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Land Politics in Hungary between the Two World Wars

Introduction

On the examination of the Acts relating to land politics that were passed and entered into force between the two World Wars in Hungary, we may get to the conclusion that the antecedents of this era are deeply rooted in the land and agrarian politics of the second half of the 19th century. The development of Hungarian agrarian politics should be interpreted as a process which started during the so-called reform era of the Hungarian Kingdom (the period lasting from 1825 or, according to latest research, from the Hungarian Diet of 1829/30 until 1848) and which continued until the period between the two World Wars when several Acts aimed at introducing sweeping changes in the agrarian situation were passed by the Hungarian Parliament.

The regulations relating to landed property and its ownership conditions were put on a different ground after 1848. The Acts of April of 1848 abolished both the serfdom (socage) system and aviticity (*aviticitas*) relating to the familial property, but beyond the declaration of the abolishment the Diet could not elaborate any further detailed regulations for the lack of time caused by the war of freedom eventually lost by Hungary in 1849.

Neoabsolutism (1849-1867) prepared the toolkits for the reforms. The total liquidation of serfdom was served by establishing the Austrian type of courts for hearing the legal claims of the former serfs and their landlords, and later, the introduction of the Austrian Civil Code provided the legal basis for the free and unlimited ownership of property without any differentiation. Apart from this, instead of the previously existing pawn system, the introduction of the land register system also laid down the guarantees of the mortgage system serving the free transfer of property by the end of the 1850's.¹

Although the abolishment of the socage system constituted a significant achievement in the modernization of private law in Hungary, the process of liquidation produced some difficulties, which may be proved by the fact that the special courts created during the Neoabsolutism and designed to handle the legal disputes of the landlords and former serfs continued to exist even after the Compromise of 1867 between Austria and Hungary. This happened so, because redemption fees for landlords were sometimes paid in uncovered debenture-bonds.

After the liquidation of serfdom, the former serfs could only turn into independent farmers if they had the possibility to take out a loan. In Hungary agricultural production had always played a dominant role, so the former serfs had to be taught how to become independent smallholders if they wanted to secure their means of living. Therefore, the state had to interfere into this process in order to facilitate the functioning of the free ownership-system and the switchover from the squatter system to the smallholders' system. Besides, the landlords were also forced to employ paid manpower instead of serfs in order to have their

¹ These reforms were implemented in Hungary by the royal decrees of 2 March 1849, 29 November 1852 and 15 December 1855.

lands cultivated, which also made the establishment of a land-loan system with a sufficient capital inevitable.²

Parallel to these problems, urbanization, catalyzed by industrialization, and the migration of the agrarian population overseas, from time to time, generated huge agricultural crises, such as, for example, the crisis of the 1960s, which spread all over Europe and which also had an effect on Hungary. Smallholders became indebted and faced a lack of manpower, so powerful state intervention was required for consolidation. For this reason, the colonization process and the repartition of land had to be carried out under the patronage of the Ministry of Agriculture in order to impede land speculations.³

The colonization

Reading the Bills and the Acts passed by Parliament relating to the colonization process, one may reveal three distinct trends in Hungarian land politics: the national, the economic and the social trends. National land politics was aimed at the fortification of the Hungarian nation as opposed to other nations by giving land to the Hungarian citizens. Economic land politics emphasized the exploitation of the less useful lands by colonization, while social land politics endeavoured to move landless citizens to the foreground. The optimal solution would have been the combination of the latter two trends, because social land reforms could only lead to success if they were coupled with the augmentation of productivity. Only the establishment of a profitable smallholders' system would have served the purposes of economic development. The aim of an appropriate land politics should have been to assist existing landowners by creating a safe market and stable crop prices. Furthermore, there would have been a need for a well-functioning land-loan system and the parcelling out of the landed property in order to provide the landless with land as well as for colonization to promote the peopling and utilization of those areas of the country that had lain fallow until then. Successful colonization would also have required a well-functioning land-loan system.⁴

Although, an Act of Parliament was passed on colonization at the end of the 19th century, neither this Act, nor the repartition of land implemented after the end of WW I proved useful for economic development.⁵ Soon after the land repartition of 1920 some problems became revealed. It had to be found out soon that providing 1-2 "holds" of land to the peasantry could not solve their problems, or maybe it is proper to say, this pushed them further into poverty instead of helping them.⁶

The Hungarian National Farmers' Association dealt in detail with the land problems and tried to work out the best solution for colonization and land repartition, and lots of experts in

² Mennyey Géza: A földhitel. Történelmi kifejlődése. I. kötet. [The Land Loan. Its Historical Development. Vol. I.] Budapest, Darányi Ignác Agrártudományos társaság, 1940, pp.255-256.

