

Traces of Legal Anthropology in Hungary in the 20th Century. An Attempt to Define the Folk Concept of Law

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ABSTRACT

The present paper addresses the fragmented history of Hungarian legal anthropology. Although legal anthropology does not have a centuries-long tradition in Hungarian legal scholarship, the activities and publications of the late Ernő Tárkány Szücs, along with those of Sándor Loss and István H. Szilágyi, can be said to have established the scholarly framework for an anthropological understanding of law in Hungary. While not explicitly, all three authors relied on the folk concept of law and contributed to the introduction of a cultural aspect to the study of legal issues. The first part of the present paper discusses the work of the late Tárkány Szücs, the leading personality in the Hungarian legal ethnology movement after 1945, with a particular focus on how the author conceived the research of socialist legal folkways. Although Tárkány Szücs's frame of reference was legal ethnology, it can be argued that his insights into socialist legal folkways brought him close to an anthropological perspective. The second part of the paper presents in detail the research carried out by legal anthropologists in the 1990s, focusing on the work on Romani law carried out by István H. Szilágyi and Sándor Loss. It should be stressed that in this latter research, the methodology of participant observation was applied, thus expanding the toolkit of Hungarian legal scholarship to some extent. In conclusion, the paper argues that a proper understanding of everyday legal practice — including trouble-free cases — is impossible unless legal scholarship is liberated from the constraints of the analytical concept of law and exploits the freedom offered by the folk concept. The reinterpretation and revitalization of the broadly understood legal anthropological tradition — from the late Tárkány Szücs to H. Szilágyi and Loss — can be of significant help in this respect.

KEYWORDS

legal ethnology, legal anthropology, legal culture, folk law, Romani Kris

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The aim of the present study is to provide a coherent framework for the highly fragmented history of post-1945 Hungarian legal anthropology. Although there is no tradition of legal anthropology in Hungarian jurisprudence, we argue that recent research has contributed greatly to the broadening of legal knowledge. Even in the absence of adequate resources, Hungarian legal ethnographers have been able to shed light on the folk concept of law, thereby enriching the discipline of jurisprudence. In our approach, research on the folk concept of law is concerned with identifying those concepts of law that have been constructed by social groups outside the legal field. Based on this understanding, every concept of folk law is different, and yet, as a result of this diversity, we are able to obtain a more realistic picture of how law works in social practice. The first part of our study presents the work of Ernő Tárkány Szücs, the first published legal ethnologist after the Second World War, with a special focus on how the author conceived the research of socialist legal folkways. The second part presents research carried out by legal anthropologists after the change of political regime in 1989, with particular emphasis on the research carried out by István H. Szilágyi and Sándor Loss on Romani law.

INTRODUCTION: ERNŐ TÁRKÁNY SZÜCS AS THE SOLE HUNGARIAN RESEARCHER OF THE FOLK CONCEPT OF LAW

Although Tárkány Szücs is considered to have worked primarily in the field of legal history and ethnography, the author's activities were not confined exclusively to research on legal folkways (BOGNÁR 2021; FEKETE 2022; MEZEY 2021; NAGY 2021). Few may be aware that Tárkány Szücs was an active participant in international legal ethnological discourse in the 1960s and 1970s, and that, shortly before his early death, he also addressed the question of whether legal folk customs existed in socialist Hungary (TÁRKÁNY SZÜCS 1967, 1979, 1981, 1983). The present paper focuses on this lesser-known aspect of Tárkány Szücs's work and explores the ways in which the fragmented legal anthropological tradition contributed to the exploration of the Hungarian folk concept of law (GOODALE 2017:15–16; H. SZILÁGYI 2000:42).¹ The second part of the paper mainly presents Hungarian endeavors in the field of legal anthropology after the regime change, focusing on the research carried out by István H. Szilágyi and Sándor Loss.

