid, at 145.
[4] Frank (1845) at 589.

public policy and accepted principles of morality. In the latter, not only the agreements concerning individuals and families were included, but also the transactions - usurious and exploitative contracts - concerning public policy and economic order.[1]

Before World War II, due to the lack of a firm distinction between public policy and accepted principles of morality, every contract that *"limited individual freedom to the extent that it deprives the individual of the practice such freedoms"* were declared void.[2]This includes the limitation of industrial and economic freedom with non-compete, unlawful wage competition or anticompetitive cartel agreements,[3] but we can also find references to the accepted principles of morality in connection with unlawful pyramid schemes.[4] We can see the phenomenon of accepted principles of morality in connection with the increased economic free competition and widespread unfair competition as the principle that provides a general starting point for the protection against unfair competition.

According to judicial practice, the accepted principles of morality expressed the general value judgement of the society, the limits determined by private autonomies and common consent, the general moral norms and the standard of generally expected conduct.[5] While the origin of accepted principles of morality as a private law category should be sought in the general value judgement of society, the starting point related to unfair competition can be found in a more limited circle, i.e. the moral judgement of the commercial and industrial world. In the following, I will seek to know how different could the content of interpreting accepted principles of morality - regarding unfair commercial conduct - be from the general interpretation of accepted principles of morality.

Honest Commercial Practice and accepted Principles of Morality as the Standards of Unfair Competition

The central element of Article V of 1923 on unfair competition (AUC) was obviously honest commercial practice which served as the starting

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[1]Deli (2009) at 188.
[2]Szaladits (1941) at 340.
[3]For further information see Homoki-Nagy (2016) and Varga (2018).
[4]Deli (2009) at 192.
[5]Menyhárd (2004) at 308.

point for judging each commercial act. Here, the concepts of honest commercial practice and unfair competition are worth talking about briefly.

"Any business conduct regarded as unfair competition by the commercial and industrial world is unfair competition."[1] This statement is supported by the standpoint of the Jury of the Budapest Chamber of Commerce and Industry (Jury) according to which *"by causing his competitors harm or heavy losses by his success, or commercial or industrial activity with licit means, one is not engaged in unfair competition."*[2] When we usually talk about honest commercial practice and accepted principles of morality a a narrower category of private law appearing in commerce, by it, we should always mean the moral judgement of the business world.

On the one hand, a distinction was made between the proper judgement of good taste unaccepted principles of morality. On the other hand, the competitor's endangered, legitimate interests were also respected in the context of honest commercial practice. From the standpoint quoted above, it also follows that the harsh, ruthless battle unfolding in the commercial world, which could aim at destroying another person, the competitor or conflicted with any other law provisions, did not, in itself, constitute as unfair conduct. This presupposed that the competitive intent and the applied means were not immoral.[3]

The quoted standpoint of the Jury raises several questions when the competition law categories of accepted principles of morality and honest commercial practice are analysed. On the one hand, it is clear that the standpoint according to which the concept of accepted principles of morality has to be interpreted with different contents in relation to unfair competition was correct. While in general, we can say that the value judgements in connection with morality originated from the general judgement of society, we could only rely on the traders and manufacturers' moral judgements as far as commercial competition is concerned. In my opinion, it resulted from the fact that the society of the era would have regarded any commercial act that aimed at destroying and harming competitors or was illegal as unethical, despite the fact that these acts were not automatically constituted as unfair practices. The emphasis was on the circumstances and if the competitive intent and the applied means were not immoral, competition remained free. In my opinion, based on these,

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[1]Bányász (1933).
[2]Bp. Cham. Jury: Z 195. J. 473-1926.
[3]Bp. Cham. Arbitral Tribunal Z 202. Vb. 55.368-1927.

we could say that the boundaries established by the commercial and industrial world of the era proved wider than what was accepted by the general moral judgement of society. However, this is not necessarily true. During the examination of the practice, some of the cases demonstrated the opposite. It might be more accurate to state that the moral standard which had to be used when judging competitive acts could not be set accurately in a general manner. As I will seek to emphasise in the present entry, whether a commercial procedure was legal or not always depended on the judgement of the circumstances of the particular case.[1] The category and interpretation of accepted principles of morality with the content described here is what we can summarise as honest commercial practice.

There is one more issue regarding the analysis of accepted principles of morality and honest commercial practice I would like to clarify. A conduct could automatically constitute as unfair if a commercial procedure was carried out in a way that it conflicted with the law. According to Attila Menyhárd, the prohibition of conflicting with the law could be considered *lex specialis* compared to the prohibition of conflicting with accepted principles of morality.[2] Does the violation of law mean the violation of accepted principles of morality at the same time?[3] However, when we examine this question through the category of honest commercial practice, we can come to different conclusions.

The spice merchant plaintiff based on his lawsuit on the defendant selling milk without a permit. The Royal Court of Budapest decided that unfair competition took place. This decision was later upheld by the Budapest Royal Court of Appeal. However, the standpoints regarding the issue[4] found the judicial practice which, based on other laws, decided that it was unfair competition resulting from punishable acts, doubtable.[5] *"The purpose of the competition law was to persecute those acts and conducts that could not be persecuted based on any other law." So it is clear that an act that violates the law, cannot be one to be persecuted based on the law on unfair competition."*[6] The Curia agreed with this standpoint as in its verdict, they rejected the plaintiff with the following justification. *"Even if the defendant violated the*

[1]The right guidance has always been provided by the circumstances of the particular case, the experiences of everyday life and the phenomena of commercial life. Bp. Cham. Jury: Z 195. J. 1489/1926.
[2]Menyhárd (2004) at 252.
[3]Deli (2009) 169.
[4]For further information see Meszlényi (1936).
[5]Közigazgatási értesítő. XXXII. évf. 3. szám. Budapest. 1937. 4.
[6]Ibid. at 5.

regulations on the permit to selling milk, it does not necessarily mean that this conduct violates the AUC as in itself not every act prohibited by the law is unfair or immoral."[1] In this case the expression *"in itself"* had to be emphasised as, in my opinion, theabove-mentionedd standpoint, according to which an act that violates the law cannot be one to be persecuted based on the law on unfair competition, is not correct. In my opinion, the interpretation of the verdict of the Curia in this context would be misleading and would conflict with the moral content of competitive fairness. The first competition law of Hungary wanted to provide protection against any manifestation of unfair competition and provided special legal consequences – prohibitory injunction, interdiction, publication in newspapers, etc. – for competitor, since only with these means could get the conducts violating commerce *back on track*.[2] It would have been incorrect to deprive the competitors, against whom unfair procedures – realizing acts conflicting with other laws as well – had been carried out, of these means. As far as I am concerned, I find the approach, according to which despite the fact that a commercial act conflicted with the law, it did not automatically lose its feature of being contradictory to honest commercial practice, more accurate. According to my interpretation, what the expression *"in itself"* highlighted in the verdict of the Curia exactly tried to express was that in such cases, the circumstances of an act have to be investigated as well, since only in consequence of these – based on the moral judgement of the commercial and industrial world – could it be decided whether the act violated the requirements of honest commercial practice.[3]

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[1]From verdict P. IV. 3596/1935. Of the Curia; Közigazgatási értesítő. XXXI. évf. 16. szám. Budapest. 1936. 5.