³ Czettler, Jenő: Földbirtokpolitika. [Land Politics.] Budapest, Kis Akadémia, 1936, p. 7-9.

⁴ Czettler Jenő: Földbirtokpolitika. [Land Politics.] Budapest, Kis Akadémia, 1936, pp. 17-18.

⁵ This land repartition was made under the supervision of István Nagyatádi Szabó, Minister of Agriculture, who prepared Act XXXVI of 1920 on the land reform. The aim of this act was the elimination of the inequalities between the landowners and the Act was made for the abolishment of the huge landed property system and for the creation of a functioning network of smallholders.

⁶ The repartition of land into small properties was already criticized by experts at the beginning of the 20th century, decades before its realization in the practice. János Asbóth drew the attention to the risks of agrarian socialism in its work „A Föld mint Társadalom-politikai és nemzeti kérdés (nagybirtok – majorátus-latifundium-parcellázás – telepítés) [The Land as Social-Political and National Question. Latifundium – Majoratus – Parcelling and Colonization] during the early years of the 20th century. Asbóth János a „A Föld mint Társadalom-politikai és nemzeti kérdés (nagybirtok – majorátus-latifundium-parcellázás – telepítés) [The Land as social-political and national question. Latifundium – Majoratus – Parcelling and Colonization], Budapest, Atheneum Irod. és Nyomd. R. Társulat, 1900, p. 7,9.

the field of agriculture held presentations on colonization at their assemblies beginning from the 1930's.

The root of the land problem differed according to the regions of Hungary, so it was different in the Trans-Danubian part of the country and in the Great Plain. The Trans-Danubian part of Hungary was mainly characterized by great landed properties, because most of the *fideicommissa* properties were situated in this part of the country, originating from the end of the 17th century. There were also small properties here - although their number was insignificant - where, in order to maintain the undivided status of the land, peasant families bore less children, or sent the second or third born children into the towns to find working possibilities there instead of living from farming. As opposed to this, in the Great Plain there were huge unexploited lands, where farming families should have been settled in order to help the inhabitation.

In order to implement a functioning land ownership system, the Hungarian Parliament prepared the conditions according to which only those citizens could become landowners who met the requirements of the Act containing regulations corresponding to the objectives of the country's land politics. The essence of these conditions was to create such landowners who were willing and capable of reasonable and rational farming and who could remain landowners only if they carried out their activities in accordance with the aims of the legislative organ.⁷ It was not the same for the government either for reasons of productivity, who should be settled on the land. In order to fulfil the governmental aims, a bill was submitted for approval to the Parliament between the two World Wars that laid it down as a requirement - for those wishing to receive land - that they should deal with agriculture and farming as a living, and that preference would be given to those having three children already and those who could pay 30% of the price of the land in cash. In order to pay the rest of the price, they could apply for a loan they agreed to repay without any delay according to the terms of the loan contract. Moreover, the applicants were obliged to present a medical certificate, by which they were to prove that they did not suffer from any illness that could prevent them from farming.⁸

According to this Act of Parliament, about 10 – 12.000 families were to receive parcels of land of 10 cadastral yokes from the state.⁹ The aim of the parcelling was to establish new villages. The state wanted to provide the parcels from land previously redeemed or re-bought by it and from the selling out of the parts of *fideicommissa* that were over 30.000 cadastral yokes. The Act on colonization attracted as much positive as negative criticism. On the one hand, the main criticism against the Act was that it did not realize deep reforms because it maintained the huge landed property system and did not really improve the social situation of poor peasant families. Their insolvency could not be solved by this Act because the Act favoured those who had enough money to pay for the land.¹⁰

There was a debate about the ideal and most suitable system of inheritance that could prevent the possible fragmentation of the smallholdings, too. It was shown by statistical means that 70 years should pass - assuming a constant growth of the population, which process may be influenced by the number of marriages contracted between smallholders'

⁷ "Besides the expertise, the criteria of gumption should be noticed in the willingness to be settled to other regions of the country. Someone who is expecting only to get things ready-made and is not willing to give up the least from his comfort does not deserve to get the expensive support the state is willing to provide him by its land politics." Czettler Jenő: *Földbirtokpolitika*. [Land Politics.] Budapest, Kis Akadémia, 1936, p. 21.; Nizsalovszky Endre: *A földbirtokpolitika eredményeinek biztosítása*. [Guaranteeing the Results of Land Politics] Budapest, Első Kecskeméti Hírlapkiadó és Nyomda Részvénytársaság, 1936, pp. 6-7.