It is worth clarifying that Tárkány Szücs regarded himself chiefly as a legal ethnologist and maintained active contacts with representatives of European legal ethnography (TÁRKÁNY SZÜCS 1967, 1979). It is therefore important to define what contemporary social science understood by legal ethnology, and how his work differed from this understanding. Stanley Diamond, an American anthropologist with whom Tárkány Szücs maintained a lively working relationship,²

¹H. Szilágyi pointed out that the American legal anthropologist Paul Bohannan was the first to demonstrate that the concept of Western law is not applicable in all cultural contexts. According to Bohannan, a distinction must be made between the folk concept and the analytical concept of law. Bohannan formulated this distinction in opposition to Max Gluckman, who argued that Western legal categories were appropriate for describing African tribal court procedures. According to Goodale, the Bohannan–Gluckman debate highlighted the fact that legal anthropological research can become paralyzed if it is mired in debate about the concept of law and the legal nature of certain rules. The author argues that this debate has led a new generation of legal anthropologists to stop thinking about law in general and to focus their research on specific issues, including dispute resolution, social order, and the relationship between law and social change (H. SZILÁGYI 2000:42).

²Diamond and Tárkány Szücs were both members of the editorial board of the journal *Dialectical Anthropology*, and Tárkány Szücs contributed to a book edited by Diamond: *Toward a Marxist Anthropology* (DIAMOND 1979).



described legal ethnology as follows: “folk studies seek to reflect the historical dimension of cultural meanings in both their continuity and discontinuity. (...) The Hungarian ethnologist Ernő Tartyany-Szűcs [sic!] has, in (...) *Ethnologia Europea*, clearly reflected the folkloristic consciousness of this recently organized group. (...) the folklorist shares a certain understanding with the colonized native: both are aware of cultural decline. But the folklorist is precisely the kind of native ethnographer of his own culture that has not been created in ‘aboriginal’ cultures, for the folklorist’s society, in the course of becoming a modern imperium, transforms itself, losing its own past, its own particularity, which the folklorist works to recover, but the past of the other, the imperialized society is reduced to an abstraction in the mind of the conqueror” (DIAMOND 1980:10).

Diamond’s terminology may seem a little outdated to the modern reader, but it is clear that he regarded legal ethnology as a discipline concerned mainly with the exploration and collection of historical traditions, and Tárkány Szűcs clearly placed himself within this discipline. The Hungarian author, however, went a step further in describing the usefulness of legal ethnography. In the last chapter of his book *Hungarian Legal Folklore*, published in 1981, Ernő Tárkány Szűcs proposed hypotheses applicable to his own times, which also implied the possibility of a legal anthropology that could be integrated into international trends (TÁRKÁNY SZÜCS 1981:813–833). However, the success of this research was hampered by a variety of academic policy factors, as outlined below.

REASONS BEHIND THE FAILURE OF HUNGARIAN LEGAL ETHNOLOGY DURING THE SOCIALIST ERA

When discussing the research prospects of Hungarian legal anthropology and legal culture, it is important to examine why the discipline was prevented from developing between 1945 and 1989 — especially in light of the fact that Hungarian legal sociological research played an increasingly important role in Hungarian jurisprudence from the 1960s (FEKETE – H. SZILÁGYI 2017:19–63). An explanation of this historical context is also important from the point of view of research into legal culture and the folk concept of law, since the 40-year gap contributed significantly to the fact that, after the Second World War, we have no sources of scientific value with respect to any elements of legal culture other than research into legal consciousness.

The reasons for the underdevelopment of legal anthropology are to be found primarily in the popular Marxist academic policy of the period, which considered “research into the folk life of law” to be nationalistic and unnecessary, as opposed to research into the sociology of law, which was seen as a way of assessing the effectiveness of “the educational role of socialist law” through research into legal consciousness (H. SZILÁGYI 2004:86).³ Kálmán Kulcsár⁴ insisted explicitly on

³H. Szilágyi draws attention to the fact that it became the task of the philosopher Ferenc Tőkei and his disciples to justify the inadequacy of anthropology. “At the same time, ideological warfare isolated our scientific thinking from the theoretical concepts and methodological considerations formulated by anthropology, and this contributed greatly to the provincialization of our scientific thinking, to its impoverishment, and to its loss of sensitivity to problems. These symptoms can also be observed in the field of law” (H. SZILÁGYI 2004:86).

⁴Kulcsár was the founder of the Hungarian sociology of law and from 1969 served as the director of the Sociological Research Institute of the Hungarian Academy of Sciences. He was minister of justice in the last party state government in 1989–1990.



the unnecessary and superfluous nature of legal anthropology in his 1961 study *Folk Law and National Law* (KULCSÁR 1961).