[2]*The chapter on the transgression of the limits laid down by honest commercial practice is not exhaustive. It only provides a non-exhaustive list of the most significant cases of unfair competition. Thus, the arbitral tribunal is not barred from deciding that unfair competition took place even if they find that none of the cases of Chapter II is taking place. This is what the rule stated in Section 1 of the law provided a procedure for. According to the rule, commercial competition must not take place in a way that it conflicts with honest commercial practices or accepted principles of morality in general and the person whose conduct conflicts with these can be ordered to put an end to such conduct by the party so entitled.* Bp. Cham. Arbitral Tribunal Z 202. Vb. 3495-1925.

[3]In verdict P. IV. 3596/1935. the Curia considered that: *'Although the violation of statutory or contractual obligations does not imply that a certain conduct conflicts with the AUC as well because not every act prohibited by the law or contract is unfair or immoral in itself, but it can be so due to the nature of the act or the circumstances, namely, when the purpose, manner or means of violation is incompatible with the requirements of honest commercial practice or accepted principles of morality."* The point of the following case is that the defendant was selling razor blades

Both legislation and jurisprudence have agreed that the content of accepted principles of morality cannot be determined by law. Both leave the specification of the content in the hands of judicial practice.[1] So it was regarding the determination of the content of honest commercial practice in connection with unfair competition. At this point though, there was a substantive difference between the judicial specification of accepted principles of morality and the judicial consideration of honest commercial practice. In the latter case, enforcement had to be based on the moral judgements of the commercial and industrial world of the era, which, in many cases, was not a simple matter for judges with no commercial expertise. This is what the legislature recognised and created opportunities to ask the chambers of commerce and industry for help and advice regarding particular cases.

Setting the Standard of accepted Principles of Morality as the Duty of the Budapest Chamber of Commerce and Industry

In Sections 43-44, the Article on unfair competition ordered the set-up of bodies that exercise direct control over the compliance with the law and the fairness of competition. This task was carried out the chamber juries

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after closing time. According to the plaintiff, this act was conduct conflicting with Section 1 of the AUC since the plaintiff was trying to circumvent the general non-compete, which conflicted with honest commercial practice. According to the standpoint of the Curia, if the defendant had been engaged in this act in a planned, regular manner, he would have, indeed, committed an unlawful act. Here, I would like to point out that the reason the defendant's conduct constituted as conflicting with honest commercial practice might not have been that it was unlawful regarding the closing time, but because of the circumstances, namely its planned and regular manner. According to the judgement of the Curia, however, the circumstance that the defendant sold only one razor blade per time and did it three times after closing time, cannot be regarded as planned conduct in the particular case. Közigazgatási értesítő. XXXII. évf. 13. szám. (Administrative Notice. Vol. XXXII, Issue 13) Budapest. 1937. 4.; In several similar cases, too – when a competitive action also conflicted with the law –, the Arbitral Tribunal of the Budapest Chamber of Commerce and Industry concluded that even though a certain commercial conduct conflicts with the law, it does not automatically constitute as unfair competition. Bp. Cham. Arbitral Tribunal Z 202. Vb. 32.260 – 1925., 25.277 – 1925, 13.617 – 1924.)

[1]For further information see: Almási (1929) at 37-38.and Raffay (1906) at 378-379. Kolosváry (1911) at 102. In his opinion, though, how business intent related to public morality was a legal matter.

and arbitral tribunals functioning within the organisations of the chambers.[1] The competitors who exercised their rights provided by the AUC basically had three possibilities in connection with a possible competitive act. If they merely wanted to decide whether the alleged act, advertisement, etc. constituted as unfair competition, they could turn to the juries of the chambers of commerce and industry for resolution. If they were sure that the alleged act constituted as unfair competition and through a judicial verdict, their objective was to make competitor stop their alleged activity as soon as possible, they could file suit at the arbitral tribunals working within the chambers of commerce and industry. In the end, if they demanded compensation from the competitor besides the injunction or they even wanted to them to be prosecuted, the suit had to be filed at the competent royal court.[2]

The primary duty of the institution of the Jury was to issue resolutions on the requests – regarding unfair competition – they received. As an example, let us look at the case added in 1924, regarding which the Jury expressed the following opinion. A company in Budapest, as a wealthy American relative, announced the arrival of 100 dollars to the buying public and in the hope of restoring the old kinship and besides promising return favours, offering his company in exchange for the incoming amount, he requested the procurement of multiple counts of goods and urgent response.[3]

In this case, the Jury of the Chamber found that it was the realisation of an advertisement based on human credulity (*"boor baiting"*). According

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[1]AUC Section 43 *„The chambers of commerce and industry act as separate bodies in order to exercise their rights provided in subsection 2 of section 24, subsection 2 of section 32 and subsection 2 of section 40 and in order to perform the tasks assigned to them. On the composition and rules of procedure of this body, the chamber constitutes regulations, for the validity of which, The Minister of Trade's approval is necessary.";* Section 44 of the AUC *„The chambers of commerce and industry establish arbitral tribunals that rule on debates regarding unfair competition. This arbitral tribunal has the power to deal only with cases when the plaintiff does not demand compensation, so the only purpose of the lawsuit is injunction;* First and foremost, it is important to emphasise that the functioning of the Jury of the Chamber has to be distinguished from that of the Arbitral Tribunal. While the Jury was the advisory body of the chambers, the Arbitral Tribunal, on the other hand, was the specialised court of the commercial and industrial interests, adjudicating specific cases.

[2]Consequently, the chamber juries could only order the defendant to put an end to the infringement, but could not impose any other sanction. As a result of the impairment of the power of the arbitral tribunals, in many cases, if the competitor wanted to pursue any other claim besides the injunction, they could only do that in ordinary courts.