⁸ Act XXVII of 1936 about colonization and other land political measures.

⁹ 1 cadastral yoke would be the equivalent of 1, 42 English acres or 0, 57 hectares.

¹⁰ Nagy József: *Földbirtok-politika Magyarországon a két világháború között*. [Landed Property and Politics in Hungary between the Two World Wars.] Eger, EKF Líceum kiadó, 2003, 221-235;240-254.

families - until a smallholding could be divided into so many pieces that farming would be impossible.¹¹ There were many possibilities for solving the problem. They included the popularization of making a will, the simplifying of the foundation of entailed smallholding, and the introduction of the German type of impartible (single-heir) inheritance called "Anerbenrecht" that would have favoured the inheritance of the male descendants, especially of the firstborn sons at the expense of the other sons who were to receive only their compulsory share from their father's bequest.¹²

The realization of political ideas related to land and its parcelling was well-mirrored by population increase and structure. Before WW I the majority of the population dealt with agriculture. In 1910 56% of the population, but in the period right before WW II only 49% of the population were living from farming. While agriculture was gradually falling into the background, the number of the workers employed in the other sectors of the economy went on increasing. Because of the structural changes in the population, the number of the people moving into the cities increased at the expense of the village inhabitants. From this aspect, special mention should be made of the population increase of the capital city.¹³

The land loan

The demand for creating a well-functioning land loan system appeared already in the period of the Reform Age Diets and the most famous politicians of the time, such as István Széchenyi and Lajos Kossuth took up the realization of this idea. Unfortunately, their efforts were not successful, because a well-functioning land loan system would have required an institutional basis including a well-organized land register and also the right to dispose over property freely of any legal restrictions.¹⁴

The debates on land loan continued even after the war of freedom had been lost in 1849 and politicians were still writing about its necessity on the columns of the newspapers. Their aim was to prove that the foundation of a Hungarian land loan bank would not diminish the role of the Austrian National Bank in lending on mortgage. At the assembly of the Hungarian National Economic Association held on 10th July 1858 György Mailáth presented a proposal about the foundation of such a loan bank. Menyhért Lónyay and Antal Csengery were entrusted with the preparation of a Bill regarding the subject, which was later submitted to Archduke Albrecht for approval. The final scheme of this loan bank became outlined by 1860, the aim of which was to provide possibility for landowners to take out a loan on favourable terms repayable in the form of annuities, as well as the creation of an institution where landowners could place their capital in the form of a deposit on terms of mutual warranty excluding the possibility of profiteering. The capital of the loan bank was raised from the savings and deposits of the landowners and founders on the one hand, and from the state's contribution on the other hand. The loan bank was also entitled to engage in financial market activities in order to increase its capital. The loan bank was to be founded with a registered capital of 1.000.000 forints, which was even exceeded with 300.000 forints at the time of the foundation and the ruler provided 500.000 forints in addition to the capital as state aid. On 22nd September 1862 the loan bank opened its gates by holding its statutory meeting, where

¹¹ Asbóth, János a „A Föld mint Társadalom-politikai és nemzeti kérdés (nagybirtok – majorátus-latifundium-parcellázás – telepítés), [The Land as Social-Political and National Question. Latifundium – Majoratus – Parcelling and Colonization], Budapest, Atheneum Írod. és Nyomd. R. Társulat, 1900, p.9

¹² Nizsalovszky, Endre: A földbirtokpolitika eredményeinek biztosítása. [Guaranteeing the Results of Land Politics], Budapest, Első Kecskeméti Hírlapkiadó és Nyomda Részvénytársaság, 1936, pp. 11-16.

¹³ Acsádi, György-Klinger András: Magyarország népesedése a két világháború között. [The Population Increase of Hungary between the Two WW.] Budapest, Közgazdasági és Jogi Könyvkiadó, 1965, pp. 13-14.