The beginning of the 1960s marked a new period in the history of Hungarian social science, since it was then that state academic policy allowed other social science research to be launched in Hungary in addition to the “science of Marxism–Leninism” (FLECK 2004). The publication in 1960 of Kulcsár’s study *The Problems of Legal Sociology*, which can be seen as the first indication of the development of Hungarian legal sociology, was also a sign of the political détente (KULCSÁR 1960).

In his 1961 study, Kulcsár aimed to prove, through the history of Hungarian legal ethnology (“ethnological legal research”) before 1945, that it was a nationalist political endeavor that had developed from the intellectual heritage of the German historical legal school, which, “with its legal policy ideas was a retrospective movement based on the past, which thus corresponded to the ideas of the national in the feudal” (KULCSÁR 1961:167). Accordingly, Kulcsár described legal ethnology as a “fallacy,” which “(...) could not provide a basis for looking for the real, social contradictions behind the ideology of the people (...)” (KULCSÁR 1961:175).

By designating “the transformation of social relations on a large social scale” as the object of socio-legal research, Kulcsár’s study made it impossible to carry out a legal ethnographic study of domestic legal culture, or to research the legal folkways of local communities under socialist conditions. The economic determinism of the study and its emphasis on the fact that only “[t]he socially bounded legal consciousness thus appears in such folklore products” prevented the investigation of cultural influences on legal consciousness (KULCSÁR 1961:182, 185)⁵. The rejection of the concept of legal culture resulted in the rejection by Hungarian socio-legal research of the legitimacy of the folk concept of law. Instead, it relied exclusively on the so-called analytical concept of law, based on the terminology and system of state law (see note 1). The programmatic insistence on the primacy of the internal, juridical legal culture and the rejection of the possibility of “folk law” marked out the subject of socio-legal research as “the study of the social validity of laws and their relation to other rules of conduct” (KULCSÁR 1961:184).⁶

The anchoring of Hungarian legal sociology in the study of legal consciousness in the first decades of its existence is also of decisive importance for the history of socio-legal research in Hungary. It was for this reason that the question of the existence of legal cultures and legal customs in local communities was pushed into the background with the marginalization of legal ethnography. Kulcsár identified the place of legal ethnography as “the collection and truly scientific processing of legal folk traditions,” a science auxiliary to legal history and ethnology (KULCSÁR 1961:185). Kulcsár thus marked out the place of Tárkány Szücs’s legal ethnography in Hungarian jurisprudence where Diamond had placed folklorists. In what follows, however, it will become apparent that Tárkány Szücs was heading in a far more forward-looking direction.

⁵According to Kulcsár “The development of law is based, fundamentally and essentially, on a development involving the fundamental class relations of human society, and for this, such class relations are decisive” (KULCSÁR 1961:185).

⁶Kulcsár reasoned that “Research into ‘folk legal life’ would therefore be essentially the same task as research into legal life in general. But what do we mean by ‘legal life’? In the narrow sense, the social application of laws, and in the broader sense, the extent to which laws govern the legal life of a society or a part of it (...)” (KULCSÁR 1961:184).



THE POSSIBILITY OF FOLK LEGAL CUSTOMS IN A SOCIALIST SOCIETY

In the last chapter of his book, Tárkány Szücs refutes Kulcsár's remarks about the inadequacy of legal ethnography, thus creating the theoretical framework for research into the living legal customs prevailing within small communities in the social and cultural conditions of his day (TÁRKÁNY SZÜCS 1981:830). In this way, Tárkány Szücs disproved Kulcsár's statement that in the era of socialist normativism, folk legal life was exclusively a historical category and excluded the existence of any "folk" legal concept other than "socially bound legal consciousness." Tárkány Szücs, on the other hand, pointed out that internal and external legal culture — or, in his terminology, the dichotomy of "above and below" in law — are real categories "without which no community could exist" (TÁRKÁNY SZÜCS 1981:820). The author even makes a subtle reference to the existence of the categories of "above" and "below" as evidence of the existence of legal pluralism, which he describes as "legal folkways," and "substitutes for state law" (TÁRKÁNY SZÜCS 1981:820).