[3]Bp. Cham. Jury: Z 195. J. VII. 10. 169. – 1925.

to their justification, mostly the people of lesser intellect did not examine the content of such a confidential, family-related letter mostly in connection with America. They did not examine the correctness and truthfulness of the data communicated to them, but based their decision on emotions. In the light of the letters of complaint the chamber received, an entire army of Hungarians expecting their American relatives appeared, who have already purchased the goods listed in the letter and it was not until after that when they enquired about the American relative who was supposed to bring the 100 dollars and the expected time of his arrival. The content of the letter was definitely reprehensible on the basis of honest commercial practices as it misled the buying public. On the grounds of the fact that this act conflicted with accepted principles of morality, the Jury of the Chamber immediately demanded the injunction of the mailing of the circulars.[1]

From this precedent, it is clear that the Jury did not have means other than declaring that the commercial conduct of the company conflicted with the law and was unfair. This resolution, though, was not binding on the conduct of the company complained against. However, the situation would have been different if the procedure had not been conducted before the Jury but before the Arbitral Tribunal of the Chamber of Commerce and Industry, which I would like to demonstrate through the following example.[2]

The defendant of the case was selling shoes and was selling certain shoes at half price. This fact was advertised with the following text running across the entire shop window, in an especially enticing manner due to the large size of the letters: *"Buy now, we are selling at half price"* and other that, continued in small prints: *"certain pairs"*. The *"certain pairs"* part

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[1]The Jury emphasised that the conduct of anyone who, in the economic area, engaged in economic activities out of self-interest for profit-making purposes *"falls within the scope of the prohibiting orders of the law relevant to the competition in the entire economic activity."* Bp. Cham. Jury: Z 195. J. VII. 18.016. – 1925.

[2]Even at this point, I would like to point out that in many cases, there was no possibility to initiate a proceeding before the Arbitral Tribunals of the Chamber because the party initiating the procedure did not have the skills to initiate an arbitration procedure. In most cases, it meant their lack of status as competitors. For a more detailed discussion of this, see the chapter titled *the classification of competitors based on the practice of the chamber*. As far as parties with no status as competitors, it is important to see that the right to sue was provided for them neither before ordinary court, nor before the arbitral tribunals by the competition law. The article on unfair competition intended to defend the interests of customers only indirectly, by taking action against the immoral activities of those involved in economic life.

was written in significantly smaller letters, so that could only be noticed by paying special attention. In addition, it was placed in a way that it could easily be missed by the public. Basically, we can say that the defendant was advertising a truthful fact in a way that *"with usual attention, his advertisement could be given a meaning that did not comply with reality."*[1] The Arbitral Tribunal of the Chamber stated that the defendant's way of advertising was simply capable of increasing the attractiveness of the shoes and misleading the buying public. As the possibility of repeating the act of unfair competition existed as long as the defendant was using this method of advertising, the Arbitral Tribunal ordered the defendant to put an end to the activity.[2]

In a similar case, the party complained against *"gave 6 plates, 6 cups and 6 glasses for free"* for 100,000-koruna purchases. According to the complainant, the wording of the advertisement was liable to mislead the customers as in reality, the advertiser gave either 6 plates, or 6 cups or 6 glasses and not all three products. In the Arbitral Tribunal's opinion, this act of the party complained against aimed at misleading the buying public. The Jury pointed out that *"practice – and the wording of the advertisement itself shows that even such mendacious, advertisements that seem impossible were considered to be credible and made people purchase."*[3]

We can see that contrary to the power of the Jury, the competence of the Arbitral Tribunals of the Chamber was broader and binding, it could make enforceable judgements. It was the primary and most important difference between the institutions of the arbitral tribunals and the jury. Let us now see in detail what the duty of the Jury of the Chamber was and how it tried to shape legal practice regarding honest commercial practice and commercial conduct.

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[1]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 13.687. – 1938.

[2]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 13.687. – 1938.; The rightness of the Arbitral Tribunal's decision and the convergence of the practice of competition law were proven by decision No. 8380/1930 of Hungarian Royal Curia, which the Arbitral Tribunal's standpoint was almost exactly identical with regarding the above-mentioned case: *Advertising truthful facts in a way that they cannot be recognised with usual attention constitutes as unfair competition."*; This standpoint of the Arbitral Tribunal was supported by the Jury in resolutions Z 195. J. 1783-14. – 1925. and 1783-13. – 1925.

[3]Bp. Cham. Jury: Z 195. J. VII. 1783-10/1925.

The Guidelines of the Arbitral Tribunal of the Budapest Chamber of Commerce and Industry regarding each act of Competition

The arbitral tribunal procedures were not actually civil proceedings, they rather substituted these. The state set up its own institutions of judicial protection, but did not oblige the parties to use them in case of a dispute. Rather, the parties involved were enabled to deal with their disputes between themselves, without the assistance of the state's body of judicial protection.[1] Overall, we can say that the proceedings and decision of the arbitral tribunal were based on private-law relationships and they fell under private law as they could only proceed on the basis of the contracts concluded by the parties.[2] However, if the executive power endows the verdict of the arbitral tribunal with qualities of a public document or other qualities of a final judgement, the legislative power has an obligation to guarantee that the public interest and the legitimate private interest cannot be violated by the arbitral tribunal proceedings.[3] In relation to the foregoing, Article I of 1911 on the Code of Civil Procedure (hereinafter: CCP) had already contained that the effects of arbitral tribunal verdict and the agreement are the same as the that of the final judgement of a court and it sought to regulate the entire proceedings with guarantee elements.[4]

As I explained earlier, regarding specific acts of unfair competition, the aggrieved competitor had more opportunities to resort to the protection provided by the competition law. One form of enforcing rights was to initiate arbitration before the arbitral tribunals working within the organisation of the chambers of commerce and industry. Before examining

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[1]Gaár (1911) at 385. It follows that the parties can agree to have a person or multiple people chosen by them in a specified way decide their dispute and consent to be bound by the decision. However, it was only the result of the agreement between the parties and *"not an act of public law carried out by the state's body of judicial protection endowed with the power of public authority and therefore it does not have the power of a verdict."* As a result, if the party did not voluntarily make the obligations they were bound to by the arbitrator or arbitrators' verdict, no proceedings based on the arbitral decision can be initiated against them. The arbitral decision could become an enforceable public document only by specific legislative measures. Id. 385-386.

[2]Magyary (1924) at 729.