¹⁴ Mennyey, Géza: A földhitel. Történelmi kifejlődése. I. kötet. [The Land Loan. Its Historical Development. Vol. I] Budapest, Darányi Ignác Agrártudományos társaság, 1940, pp.240-256.

the statutes of the bank were approved. Count Emil Dessewffy was entitled to be its president and the bank started its real functioning on 1st July 1863. The organizational structure of the loan bank consisted of a board of directors, a board of supervisors and a general assembly in which every founding member had a direct or indirect right to representation (the form of the representation depended on the amount of the loan one took out from the bank, in case of a loan of more than 50.000 forints the debtors were entitled to be present in person at the assemblies of the bank, and in case of lower loans, the debtors having together taken out 250.000 forints of loan could elect a representative). Besides the central division there were also sub-agencies outside the capital but their competence extended only to the estimation of property and the reception and transmission of applications. The loan bank provided loans only for landed property by issuing long term debenture-bonds. In order to ensure its smooth functioning, the ruler granted them privileged competence, prompt disposal of applications, a faster method of execution, an exemption from duty payable on the debenture-bonds and general taxation relief.¹⁵

The Land Loan Bank started its functioning in extremely difficult circumstances, because at the same time the Austrian National Bank stopped providing any types of loan in Hungary and the Austrian newspapers started a broadside on their columns in order to discredit the Hungarian loan-market.¹⁶ At the same time the frost in May 1863 and the following drought also caused big problems and pushed Hungarian agriculture into a huge crisis.

A few years later, after the political change and the compromise of 1867, the Austro-Hungarian Monarchy closed a very fruitful agricultural year in 1868, so the Hungarians had all reasons to look hopefully to the future. By the '70-s in the legislative field it seemed necessary to fix the rate of interest and to forbid usury, because the lack of these regulations had resulted in the rise of usurious loans. So the Hungarian Parliament first regulated in an Act the legal functioning of the Land Loan Bank for the first time¹⁷, then it passed the Act on the prohibition of usury in 1883.¹⁸

Besides the Land Loan Bank, the National Land Loan Bank of Smallholders was founded and it gained full marks among the politicians of the time both at home and outside the country. Even Lajos Kossuth - who was in emigration at that time – approved of its foundation. The National Land Loan Bank of Smallholders started its work on 31st August 1879 by providing mortgage loans of 300 to 6.000 forints for smallholders. Its functioning was regulated by its statutes and by Act XXXIX of 1879.¹⁹

¹⁵ Mennyey Géza: A földhitel. Történelmi kifejlődése. I. kötet. Budapest, Darányi Ignác Agrártudományos társaság, [The Land Loan. Its Historical Development. Vol. I] Budapest 1940, pp.258-260; Bernát István: A magyar földbirtok tehermentesítése. [The Discharge of the Hungarian Landed Property.] Budapest, Kilián Frigyes egyetemi könyvtáros bizománya. 1905. pp. 29-30; Matlekovits Sándor: A földbirtok. A nemzetgazdaság jelenlegi álláspontja szerint rendezve. Különös tekintettel Magyarország törvényhozására. [The Landed Property. Its resolution according to the status of the national economy. With special regard to the legislation of Hungary.] Pest, Kugler Adolf sajátja, 1865, pp. 174-175.

¹⁶ Mennyey Géza: A földhitel. Történelmi kifejlődése. I. kötet. [The Land Loan. Its historical development. vol. I] Budapest, Darányi Ignác Agrártudományos társaság, 1940, p.260.

¹⁷ Act XXXIV of 1871 about the Land Loan Bank. The previous legal regulations cannot be considered as Acts because according to Act X and XII of 1791 the legislative power could be exercised by the King and the Parliament together, and in the times from 1849 to 1867 there was no crowned Hungarian King who could convoke the Hungarian Parliament. Neither were elections held to elect the members of the Parliament.

¹⁸ Act VIII of 1877 fixed the general rate of interest that could be imposed in case of a loan and this rate could not exceed the 8% per year. Act XXV of 1883 ordered those asking for more interest for a loan than the yearly 8% rate to be punished with imprisonment of 1 to 6 months and to pay a penalty of 100 to 2.000 forints.

¹⁹ Mennyey Géza: A földhitel. Történelmi kifejlődése. I. kötet. [The Land Loan. Its historical development. vol. I] Budapest, Darányi Ignác Agrártudományos társaság, 1940, pp.262-264. Bernát István: A magyar földbirtok tehermentesítése. [The discharge of the Hungarian landed property.] Budapest, Kilián Frigyes egyetemi könyvtáros bizománya. 1905. p. 34.