Tárkány Szücs tried to answer the question of "whether legal folk customs can exist today, under socialist conditions." In his opinion, legal culture, or what he calls "legal folk customs," also existed between the "above" and "below" layers in the socialist conditions of his time. This was mainly because "[the] old traditions are no longer known, and the new laws are not yet known (...). Although social and economic change has been accompanied by legislation, the broad masses of our people have not been able to master and understand it (...)" (TÁRKÁNY SZÜCS 1981:822–823). Thus, in contrast to Kulcsár's opinion, the post-Second World War political and economic transformation of the system did not result in a "socialized legal consciousness," but rather increased the division between internal and external legal culture (FRIEDMAN 1975) and contributed to the persistence of legal pluralism.

According to the legal anthropologist, this uncertainty is apparent in the fields of legislation, law enforcement, and legal education (TÁRKÁNY SZÜCS 1981:823). To highlight merely the issue of the enforcement of the most basic civil rights from among the examples given by Tárkány Szücs, he lists some interesting examples from all three areas as reasons for this uncertainty. In lawmaking, "the tendency to be indefinite is often deliberate," resulting in jurists interpreting the law in a discretionary manner, aided by the fact that the texts of the legislation are incomprehensible to non-legislators (TÁRKÁNY SZÜCS 1981:823–824). Tárkány Szücs provides an example of this, which can also be seen as an early reflection on the practical implementation of the right to a healthy environment: "Our environmental protection act is beautiful and modern, yet the chimney of the seven-story house opposite is still blowing ash onto our balcony, the Vác cement factory is still spewing its dust into the neighborhood, and the fish in Lake Balaton are still as dead as ever due to environmental damage. But at least we can boast about the new law abroad" (TÁRKÁNY SZÜCS 1981:823–824).

This gives rise to the question of the unpredictability of the application of the law, according to which "the citizen should depend on the moral sense, objectivity, and whims of the administrator and should not trust the law but should seek contact with the administrator. It follows, however, that the citizen will not be able to browse the mass of relevant legislation for days on end with determined zeal, but the administrator, wandering between the legal frames, will decide on the case, rather than the law" (TÁRKÁNY SZÜCS 1981:824).

In an article written in 1983, Tárkány Szücs observed that while the collection of the period's legal folk customs had begun, researchers were still in the very early stages



(TÁRKÁNY SZÜCS 1983:71). The author was expressly pessimistic, since “our country belongs to that part of Europe where, for centuries, the political will of the state has attempted to prevail in all areas of life” (TÁRKÁNY SZÜCS 1983:71). According to Tárkány Szücs, as a consequence “citizens often do not even realize that they are acting against the law” (TÁRKÁNY SZÜCS 1983:71). In his opinion, this tendency is also the source of contemporary legal folk customs, which he classifies according to settlement structure. He sees the way in which citizens dispose of so-called socialist social property as an adaptation of old traditions. This includes tipping, or the fact that “the citizen must give an additional benefit for personal use (e.g., a tip, a bribe, a gratuity, etc.) in addition to the price and fee set by the state, according to an actual or implied stipulation” (TÁRKÁNY SZÜCS 1983:74).

Although Tárkány Szücs’s research on legal folk customs under “socialist conditions” came to end with his death in 1984, his work had given rise to hypotheses that lay the foundations of a legal anthropology suitable for the study of contemporary legal culture and capable of recognizing that communities applying the law live under pluralistic conditions. The following lines might be interpreted as a message for future researchers, advocating for the justification of folk law: “Life goes on, people want to and will live, and for this they need rules that closely follow life. (...) Customs do not die out as long as there are people living anywhere on Earth” (TÁRKÁNY SZÜCS 1981:822–823).