[3]Meszlényi (1911) at 396.

[4]In relation to the arbitral proceedings, the Code of Civil Procedure of 1911 also determined the subject of the arbitral contract and its means of validity, its discontinuation, the selection and exclusion of the members of the arbitral tribunal, as well as the judicial procedure and the actions for annulment of a decision.

the practice of the Arbitral Tribunal regarding acts of unfair competition, I would like to briefly summarise the points where essential differences occur between the arbitral tribunals of the chambers and thee arbitrations regulated in Title XVII of the CCP.

In respect to the cases described in the AUC, the arbitral tribunals are regarded as ordinary courts, while the arbitration regulated in the CCP was always exceptional. The power of the arbitral tribunals of the chambers was determined by the unilateral declaration of the plaintiff, according to which they filed the lawsuit before them, while according to the rules of the CCP, the arbitration clause was only valid if the parties stipulate it in a joint, bilateral legal act. The members of the arbitral tribunals could only be selected from the register of the jury members. Its president was always one of the judges of a High Court designated by the Minister of Justice, while, according to the regulation of the CCP, anyone could be a member of the arbitral tribunal, except for those who could be excluded on the basis of Section 774 of the CCP, and it was not mandatory to appoint a president. Nevertheless, one of the main differences was that the arbitral tribunals carried out judicial activities, they could hear witnesses and perform proofs of concept, while, according to the rules of the CCP, if an arbitral tribunal wished to carry out such activities, they had to turn to the competent District Court.[1] It was possible to appeal against the decisions of the arbitral tribunals to the competent High Court, while, according to

[1]Section 777 of the CCP:: *"The arbitral tribunal can only hear witnesses and experts if they appear before the arbitral tribunal. However, neither the, nor the parties must be made tosweart on oath. The arbitral tribunal must not order coercive measures and must not impose fines."* Section 778 of the CCP:: *If the arbitral tribunal finds a judicial act that they cannot enforce, necessary, for that purpose, they can turn to the competent (Section 14) District Court. The District Court is authorised to hear the witness or expert, and carry out the measures of a court with jurisdiction* related to the implementation of the inspection."; The fact that the presidents of the arbitral tribunals were, in all cases, High Court judges who could be selected from the register determined by the Ministry of Justice and who were authorised to carry out the specific proceedings could explain this essential special power.; *"At the request of the plaintiff, the arbitral tribunal made the witnesses swearann oath as they found that the directions of Title XVII of the CC Papplys to arbitral tribunals established on the basis of Article V of 1923 on unfair competition only in so far as it is prescribed specifically in Regulation No. 23.900/1924. I.M. and this regulation orders the directions of Chapter VII of Article I of 1911 on unfair competition applicable only in so far as that they concern the establishment of arbitral tribunals. Therefore, the direction of Section 777 of the CCP according to which the arbitral tribunal must not make witnessed swear oaths, is not applicable in the procedure."* Bp. Cham. Arbitral Tribunal: Z 202. Vb. 3495. – 1925.

the rules of the CCP, the decisions of the arbitral tribunals could only be challenged with lawsuits of annulment.[1]

Thus, the main difference between the chamber jury and the arbitral tribunals was the fact that while the jury provided opinions, assessments regarding specific commercial conducts, the arbitral tribunals gave irrevocable judgements in case of a lawsuit brought before them by the aggrieved party.[2] In the following, I will provide some insight, with honest commercial practice and accepted principles of morality in the centre, into the practice of the Arbitral Tribunal working within the Budapest Chamber of Commerce and Industry.

After the arguments presented by the parties, the Arbitral Tribunal determined the following facts. In their shop, the defendant served their customers asking for Franck coffee another brand of coffee. They did it without drawing their attention to the fact that they were serving another brand instead of the one the customers had asked for. According to the judgement of the Arbitral Tribunal, this procedure was, on the one hand, capable of deceiving the customers and on the other hand, it could put the manufacturer of the product requested by the customers at a particular disadvantage. Finally, the Arbitral Tribunal drew attention to the fact that the defendant's commercial conduct *"clearly destroyed the tradesmen's respectability as with their procedure, the defendant undermined the most important basis of commerce, namely the faith and trust in tradesmen which should have existed towards them from the manufacturer of the product and the other tradesmen as well."*[3] The conduct determined in the facts, therefore, clearly conflicted with the law and the defendant had to be made subject to an injunction prohibiting provision under Section 1 of Article V of 1923.[4]

In the above-mentioned decision by the Arbitral Tribunal, their moral judgement is made ever clearer. Their decision was not only based on whether the defendant was engaged in a commercial practice that was prohibited by the existing law, but going far beyond that, representing every honest tradesman and craftsman, the Arbitral Tribunal tried to express their morality as well. They did this by laying down in judgement and detailing why the defendant's commercial practice conflicted with

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[1]Section 784 of the CCP:: *"The decision of the arbitral tribunal can be annulled with action before a regular court."*

[2]Julow (1926) at 8-9.

[3]Budapesti Kereskedelmi és Iparkamara. Kamara évkönyve. Budapest Budapesti Kereskedelmi és Iparkamara. 1925. 132.

[4]Id., 133.

honest commercial conducts and what adverse consequences can it have on commercial life, which, ultimately, justified the injunction.

The Jury could not stress enough that regarding cases of competitive acts, it is always the circumstances of the case that one has to focus on. This resolution by the Jury was expressed to the full in every arbitration.[1]

In a case that started in 1933, the plaintiff complained that the defendant, a charcoal vendor, put charcoal packages labelled as "white impregnated charcoal" on the market, advertising them as odourless. The plaintiff attached the results of the examination carried out by the Royal Joseph University to the lawsuit. The examination determined that the examined charcoal *"had an unpleasant odour and the effects of examined charcoal wares not different from that of the ones without the white coating."*[2] Based on the arguments, referring to Section 1 of the AUC, the plaintiff requested the Arbitral Tribunal to ban the defendant from such means of advertisement and also requested the decision to be published in the specialist magazine titled *Fűszerkereskedők Lapja* and the newspaper titled *Ujság* at the defendant's expense. In their decision, the Arbitral Tribunal stated that the defendant admitted that the package of the charcoal said that it was smokeless and odourless but according to their defence, it meant that the charcoal was smokeless and odourless was it was not used, but it gave off a slight smoke and coal odour when used. According to the consideration of the Arbitral Tribunal, *"the customer who was offered smokeless and odourless charcoal by the vendor, did not put the emphasis on the fact that the charcoal they purchased had these qualities when not used, but clearly interpreted the advertisement as meaning that the charcoal did not give off an unpleasant smell and smoke when used."*[3] According to the resolution of the Arbitral Tribunal, the defendant's act deceived the public, which ultimately constituted as unfair competition, thus they have to be banned from continuing this activity. *"The Arbitral Tribunal banned the defendant, under the penalty of a 50-pengo per package fine, from selling charcoal in packages according to which the coal is smokeless and odourless, and also obliged the defendant to pay the plaintiff a 250-pengo litigation cost within 15 days."*[4] As the