Its functioning mostly followed the sample of the Land Loan Bank. Both banks started to prosper in Hungary and in 1911 they entered into a merger by creating the National Alliance of Hungarian Land Loan Banks. Besides them, there were also some other private institutions that could provide mortgage loans but they did not enjoy the same legal and tax advantages as the land loan banks founded by the state.²⁰

After the WW I the land loan system almost collapsed because of the devaluation of the national currency and the loss of value of bank notes. It was Act XII of 1928 that caused a serious crisis in the land loan system, by prohibiting the valorisation of existing saving-deposits, mortgage debentures and bonds. So as a result of this Act, the debts owed to the land loan bank decreased to only 396.000 gold crowns by 1923 and while land burdens amounted only to 109 million pengős²¹ before the WW, this amount increased within seven years up to 2 billion pengős.²² So under such circumstances a land reform was unimaginable without the rearrangement of the land loan system. The reorganization of the land loan banks ruined by WW I was considered to be the most important means to ensure mortgage loans by issuing long-term debenture-bonds and providing investment loans for impecunious people.²³ The taking out of land loans was resumed by 1925/28 in Hungary. Because the foreign financial market did not trust the Hungarian national currency after the WW, it provided loans for Hungary only in foreign currency that had to be re-paid in the same foreign currency. The amount of the loan could not exceed the 50% of the market-price of the land. The loan banks issued debenture-bonds or interest bearing bonds on the basis of these loans.²⁴ The situation was ripe for a legislative reform by 1936 and Act XIV of 1936 was passed by the Parliament.

In accordance with Act XIV of 1936, the National Land Loan Bank was founded, which unified the previous Hungarian Land Loan Bank, the National Land Loan Bank of Smallholders and the National Alliance of the Hungarian Land Loan Banks, and took over their business and business management, too.²⁵ The state was the one that owned the majority of the stocks of the National Land Loan Bank. The state had its supervision also over the functioning of the bank, as the Minister of Finance and the Minister for Agriculture each appointed one member and a respective deputy to the board of directors, and the president and the two vice-presidents were appointed by the King. The Minister of Finance was entitled to exercise the legality supervision over the functioning of the National Land Loan Bank in accordance with its Statutes. The National Land Loan Bank was designed to provide long-term agricultural mortgage loans, to carry out banking activity and to parcel lands and settle people on them. The Act authorized the Bank to initiate direct enforcement against non-paying or defaulting debtors without the need for a judicial procedure.

Parallel to the National Land Loan Bank, there also existed a National Central Credit Association created by Act XXIII of 1898, which was intended for the same purpose and which functioned even in 1936.

This land loan system existed in Hungary until the end of WW II. After the reorganization of the state, this system disappeared together with the liquidation of the private landed property system.

²⁰ Mennyey Géza: A földhitel. II. kötet. Szerkezete és szervezete. [The Land Loan. Its structure and organization. vol. II.] Budapest, Darányi Ignác Agrártudományos Társaság. 1943. p. 256.

²¹ Hungarian national currency before 1946

²² Nizsalovszky Endre: A földbirtokpolitika eredményeinek biztosítása. [Guaranteeing of the results of land politics] Budapest, Első Kecskeméti Hírlapkiadó és Nyomda Részvénytársaság, 1936, pp. 4-5.

²³ Czettler Jenő: Földbirtokpolitika. [Land Politics.] Budapest, Kis Akadémia, 1936, p. 21.

²⁴ Mennyey Géza: A földhitel. II. kötet. Szerkezete és szervezete. [The Land Loan. Its structure and organization. vol. II.] Budapest, Darányi Ignác Agrártudományos Társaság. 1943. p. 257.

²⁵ Mennyey Géza: A földhitel. II. kötet. Szerkezete és szervezete. [The Land Loan. Its structure and organization. vol. II.] Budapest, Darányi Ignác Agrártudományos Társaság. 1943. p. 255.

Entailed property (*fideicommissum*)

The parcelling of land and providing land loans for its cultivation were not worth anything without the reorganization of the landed property system, or without the creation of new state property that could be parcelled out among the people who lacked land. The main issue after the abolishment of aviticity was to solve the *fideicommissa* problem either by adjusting this obsolete system to the requirements of the era, or by its abolishment, as a result of which this mostly hated legal institution could have been finally lost in the mists of time.