HUNGARIAN LEGAL ANTHROPOLOGY AFTER THE REGIME CHANGE

The establishment of legal anthropology in Hungary in the late 1990s

The oeuvre of Tárkány Szücs thus had no continuation within the socialist Hungarian legal academic sphere during the late 1980s — that is, no new generation of legal ethnologists emerged to elaborate on his magnificent legacy. In sum, the publication of Tárkány Szücs’s outstanding book, which offered an in-depth discussion of legal folkways in Hungary, also marked the end of the legal ethnology research tradition launched at the beginning of the 20th century (FEKETE 2022:252). However, this did not mean that interest in socio-legal questions on the part of Hungarian legal thinkers vanished overnight. First, the sociological method of legal inquiry continued to be applied by established scholars such as Kálmán Kulcsár and András Sajó (FEKETE – H. SZILÁGYI 2017), and their works provided an appropriate basis for the development of legal sociology in parallel with the new trends in Western socio-legal studies (GAJDUSCHEK 2017). It should be mentioned that Hungarian legal sociology in the late 1980s relied predominantly on the concepts of social and legal consciousness (SAJÓ 1986), focusing mainly on the sociological study of legislation and the everyday functioning of the law (KULCSÁR 1982). As a result, it almost entirely disregarded the idea of a folk concept of law, as elaborated by Tárkány Szücs. Second, although the work of Tárkány Szücs was not continued explicitly, the need for a culture-oriented understanding of law did not disappear completely from the thinking of Hungarian legal scholars. On the contrary, this approach was given new impetus with the reception of some of the tenets of legal anthropology advocated by a new generation of young legal scholars from the second half of the 1990s. The introduction of legal anthropological studies in the late 1990s also brought the concept of folk law back to the table of Hungarian socio-legal scholars.

The establishment of legal anthropology can be linked definitively to a new generation of legal scholars that emerged in Hungarian legal academia. From the mid-1990s, these young



scholars — István H. Szilágyi, Sándor Loss, and Gábor Szabó — argued passionately for the recognition of the insights of legal anthropology (on legal anthropology in general, see: GOODALE 2017). The best example of this attitude was István H. Szilágyi's groundbreaking paper *Let Us Invent Hungarian Legal Anthropology*, published in both Hungarian and English (H. SZILÁGYI 2002). In this paper, the author claimed that an anthropological turn in Hungarian socio-legal studies appeared to be inevitable. A core argument put forward by H. Szilágyi was that the earlier tradition of legal ethnology, as elaborated by Tárkány Szücs, could not be revitalized in the post-socialist context of the 1990s, since that tradition had already lost its scholarly vitality following the end of the Second World War. Although Tárkány Szücs's *opus magnum* can rightfully be labelled a masterpiece, it should not be forgotten that its empirical material, discussed in more than 800 pages, comes exclusively from the interwar period (H. SZILÁGYI 2002:187, 191–193). Due to the hiatus of almost 40 years in both theoretical and empirical work, socio-cultural studies on law in the new era had to be based on new premises and concepts. The earlier tradition of legal ethnology had relied heavily on the experience of contemporary German legal ethnology, including the application of the *Fragebogen* method (the use of questionnaire surveys) and the linking of folk law to state law. Thus, it was clearly an unsuitable starting point for the study of post-socialist legal phenomena (H. SZILÁGYI 2002:192). As a result, H. Szilágyi argued that Western legal anthropology could provide an appropriate starting point for such studies.

By way of a fresh start, H. Szilágyi suggested placing the phenomenon of social control at the center of further Hungarian legal anthropology studies. By doing so, he achieved two things. First, the concept of social control made it possible to overcome the earlier approach of legal ethnology, in which legal folkways were derived from state law norms. Second, this idea enabled the newly emerging anthropological studies to embrace a cultural discourse of law (H. SZILÁGYI 2002:198). Regarding the empirical aspects of research, H. Szilágyi suggested that, besides theory building, the study of the law of the Roma ought to be a main avenue of research in Hungarian legal anthropology, due to the unique social and cultural features of this minority group. In essence, the study of Roma law would enable legal scholars to study the experience of “otherness,” since, compared to modern societies, Roma communities have a qualitatively different understanding of social and cultural life. In the words of H. Szilágyi and Loss: “We, the members of modern societies, have written history, they have not; we have books and electronic media, they have oral traditions; we are living a sedentary way of life, they are modern nomads; we are working regularly, they are living from day to day; we have few children, they have a lot; we are rich, they are poor; we have a state, they have no powerful political institutions (...)” (H. SZILÁGYI – LOSS 2002:487).

Thus, it was argued, the anthropological study of Hungarian Roma communities would do much to bring Hungarian legal scholarship closer to an understanding of how, and to what extent, cultural differences have an impact on the functioning of state law. In addition, this research might help to map the existing traits of legal pluralism in the shadow of official state law. Needless to say, the folk concept of law played an important role in the formation of later legal anthropology studies.