[1]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 15.326. – 1925.
[2]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933
[3]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933
[4]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933.; *The decision of injunction imposed a fine in case the defendant did not comply with the decision by adding that the imposed fine can be collected as many times as the defendant violates the provisions of the decision."* In cases permitted by the law, the decision could also order publications in newspapers and made

Arbitral Tribunal did not find the defendant's procedure such a serious offence to be punished with the burden of being published in a newspaper, they gave the plaintiff permission to publish the decision without giving away the defendant's name and premises in a newspaper at their own cost.

Based on the decision of the Arbitral Tribunal, the successful party three more possibilities. In case the defendant did not comply with the decision, they could institute enforcement proceedings and pursue their claim by a lawsuit before the competent royal court. Finally, if the defendant was still engaged in their unlawful conduct after the decision took effect or after the deadline for compliance with the decision – with regard to the fact they obviously acted despite their better knowledge –, they could initiate prosecution.[1]

As I have pointed out multiple times when discussing the practice of the Jury, regarding their specific resolutions, the Jury increasingly tried to avoid their decisions to be regarded as fundamental statements. Contrary to this, though, the Arbitral Tribunal, in their judgements, expressed fundamental decisions as well, contributing to the even clearer assessment of competitive acts.

In the following case, it was not the exactly the non-compliance with honest commercial practice of a specific commercial conduct that the Arbitral Tribunal had to assess, but they had to decide whether an idea, a unique advertising method, a commercial notion could be defended on the basis of the law on unfair competition. In their lawsuit, the plaintiff

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arrangements regarding the matters of paying the litigation cost and its amount. Bányász (1927) at139-140.

[1]Kovács (1933) at 1598. Based on the decision of the arbitral tribunal, the execution petitions always had to be submitted to the arbitral tribunal itself, which forwarded the documents to the competent royal district courts. I will summarise the possibilities that could be considered during the enforcement proceedings as follows. Based on the conviction of the arbitral tribunal, the purpose of the execution petition would be that the court banned the defendant from continuing their conduct and repeating their act with imposing a fine. However, in case the arbitral had already imposed the fine in their decision – see the case above –, it was only the repetition of the banned activity that the plaintiff had to prove in order for the court that enforced the measures to collect the fine. These, however, were only applied to the cases in which the measures expressed in the decisions were physically unenforceable – e.g. spreading false information, touch customers –since in case the measure proved enforceable, the court, beyond collecting the fine, banned the forbidden activity by enforcing the measures via its delegate. (Examples are the removal of the illegally used company sign and the seizure of documents containing forbidden contents.) Bányász (1927) at 140.

presented that they had been using a unique propaganda instrument for marketing their lozenges for almost a year. It consisted of an advertising character depicting a chimney sweeper holding a sign advertising the lozenge *"Negro"*, placed in front of lozenge shops or in their shop windows. As the plaintiff presented, *"the defendant violated the intangible rights implicit in this propaganda instrument by their practice of placing a child's figure standing next to a snow pile, holding their hand in front of their mouth with a sign advertising the Kaiser toffee on s sign attached to a pole."*[1] The *de facto* basis of the plaintiff's lawsuit was laid down on the second page of the lawsuit. According to it, *"the use of such advertising characters was their idea, they acquired the right to this idea and made it renowned at great effort and cost. The defendant committed their act violating honest commercial practice by copying this idea."*[2] The defendant requested the rejection of the lawsuit as in their opinion, the way they used the advertisement was widespread. According to their view, moreover, he had started this method of advertisement earlier than the plaintiff.

The Arbitral Tribunal considered that the plaintiff's idea was neither ne, nor unique. *It was, indeed, well-known that the advertisement method used by both the defendant and the plaintiff had been common, widely used for years and the use of suspended, free-standing boards or ones that could be placed in shop windows and depicted human characters could not be considered as an idea that would create monopoly for someone."*[3] We can see that, in this case as well, the Arbitral Tribunal proceeded on the basis of the moral judgement of the business world and concluded that nobody could consider an existing commercial practice their own, thus that could not be defended. Beyond what has been mentioned above, though, a more important decision of principle is evident from the arbitration, which could be regarded as guidance in the assessment of competitive acts with a comparable situation. On the basis of the decision, we can say that in this case, the specificity of the idea – the application of advertisements on the human figures – might not generally have been in the use and place of the set-up of the figures, but exclusively in the application of particularly shaped figure. Solely because somebody used a particularly shaped figure as an advertising

[1]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.
[2]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.
[3]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.

instrument, others still had the right to apply other figures, i.e. the use of figures depicting humans could not be appropriated.[1]

Conclusion

In my entry, I sought to choose legal cases which are especially in relation to Section 1 of the article on unfair competition, as in these cases, the particular moral standard, the content of which I was focusing on, had to be applied. Due to the length limit, I could not present all the 38 chosen cases in detail in my paper, so in many cases, footnotes indicated their contents.

Summarising my results, I assume that the foundations of the chamber work were obviously professionalism, moral reliability and promptness. In the course of their work, the endeavour of the acknowledged experts gathering in the arbitral tribunals of the chamber and juries was always for their moral resolutions and decisions to comply with the public perception of the commercial and industrial world of the era. Despite the fact that the resolutions provided by the jury were not binding on the competitors complained of, it was, of course, permitted to refer to them. In my opinion, Sections 44-45 of the Article on unfair competition have definitely fulfilled their purpose as our courts preferred to turn to the chambers of commerce and industry if they had doubts on the assessment of specific business conducts. The arbitral tribunals before which disputes regarding unfair competition were brought, were often criticised for applying excessively strict standards. At the same time, though, we could see that they sought to bear the decade-long business habits and procedures in mind and they tried to break them down step by step, gradually.[2]

As the primary objective of my paper, I set out the examination of the standard of honest commercial practice and demonstrating how the practice of the chambers tried to fill it with content. I am of the opinion that based on the practice of the Jury and the Arbitral Tribunal of the

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[1]Moreover, in their lawsuit, the plaintiff pointed out the fact that for them, protection was registered for the *"chimney sweeper"* figure. In relation this, the Arbitral Tribunal pointed out that in this regard, the fact that the plaintiff got the protection and set up human figures in front of shops in the lozenge business makes no difference as it was merely a matter of detail. The advertising character depicting a human figure had been generally used for years, thus the idea could not be regarded as the plaintiff's exclusive right and a right to be protected.