Public opinion regarding the institution of *fideicommissum* radically changed by the end of the 18th century. In the times preceding the end of the 18th century this institution meant only a special type of inheritance by which the magnates and - from 1723 onwards - the nobles in general could ensure the indivisible inheritance of their properties, in the times after the end of the 18th century this legal institution stopped to be only an institution having a succession law character, but it became important in a political sense, too. Beginning from the end of the 18th century (Hungarian Diet of 1790/91)²⁶ and mainly from the Reform Age Diets of the 19th century²⁷, the abolishment of the *fideicommissum* – together with the abolition of aviticity and the socage system – was demanded by Hungarian reform politicians as a necessary means of the modernization of the private law system .

It is obvious that the commercialization of property, creditability and, as a result of them, desirable economic development could have been completely realized only if the modernization of private law had happened by way of the abolition of all the three legal institutions. Many politicians of the Reform Age knew that if they left the solution of the problem of any of the above-mentioned three institutions to the future, the reforms would not meet the expectations. Even if they knew what should have been done, the abolition of aviticity and the maintenance of the *fideicommissa* led to the consequence that while the abolition of aviticity ensured the transfer of property, the preservation of *fideicommissa* greatly restricted the sale of properties freed from the restrictions of the system of aviticity.

There were long debates about the future of the *fideicommissum* in the counties at the district sessions of the Diet of 1832/36, but no Act was passed by the Diet, it did not even have a debate on the proposal. It happened so despite the fact that almost all counties had voted for its abolition.²⁸ At the district session of 12th July 1834, Ferenc Deák - as a delegate of Zala County – ardently attacked the *fideicommissum*. He supported a free right of disposition as long as it was compatible with the public good and public interests, but

²⁶ The commission founded by Act LVII of 1791 proposed to maximize the size of *fideicommissa* properties in not more than 1000 units of land held in villeinage and to deprive them of their special character and have them evaluated as avitical properties. Lányi Bertalan: A családi hitbizományok reformjának jogászai szempontjai [The juridical character of the reforms of the family *fideicommissa*] In: Magyar jogászegyleti értekezések 152. XVII. kötet 3. füzet, Budapest, 1899, p. 7; Homoki – Nagy Mária: Az 1795. évi magánjogi tervezetek. [The Bill on Private Law of 1795] Szeged, 2004, p. 237; Varga Soma: A hazai hitbizományok átalakításáról. [The modernization of our national *fideicommissa*] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847, p. 244

²⁷ Act VIII of 1827 maximized the size of the *fideicommissa* property in 500 pieces of land held in villeinage. Lányi Bertalan: A családi hitbizományok reformjának jogászai szempontjai [The juridical character of the reforms of the family *fideicommissa*] In: Magyar jogászegyleti értekezések 152. XVII. kötet 3. füzet, Budapest, 1899, p. 7; Benczúr János: A magyarországi hitbizományok célszerű átváltoztatásáról. [The rational alteration of the Hungarian *fideicommissa*] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847 p. 218; Varga Soma: A hazai hitbizományok átalakításáról. [The modernization of our national *fideicommissa*] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847, p. 244

²⁸Völgyesi Orsolya: Politikai – közéleti gondolkodás Békés megyében a reformkor elején. A rendszeres bizottsági munkálatok megyei vitái 1830-1832. Gyula, 2002, pp. 151-152

according to his opinion, as soon as this compatibility failed to be taken into consideration, the right of disposition could be restricted just as it had been done by Louis I in his decree of 1351 in connection with aviticity. According to Deák, the maintenance of the clans by the *fideicommissa* was not in the interests of the republic anymore, as it used to be in the time of Leopold I when a person could be rewarded so for his merits and services done for the defence of the country. After the change in the structure of defence, the *fideicommissum* became an obsolete institution and even the famous Deák voted for its abolition.²⁹

Parallel to the district sessions, the debate on the *fideicommissum* continued on the columns of contemporary newspapers, such as the *Pesti Hírlap* (Pest Review) and later in the *Hetilap* (Weekly Review). The subject also inspired Lajos Kossuth, who wrote several leading articles on the theme clarifying its dogmatic characteristics and making comparative research on the institution.³⁰ As a conclusion, he protested against the vindication of this institution because he considered it dangerous as it would lead to the development of *aristocratic proletariat* as a result of the concentration of fortunes, and he went even further into radicalism by suggesting the total abolition of all *fideicommissa* even before the death of the existing *fideicommissa* holders.³¹