The “Gypsy trial”: A symbol of mutual misunderstanding before the courts

One outstanding finding of Hungarian legal anthropology was the description of the so-called Gypsy trials taking place before the ordinary courts. In 1998, H. Szilágyi and Loss, with the help



of law and anthropology students, carried out an empirical research project based on participant observation. The goal of the project was to gain an understanding of whether the cultural differences of the Roma participants, mostly defendants and witnesses, had any impact on the functioning of the courts in criminal cases. The observers closely followed the events at the hearings, concentrating on the communication among the actors in the courtroom (judges, prosecutors, and Roma participants). The authors argued that: “it is important to study the entirety of the interactions, in which the value judgments, the prejudices, and the attitudes of the non-Roma participants appear necessarily, and, on the other hand, where the specific cultural patterns related to the criminal justice of the majority society with respect to Roma people, if any, also emerge” (Loss – H. SZILÁGYI 2001:95).

Thus, the observation of courtroom interactions in criminal cases in which Roma people were involved seemed able to shed light on the question of how cultural “otherness” and contrast might nominally influence formal legal processes based on the ideas of equality and fair trial.

The authors’ conclusions are rather striking. Based on the findings of their fieldwork, they argued that the courts were in practice unable to fulfil their elementary function arising from the principles of a modern rule of law system. In fact, if a Roma defendant came before the court, the lawsuits could scarcely be discussed using modern legal terms: they could rather be called rites in the anthropological sense. Thus, the “Gypsy trials” did not contribute to the realization of criminal justice but instead merely facilitated the “preservation of the mutual prejudices between the majority society and the Roma minority, thereby strengthening discrimination against the Roma minority” (Loss – H. SZILÁGYI 2001:100).

Cultural “otherness” thus proved to be an obstacle that could not be neutralized by the normal functioning of the courts. For this reason, H. Szilágyi and Loss argued for the reform of criminal and civil procedures, with special regard to strengthening *pro bono* legal assistance. Clearly, when studying these lawsuits, the authors’ goal in applying the anthropological method was exclusively to gain a qualitatively different perspective on their research question. They also relied on its critical potential to shed light on the contradictions in the criminal justice system, should Roma people have to participate in a hearing.

The Romani *kris*: folk law in action and the signs of existing legal pluralism

While the “Gypsy trials” issue highlighted the weaknesses of modern Hungarian courts in dealing with clients from a culturally different background, an anthropological study by Sándor Loss explicitly addressed the folk law of the Roma people. By conducting extensive fieldwork — participant observation of the life of the Mašari Roma community in Békés County during the spring and summer of 2001 — Loss was able to confirm the contemporary practice of the Romani *kris* (i.e., in this context: the Roma “courts” that play a central role in community dispute settlement), even though some ethnographers studying Roma communities believed this tradition of dispute settlement to have become extinct (Loss 2005:120). The fieldwork also revealed some of the basic norms of the Romani *kris* (in this context: Roma law), thus Loss was able to access the substance of Roma law that had previously been practically unknown among those outside the Roma communities.

Relying on the intellectual legacy of Karl Llewellyn and Adamson Hoebel, as well as that of Leopold Pospíšil (Loss 2005:119–120), Loss argued that the main function of the Romani *kris* as a community “court” is dispute settlement in order to ensure the maintenance of the



community. In the event of conflict, the Roma community is primarily interested in restoring order and peace without external intervention. In other words, Roma people consider dispute settlement to be an exclusively internal affair — non-Roma people have never been permitted to participate in a *kris* — which may be the reason why Hungarian legal and ethnological scholarship had had no access to this tradition prior to Loss's outstanding piece of scholarship. Loss did not deny the need for cultural translation in order to gain an appropriate picture of ordinary Romani *kris* practice: "What we understand, as outsiders, from the institution of the *kris* is that it is an exceptional and very rare phenomenon. One never knows when the next *kris* will be held — perhaps tomorrow, perhaps next week — but one thing is sure: if there is a problem, then a *kris* will be held — sooner or later" (Loss 2005:123).

According to later studies, this method of conflict management was determined by the social structure of Roma communities. In essence, four reasons can be discerned behind this closed attitude towards state dispute resolution options: strong community consciousness; the tribal structure of Roma communities; the patriarchal understanding of the family; and respect for the authority of the elders. In addition, the fact that the separation of the public and private spheres in a modern sense does not exist in Roma communities also strengthened the need for a method of community dispute settlement (Frey 2009:374). In sum, the unofficial features of the Romani *kris*, as a method of conflict management, cannot be separated from the socio-cultural traits that distinguish Roma communities from the majority society, which has mostly embraced the values of modernity.