[2]Bp. Cham. Arbitral Tribunal: Z 202. Vb. 31.885.-1925.

Budapest Chamber of Commerce and Industry, we can clearly state that the content of the conception of honest commercial practice is slightly different from the well-known private law categories of accepted principles of morality and honesty. On the basis of the cases presented in my entry, we can say that the content of honest commercial practice sometimes showed a stricter and in some other cases, it showed a more lenient standard compared to the general moral judgement of the society.[1] For this reason, it would be right to say in general that a stricter standard had to be always applied against commercial conducts that were classified on the basis of honest commercial practice. In this case, I accept the investigation method expressed by the Jury so many times as right, according to which, all the circumstances of business conducts had to be assessed. There is no doubt that it was not an easy task to classify the commercial conducts and to determine whether they conflicted with the article on unfair competition. Thanks to the variety and diversity of the cases, though, I think that this is what makes this topic interesting and special.

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[1]Constituted more severe including: Bp. Cham. Arbitral Tribunal: Z 202. Vb. 15.326. – 1925.; Constituted less severe, for example: Bp. Cham. Arbitral Tribunal: Z 202. Vb. 55.368-1927.

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Tools of the Case Management in the First Hungarian Code of Civil Procedure[1]

Kristóf Szivós

The dilatory behaviour of the parties and their lawyers is independent from age and geographical location since it arises always and everywhere for identical reasons.[2] *Case management has been recognised as essential to securing the right to a trial within a reasonable time in a number of European jurisdictions.*[3] *As a result, judicial case management has become increasingly popular. Much of the control over the proceedings that was with the parties and their lawyers has over the last decades been transferred to the court.*[4] *Increasing proceedings with a single judge, fewer hearings and adjournments and a better balance between written and oral proceedings, were among the central goals of the reforms.*[5] *This tendency can be observed in Hungary as well since the main aim of the new Code of Civil Procedure of 2016 is to concentrate the proceedings, which has two addressees: the parties and the court. This means that on one hand, the parties are obliged to facilitate the proceeding and on the other hand, the role of the court was strengthened through the case management. This study examines the historical basics and tools of this latter legal institution in accordance with the first Hungarian Code of Civil Procedure, the Act I of 1911 enacted after almost thirty years of codification. The study is based not only on the legal literature but on the practice as well, which means that the decisions of the higher courts are also taken into consideration. I also analyse the legal practice of the code of summary procedure (Act XVIII of 1893) because the examined Sections were regulated identically in the two codes.*

Keywords: *Act I of 1911; Act XVIII of 1893; case management; civil procedure; relationship between the parties and the court*

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[2]Czoboly (2013) at 9.

[3]Uzelac (2017) at 7.

[4]Verkerk (2007) at 27.

[5]Nylund (2018) at 17.

Introduction to Case Management

The Birth of the French Code of Civil Procedure and its effects

The 19th century brought significant changes in the law of civil procedure based on the principles of orality, immediacy and the free evaluation of evidence. The codification of the French Code of Civil Procedure (*Code de procédure civile*) of 1806 was "the expression of a society and a political regime which meant to put the revolutionary years behind them, but without putting the clock entirely back to the era of the *Ancien Régime*."[1]

The birth of the *Code de procédure civile* marked the beginning of the era of the so called passive judges, which left "its mark on the nineteenth century civil procedural law of almost all European states."[2] For example, the German Code of Civil Procedure[3] (*Reichscivilprozeßordnung* – still in force under the name of *Zivilprozessordnung*) of 1877 was intended to modernise the conduct of proceedings under French influence. The freedom of the private individual in regard to the state authorities, particularly to the law courts, was expressed in a series of separate provisions, for instance by the passive (or waiting) attitude of the court, since it only interfered with the procedure only to a small extent. State authorities took an active part only when the judgment was given.[4] The procedure was dominated by the party-prosecution (*Parteibetrieb*), they could submit new arguments until the end of the last oral hearing (without any possibility of precluding arguments) and they could adjourn the proceedings without any reason.[5]

A Different Way: The Austrian Model and its success in the Twentieth Century

When the Austrian Code of Civil Procedure of 1895 took effect in 1898, the era of the rather passive judges ended.[6] Perhaps the most perplexing

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[1] Wijffels (2005) at 25.

[2] Van Rhee (2007) at 307.

[3] After the Congress of Vienna of 1815, the left bank of the Rhine were annexed to Prussia, Bavaria and Hessen-Darmstadt. However, this territory was not integrated to the legal systems of these states and the *Code de procédure civile* remained in force until the *Reichscivilprozeßordnung* of 1877, so the influence of the French code came 'from within'. Oberhammer & Domej (2005) at 107.

[4] Cohn (1934) at 73.

[5] Gottwald (2004) at 147., Bettermann (1978) at 365-397.

[6] Van Rhee (2007) at 307.

task which Franz Klein ("the superb drafter of the Code")[1] faced in drafting the Austrian *Zivilprozessordnung* was the delineation of functions of the court and the parties in a system intended to combine features of party-presentation and court-prosecution.[2] Cappelletti featured this code as "extremely influential, more radically innovative"[3] than the German one. Klein advocated a stronger position for the judge in such a way that the parties remained in control of the initiation of the lawsuit and made decisions about its continuation and termination.[4] While the parties were required to set forth truly all the facts serving for the support of their respective contentions and are permitted, through the court or by its permission, to question each other or each other's representatives, it is made the duty of the court, at the hearing, by questioning or otherwise, so to proceed that all relevant allegations be brought forward and all relevant facts disclosed.[5]

The Austrian *Zivilprozessordnung* realised the idea that civil procedure is a social institution of the state (*Sozialfunktion*) where the judge should manage the case in a concentrated way to give a just judgment as early as possible.[6] Klein sought to introduce measures designed to speed up proceedings, for example, the restriction of procedural objections, the limitation, if possible, to a single oral hearing, the shortening of time-limits and the prevention of the adjournment of the hearing by request of the parties.[7]