The fact that on 24th August 1846 Imperial and Royal Councillor Baron János Dercsényi announced a call for tenders in the subject of the rational reform of *fideicommissa* – the announcement being published by Ferenc Schedel in the Weekly Review³² – proves that politicians were seriously trying to solve the problem of this legal institution. The tenders were to contain proposals concerning the capitalization of the *fideicommissa* prepared in the form of a Bill. The Baron promised to have the first three award-winning works published and he offered a prize of 70 and 30 gold forints for the first two winning essays. All the three persons - József Keresztúry, József Benczúr and Soma Varga³³ – who submitted competition papers and won the competition were practising lawyers who dealt with the subject also involving state interests into the question besides the private interests of the founders. They did not support the idea of the abolition but they suggested turning the *fideicommissum* property into money by selling it at auction. The capital should be put as saving into the national (*fideicommissum*) fund and the *fideicommissum* holders should be given the yearly interest of the capital only. After the death of the last possessor the state should inherit the capital. The proposals left possibility for the foundation of new *fideicommissa*, too.³⁴ Neither

²⁹ Kónyi Manó: Deák Ferenc beszédei [The speeches of Ferenc Deák] Budapest, Franklin, 1882, vol. I. pp. 94-96, Deák Ferenc: Válogatott politikai írások és beszédek I. 1825-1849 [Selected political essays and speeches. vol. I. 1825-1849] (ed: Molnár András) Budapest, 2001, pp. 85-87

³⁰ Kossuth Lajos: Angolhon (külföld) [England (Abroad)] In: Pesti Hírlap 1842.08.07., nr. 166, 167; Kossuth Lajos: Majorátusok (vezércikk) [Majoratus (Leading article)] In: Pesti Hírlap 1842.08.25., nr. 172; Kossuth Lajos: Majorátusok folytatás (vezércikk) [Majoratus (continuation – leading article)] In: Pesti Hírlap 1842.10.13, nr. 186; Kossuth, Lajos: Majorátusok II. (vezércikk) [Majoratus II. (leading article)] In: Pesti Hírlap, 1842.10.16, nr. 187; Kossuth Lajos: Poroszthon (külföld) [Prussia (Abroad)] In: Pesti Hírlap 1842.11.03, nr. 192; Kossuth Lajos: Külföldi napló (külföld) [Abroad Diary (Abroad)] In: Pesti Hírlap 1842.11.27., nr. 199; Kossuth Lajos: Robot [The socage] In: Hetilap, 1847. nr. 117.; Kossuth Lajos: Vegyes közlemények [Miscellaneous publications] In: Hetilap, 1847, nr. 206. Source: Kossuth Lajos Hírlapírói munkássága. [The journalist work of Lajos Kossuth] Arcanum Kft. CD-ROM

³¹ Kossuth Lajos: Majorátusok folytatás (vezércikk) [Majoratus (continuation – leading article)] In: Pesti Hírlap 1842.10.13, nr. 186; Kossuth Lajos: Historiai visszpillantás III. (értekező) [Historical flashback III (dissertation)] In: Pesti Hírlap 1842.10.30. nr. 191

³² Schedel Ferenc, Hetilap, 1846, nr. 69

³³ Kossuth Lajos, Hetilap, 1847, nr. 104

³⁴ Keresztúry József: A Hazánkban létező hitbizományok átalakítási terve. [The plans of the transformation of our national fideicommissa] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847, pp. 85-94; Benczúr János: A magyarországi hitbizományok czélszerű átváltoztatásáról. [The rational alteration of the Hungarian fideicommissa] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi

the political debates, nor the expert works on the subject led to a final solution and the whole question fell soon into oblivion both in politics and the press.³⁵

The question of the reform of the *fideicommissum* was not raised during the time of the Neo-absolutism but the regulations relating to it were totally changed by the introduction of the Austrian Civil Code in Hungary. The Austrian Civil Code provided so detailed provisions for this institution that even after the overruling of the Austrian Civil Code, they were maintained in the Hungarian legal system by the royal rescript of 9th October 1862. Neither did the Lord Chief Justice's Conference of 4th January-22nd March 1861 deal with the *fideicommissum*, nor did Ferenc Deák, who had attacked the existence of the institution earlier, deliver a speech at this conference about the necessity of its abolition again.³⁶