The main steps in a Romani *kris* "procedure" may be summarized as follows. Interestingly, it is preceded by a quasi-mediation phase comprising two consecutive levels. In principle, a *kris* cannot be held immediately: the conflicting parties must first try to reach an agreement on the issue by themselves. This can happen either in person or by phone. If the disagreement cannot be resolved, the parties are obliged to convene a so-called *divano* or *svato*. This is another informal discussion, although the parties may ask elders from the community to provide them with advice. If an agreement is reached in a *divano*, with or without the help of elders, it makes the holding of a *kris* unnecessary. However, if the disagreement remains unresolved, the organization of a *kris* becomes unavoidable (Loss 2005:123–124).

The setting up of the *kris* is the duty of the parties in the conflict. In practice, this means that the parties summon the "judges" to the *kris*. The number of these judges is not strictly limited: a minimum of two judges are needed, although there may be up to 20 in rare cases. Normally, a *kris* consists of seven or eight judges (Frey 2009:376). The most important selection criteria for the judges are respect, trustworthiness, and honesty (Loss 2005:127). Since all the selected judges have to travel to the place where the *kris* is being held, the event is typically held two or three days after the unsuccessful *divano*. In rare cases, if the incident that has given rise to the dispute occurred at a bigger fair where many members of the community are present, the *kris* may be held immediately, on the spot.

Once the parties and judges are present, they choose a calm and neutral place, typically a house or a garden, and sit in a circle. The initial step in every *kris* is for all the participants to swear an oath that they will remain together until they have resolved the dispute wisely. In addition, the oath obliges participants to tell the truth with respect to the case. In most instances, the portrait of a particular saint is also present when the participants swear their oaths. The eldest judge directs the "hearing": it is his duty to open the hearing and he also delivers the judgment. However, he has no other privileges during the hearing, thus the eldest judge is in



practice *primus inter pares*. The timetable for the hearing is not fixed; each party may talk for as long as they consider necessary, and the witnesses are also allowed to talk at length, if needed. If witnesses are summoned, they are also obliged to swear that they will tell the truth. If the *kris* is fully apprised of exactly what happened, a decision is taken, for which a simple majority is required. Once the judgment has been delivered, the parties shake hands and must swear once again to abide by the decision of the *kris*. In most cases, the parties hold a large gathering — typically a dinner — the costs of which are covered by the losing party. It should be mentioned that the judgment is enforced by the whole community, since all members of the community quickly learn the details of the case and are able to monitor the behavior of the parties (Loss 2005:124–127). Loss described his impressions of a Romani *kris* as follows: “Let me emphasize that everything happens in the Roma language. An outsider understands nothing of the whole furor. They speak very quickly. One might readily believe that what is happening is not a peaceful discussion but a huge quarrel. In fact, they do not dispute, nor do they shout; they merely try to present their truth as persuasively as possible. No Hungarian speech is to be heard” (Loss 2005:125).

Besides providing a detailed description of the Romani *kris* procedure, unknown before this groundbreaking research, Loss was able to reveal some of the fundamental material norms of the *kris*. Since Roma people regard these norms as broad guidelines rather than specific legal provisions with a precise meaning in the sense of modern law, Loss was able to identify certain principles of particular relevance. Two of these deserve to be highlighted. First, oaths have a prominent place in Roma law. Oaths are always regarded with the utmost respect, since the breaking of an oath is believed to entail grave ramifications, such as the death of a family member or of a particularly valuable horse. Thus, oaths play a crucial role in securing full compliance with the *kris*. Second, all the findings point to the fact that the leading principle that guides the judges is justice. Since the Romani *kris* has always been an oral tradition, it lacks written sources; there are no precise precedents, although the decisions must always be as just as possible. This requirement obviously makes the concept of justice very elusive, although the judges are able to discern what is just in the given case. This also implies that the decisions of the *kris* are highly individualistic and specific, and that an attempt is made to take into account all the relevant circumstances, including the family and economic status of the parties, as well as the interests of the community (Loss 2005:126).

Loss not only (re)discovered the living tradition of the Romani *kris* in Békés County and studied it using the tools of anthropology, but his work also provided an insight into the circumscribed social life of Hungarian Roma communities. In theoretical terms, Loss’s analysis convincingly demonstrated the existence of legal pluralism (on legal pluralism, see: TAMANAHA 2021) in everyday life in post-socialist Hungary. Outstanding as these findings were, Loss’s untimely death in 2004 prevented the further study of this and similar phenomena.