The Austrian model dominated developments in jurisdictions throughout in the 20th century,[8] including the Hungarian Code of 1911, the Norwegian Norwegian Code of 1915 and the Danish Code of 1916.[9] For instance, the German *Zivilprozessordnung* was amended in 1909, 1924[10] and 1933,[11] when the duty of the parties to give all particulars of the case and to tell the truth

[1]Cappelletti (1971) at 858.
[2]Homburger (1970) at 24.
[3]Cappelletti (1971) at 854.
[4]Van Rhee (2018) at 76.
[5]Engelmann, Hermann, Millar & Schwartz (1927) at 636.
[6]Gottwald (2004) at 148.
[7]Oberhammer (2004) at 225.
[8]Van Rhee (2018) at 76.
[9]Cappelletti (1971) at 855.
[10]Millar (1924) at 703-708.
[11]The Code was also amended significantly in 1976. Gottwald (1997) at 753-766.

and gave the court the power to preclude arguments (of both parties) not presented in time in preparatory pleadings.[1]

Defining Case Management

Case management means the collection, the classification and the preparation of the materials of the proceeding by the court.[2] According to Cabral, case management constitutes the early and continuous control over a judicial process and its proceedings in terms of efficiency, in order to enhance speed and quality, as well as to ensure compliance.[3]

The parties are obliged to cooperate with the court. During the codification of the new Hungarian Code of Civil Procedure it was disputed whether the cooperation of the parties should be a basic principle or not. The legislation came to the result that such a principle is not necessary, since the plaintiff initiates a procedure because he/she could not cooperate with the defendant. According to *King*, "judicial case management requires lawyers and judge to act as a team in planning the case. The judge serves as captain and the team is responsible for expediting the exchange of information."[4]

The Main Features of the Act I of 1911

The Act I of 1911 (hereinafter: The Code) was enacted by the Hungarian Parliament in 1910 after almost thirty years of codification. The creator of the Code, Sándor Plósz (Minister of Justice between 1899 and 1905) got a mandate in 1880 from the House of Representatives of the Parliament[5] to participate in foreign studies, where he examined the new German Code

[1]There are two fundamental differences between German and Anglo-American civil procedure, and these differences lead in turn to many others. First, the court rather than the parties' lawyers takes the main responsibility for gathering and sifting evidence. Second, there is no distinction between pretrial and trial, between discovering evidence and presenting it. Langbein (1985) at 826; Vorrasi (2004) at 375-379.

[2]"Die Sammlung, Gliederung und Aufbereitung des Prozessstoffes" Rechberger & Simotta (2017) at 360, Kodek & Mayr (2018) at 245. Endemann stated that is is "die Summe von Befugnissen des Richters." Endemann (1868) at 474.

[3]Cabral (2018) at 7.

[4]King (1997) at 24.

[5]Térfi (1915) at 2.

of Civil Procedure. His first draft of 1885[1] was influenced by the liberal German model, but after the enactment of the Austrian *Zivilprozessordnung*, our codification (as mentioned before) was affected by it.

During the codification of the Code, the Act XVIII of 1893 on the summary procedure was enacted, which 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."[2]

Oberhammer emphasised that every legislator striving to speed up litigation had to decide whether ordinary procedure should be accelerated or special summary proceedings promising speedier handling of small claims or certain types of claims should be introduced alongside ordinary procedure[3] This duality was perceptible in the 18th-19th century Europe as well (especially in the German legal systems).

Oral hearings do not need the principle of contingent cumulation (*Eventualmaxime*), which was a necessary tool to avoid the protraction of the written procedure,[4] 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 case management.

In the procedure based on the Act I of 1911 (and on the summary procedure), the court had a significant managerial role, however the managerial activity of the court could not be interpreted as taking of evidence *ex officio*. The parties should name and provide the evidence based on the questions of the court.[5] Regarding the case management, the

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[1]Plósz (1885) at 1-160.
[2]Ministerial explanation to the bill on the summary procedure at 46.
[3]Oberhammer (2004) at 219-224.
[4]For the Hungarian historical background of the principle of contingent cumulation, see Szivós (2019) at 79-89.
[5]Decision no. 1900. II. G. 100. (13 December 1900) of the Royal Regional Court of Appeal of of Budapest.

chair of the court panel had such a significant role that "the fulfilment of the intention of the act" depended on him.[1]

As a general rule, the chair of the court panel should care about the detailed discussion of the case. However, the hearing of the case should not be disturbed by 'lengthiness' and with such matter that did not belong to it and it should be finished in the same session (Section 224 subs 2 of the Code).

The chair of the court panel should care about the vague requests, statements and declarations, the deficient statements and proofs and make sure the parties explain and complement them (Section 225 subs. 1 of the Code). In the procedure before the district courts, the judge had an additional obligation. He should warn the party without legal representative about the consequences of his actions or omission, the deadlines of any procedural remedy and the rules of representation (Section 225 subs. 4 of the Code). However, if the party had a legal representative, the court did not have to warn him.[2]

The Case Management in the Act I of 1911

The Difficulty of bounding the detailed Discussion and the Clarification

There were two main tools of case management: the *detailed discussion* of the case and the *clarification* of the statements of the parties. However, they were very similar. For example, there was a judicial decision where the court declared the procedural violation based on Section 37 of the Act XVIII of 1893 (Section 225 of Act I of 1911) because the court did not search the basis of the claim.[3] On the other hand, we could also say that the court did not discuss the case in details (Section 35 of Act XVIII of 1893; Section 224 subs. 2 of Act I of 1911).

When the chair of the panel cared about the vague requests, statements and declarations, the deficient statements and proofs and made sure the

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[1]Borsitzky (1915) at 83.

[2]Decision no. II. G. 21/95. (12 June 1895) of the Royal Curia; decision no. II. G. 48/95. (11 September 1895) of the Royal Curia; decision no. I. G. 44/96. (12 May 1896) of the Royal Curia; decision no. I. G. 214/96. (14 October 1896) of the Royal Curia; decision no. I. G. 531 1900. (9 January 1901) of the Royal Curia; decision no. 1896. II. G 87. (18 December 1896) of the Royal Regional Court of Appeal of Budapest.

[3]Decision no. 1899. G. 87. (12 October 1899) of the Royal Regional Court of Appeal of Debrecen.

parties explain and complement them, he also cared about the detailed discussion at the same time.[1]

The Obligation to Clarify the Relevant Facts

The clarification was a particular obligation of the court[2] and had to be applied to the statement of claim as well since it was the base of the decision of the court.[3] There is a central question in the new system of civil procedure in Hungary whether the statement of claim shall or shall not be clarified before communicating it with the defendant and not only scholars, but the jurisdiction is also divided in this debate.