The foundations of a scholarly community

At the beginning of the 2000s, the status of legal anthropology appeared rather promising in Hungary. Legal anthropology courses were introduced in the faculties of law of both Miskolc University and Pázmány Péter Catholic University, and the subject was also taught in the Faculty of Humanities of Miskolc University. In addition, a socio-legal course book with a strong focus on legal anthropology (H. SZILÁGYI et al. 2012) and an edited volume of translations of



standard legal anthropology texts (H. SZILÁGYI 2000) were published. Thus, the institutional background was established for this newly emerging discipline. However, due to the death of Loss in 2004 and H. Szilágyi's subsequent decision to give up fieldwork, the situation of legal anthropology currently appears somewhat paralyzed. The old structures still function, although the vitality provided by the experience of fieldwork is lacking.

CONCLUSION: THE IMPORTANCE OF PRESERVING THE LEGAL ANTHROPOLOGICAL TRADITION

The reader might reasonably ask why there has been a recent surge in writing about the highly fragmented history of Hungarian legal anthropology (FEKETE 2022). The response might resemble that formulated by Tárkány Szücs in 1983: "At a time when the various disciplines are dealing more and more effectively with the possibilities of understanding the reality inherent in human life, and when the study of society using empirical methods has led to the recognition of more important regularities, the time has come for the intensification of research aimed at exploring the system of relations between law and society. (...) The detailed study of the relationship between law and society thus deserves greater attention" (TÁRKÁNY SZÜCS 1983:71).

Today, the study of the folk concept of law is enjoying a renaissance thanks to the American socio-legal scholar Brian Z. Tamanaha. Like Tárkány Szücs, Tamanaha sees the understanding of the social reality of law as of primary importance, and he invokes folk concepts of law to facilitate such an understanding. Instead of an analytical approach to law, Tamanaha starts from the so-called folk concept of law, a category that includes all social phenomena that are perceived as law by certain social groups (TAMANAHA 2017:117). In his view, there is no single valid definition of law, and it is primarily on the basis of this diverse, pluralistic concept of law that a theory of law based on social reality can provide valid answers with respect to the functioning of law (TAMANAHA 2017:76). Tamanaha knows that "form-and-function-based analytical concepts of law inevitably clash with folk concepts because how people perceive law cannot be captured by functional analysis (...)" (TAMANAHA 2017:48).

According to this concept: "People and groups have conventionally identified and constructed multiple forms of law (*ius, deoit, recht, diritto, derecho, prawo*, etc.) in the course of history and today, including customary law, natural law, religious law, state law, international law, transnational law of various types, and human rights, and each of these forms of law comes in a range of variations. These forms of law arise and change over time in connection with social, cultural, economic, political, ecological, and technological factors. That is the nature of law" (TAMANAHA 2017:80).

The American socio-legal scholar thereby emphasizes that socio-legal research, and especially genealogical research on folk law, has a very important role to play in understanding the nature of law. Tárkány Szücs had an analogous understanding of the nature of law when he wrote that: "we must not be excessively imprisoned by theories and concepts, we must be more open and flexible in our approach to the material [the folk concept of law], to data, which are sensitive in many respects. Only the free atmosphere of inquiry provides us with the opportunity to explore and reveal legal folkways. (...) Our material shows that customary forms of behavior with a legal content were practiced in the period under discussion, from birth to death, from



production to distribution, in almost the totality of human relations. These forms of conduct were not invented by people on an occasional basis but were the source of tradition — that is, the rules and norms inherited from previous generations” (TÁRKÁNY SZÜCS 1981:28–29).

The recognition and research of the folk concept of law certainly do not imply the complete rejection of the analytical concept of law. However, in order to understand the everyday practice of law, socio-legal research must inevitably liberate itself from the constraints of the analytical legal concept and exploit the freedom offered by the folk concept of law to make claims about the operation of contemporary law that correlate with the socio-political reality. The reinterpretation and revitalization of the legal anthropological tradition can be of help in this respect. A re-reading of the publications of Tárkány Szücs, H. Szilágyi, and Loss may assist socio-legal researchers in developing new research questions that may bring them closer to an understanding of Hungarian legal culture.

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