In a case, the plaintiff requested the court to adjudicate maintenance payment to a child, but just *in general* (without the specification of the time or duration). The claim was vague in the sense it did not specify whether the plaintiff wanted the payment from the birth of the child. However, the court omitted to clarify the vague statement of claim and interpreted it one-sided (as the plaintiff had asked from the birth). This procedure did not fulfil the requirements of the clarification.[4] The court acted contrary to the basic principles of the Code when it held further hearings and recorded the statements without clarifying their vagueness. Neither the court of appeal nor the court of the review procedure could decide the case because of it.[5]

To mention another legal dispute, the defendant admitted that he conducted a brokerage contract with the plaintiff, according to which the half of the revenue that he earns belongs to the plaintiff. The main dispute between them was whether the plaintiff could claim his part from the defendant only if the defendant got the money from the third parties he conducted a contract with or not. According to the general procedural rules, the parties could submit the facts and the proofs freely even in the appeal hearing. However, the court of the second instance did not discuss

[1]The judicial decisions cited are mostly brought Royal Regional Courts of Appeal. They were the second highest courts in Hungary after the Royal Curia which had a significant role in unifying the jurisdiction in Hungary. Varga (2014) at 281-289.

[2]Decision no. 1896. I. G. 11. (24 January 1896) of the Royal Regional Court of Appeal of Budapest.

[3]Decision no. 1899. G. II. 3. (16 February 1899) of the Royal Regional Court of Appeal of Győr.

[4]Decision no. I. G. 298/97. (14 October 1897) of the Royal Curia.

[5]Decision no. 1898. G. 16 of the Royal Regional Court of Appeal of Kolozsvár.

the details of this disputed agreement of the parties. As a result, the court of the review procedure could not make a decision in the case.[1]

Questioning the Parties

The most typical form of clarification was the *questioning*. Apart from the members of the court panel, the parties also had the opportunity to file motions to ask questions. The court decided about the permissibility of the question (Section 225 subs. 2 of the Code).

The main boundaries of the questioning were the principles of free disposition (*Dispositionsmaxime*) and the "party control over allegations and proofs"[2] (*Verhandlungsmaxime*). The *right of questioning* could not be the tool of judicial investigation. The court could practise this right only to those facts and proofs which were submitted by the parties (e.g. when the opponent did not declare about a statement it was too general or the verbal statement opposed with the statement of the preparatory document).[3]

In case of deficient statements, the principle of free disposition was the main standard. For example, the Royal Regional Court of Appeal of Budapest set aside a judgment of the court of second instance because the defendant did not make a statement in a decisive fact and he was not questioned about it. The clarifying activity had to be recorded either in the minutes of the hearing or in the judgment.[4]

In a case the defendant was represented by a licensed attorney. As a main rule, formal defence (when the defendant requests the termination of the proceeding) had to be proposed during the preparatory hearing.[5] The defendant did not submit such defence until the appeal hearing, but then his motion was upheld by the court and the procedure was terminated.

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[1]Decision no. 1896. II . 35. (5 June 1896) of the Royal Regional Court of Appeal of Budapest.

[2]This is the English definition of the *Verhandlungsmaxime* given by Van Rhee (2007) at 312. Cohn and Meyer defined it as the "principle of party presentation." See Cohl & Meyer (1952) at 38.

[3]Kovács (1927) at 596-597.; Kengyel (2003) at 178.

[4]Decision no. 1899. II. G. 90. (23 November 1899) of the Royal Regional Court of Appeal of Budapest.

[5]In case of the summary procedure of 1893, it had to be proposed in the first hearing. In case of the pleas, the principle of contingent cumulation (*Eventualmaxime*) was applied, so if the defendant did not propose all the reasons serving as a ground for the termination of the procedure together, he did not have the opportunity to do so anymore. See Szivós (2019) at 88-89.

The Royal Curia rejected the formal defence, and a repeated appeal hearing had to be held. Since did not raise such a plea which had to be taken into consideration *ex officio* (without the request of the party), the court was not obliged to inform the defendant about these pleas because he was represented by a licensed attorney.[1] In contrary, *the court had to inform the parties about actions which might be taken ex officio*, even if they had a legal representative.

Regarding the vague statements, the principle of party presentation was the boundary of questioning because it could only refer to those circumstances and statement of facts which were stated by the parties.[2] The Code did not mention, but the courts had to clarify the statements if they were controversial,[3] since these statements also belonged to the category of vagueness.

The principles of free disposition and party representation were also important in case of the detailed discussion. For instance, if the court did not discuss the relevant circumstances which related to the complaint of review, then it was a procedural violation.[4] In the complaint, the complainer details the grievances which he wishes to be discussed by the court. When the court did not examine it, not only did it infringe the rule of detailed discussion but the principle of free disposition as well.

Conclusion

To sum up the aforementioned, when the court did not clarify the case (i.e. the *relevant facts*) or discussed it in details, it meant a *procedural violation* which could result in the setting aside of the judgment if the case could not be decided without these certain facts.[5] However, it was not

[1]Decision no. I. H. 30/1900. (30 December 1909) of the Royal Curia.
[2]Decision no. 1895. III. G. 22. (27 June 1895) of the Royal Regional Court of Appeal of Budapest; decision no. 1896. II. G. 61. (16 October 1896) of the Royal Regional Court of Appeal of Budapest.; decision no. 1897. G. 73. (27 December 1897) of the Royal Regional Court of Appeal of Marosvásárhely.
[3]Decision no. 1899. I. G. 359. (22 February 1900) of the Royal Regional Court of Appeal of Budapest.; decision no. 1900. G. 1. (20 February 1900) of the Royal Regional Court of Appeal of Marosvásárhely.
[4]Decision no. 1896. I. G. 154. (25 September 1896) of the Royal Regional Court of Appeal of Budapest.
[5]Decision no. 1896. I. G. 165. (24 September 1896) of the Royal Regional Court of Appeal of of Budapest; decision no. 1896. I. G. 154. (25 September 1896) of the Royal Regional Court

necessary if the procedural violation could be remedied by the amendment of the judgment.

The detailed discussion and the clarification were two very similar tools of the case management. We see from the judicial decisions that court treated the detailed discussion as a *general rule* of the case management since the clarification and its cases were the embodiment of it.

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