The idea of the reforms was also raised later at the end of the 19th century, but then there was no debate about the capitalization of the *fideicommissa*; in spite of this, there were serious arguments about the necessity of this institution within the frames of the Association of Hungarian Jurists. They could not agree on whether this institution should be radically erased from the Hungarian legal system, or there was a possibility for its survival. There was no bill put forward on this issue again, but it is interesting to see how the general opinion had changed by the end of the century regarding this institution, because no one would have voted for its abolition again, since the politicians and legal experts of the time seriously feared that by the selling of the *fideicommissa* property the national unity would be split if foreign citizens could also acquire ownership of the sold Hungarian landed property.³⁷

The legal situation became ready for reform only by 1936, in which year the Hungarian Parliament passed Act XI on the "family *fideicommissum* and the *fideicommissum* smallholdings", which was promulgated in the Official Gazette on 16th May 1936.³⁸

Among the general principles of the Act one may find: the rational distribution of landed property, the furtherance of an increase in the birth rate as general interests of the national economy guided by higher socio-political standards. With reference to the aforementioned aims, the Act ordered the partial liberation of the *fideicommissum* property, pointing out the movable and immovable property that would remain under entailment restrictions. In order to carry out this process, the Act obliged the holders of *fideicommissum* property to make a detailed inventory within 6 months about all their *fideicommissum* properties. On the grounds of these inventories the *fideicommissum* courts decided about the liberation of the property within one year after hearing the curators, the economic inspectorate and the expectant heirs of the *fideicommissum* property. In this process the court always had to keep an eye on the interests of the possessor and expectant heirs, and all these liberations

János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847 pp. 222-230; Varga Soma: A hazai hitbizományok átalakításáról. [The modernization of our national fideicommissa] In: Magyarországi hitbizományok átalakításáról – az Academia által 1846-ban báró Dercsényi János – féle jutalmakkal koszorúzott pályamunkák. Pest, 1847, pp. 256-254

³⁵Only Bertalan Lányi mentioned later on the assembly of the Association of the Hungarian Jurists that there was such a tender in 1846. Lányi Bertalan: A családi hitbizományok reformjának jogászai szempontjai [The juridical character of the reforms of the family fideicommissa] In: Magyar jogászegyleti értekezések 152. XVII. kötet 3. füzet, Budapest, 1899, p.8

³⁶Östör József – Petrovay Zoltán: Hitbizományi jog. A hitbizományi jog szabályainak szövege és magyarázata. Az egyes hitbizományok keletkezésének és viszonyainak ismertetése, alapítólevelek. I-II. [Fideicommissum law. The text and explanation of the acts referring to the fideicommissum. The delineation of the fideicommissa's foundation and relation. Foundation letters. I-II] Budapest, 1937, vol. I. p. XIV

³⁷Lányi Bertalan: A családi hitbizományok reformjának jogászai szempontjai [The juridical character of the reforms of the family fideicommissa] In: Magyar jogászegyleti értekezések 152. XVII. kötet 3. füzet, Budapest, 1899 p. 64

³⁸Kenéz Béla: Birtokpolitikai irányelvek a magyar hitbizományok reformjához. [Guidelines on Possession concerning the Reform of the Hungarian Fideicommissa] In: Katholikus Szemle (1938) XLVIII. évf. 11.sz. pp. 645-654

had to meet the expectations of rational and practical farming.³⁹ Those lands that were liberated from the restrictions became the property of the *fideicommissum* holders encumbered with the right of succession of the male descendants and other collateral relatives.⁴⁰

On the death of the holder, the *fideicommissum* property was transferred to the next expectant heir according to the principles of the foundation document, although the Act did not allow inheritance according to the principles of seniority or *majoratus*, so even the order of inheritance relating to the existing *fideicommissa* was changed to the principle of the primogeniture. All non-Hungarian citizens were excluded from the inheritance (except those who lost their citizenship following the Treaty of Trianon of 1920) as well as those who spent most of the year abroad by their own will, or joined the church, or made an attempt on the possessor's life, or committed treason. The exclusion of the next expectant heir left the next expectant heir's rights relating to the *fideicommissum* untouched.⁴¹

In case of the newly founded *fideicommissa* only the inheritance right of the firstborn was accepted as principle and the male descendants always enjoyed advantage over the female descendants. The accumulation of the *fideicommissa* property in one hand was strictly prohibited, so in case the yearly income of the *fideicommissum* property exceeded the amount of 30.000 crowns, one part of it had to be transferred to the next expectant heir.

The *fideicommissum* possessor was liable for all the damage culpably caused by him in the *fideicommissum* property, but he could not be obliged to provide compensation for the damage that occurred through no fault of his own. The *fideicommissum* courts were entitled to exercise legal supervision over all *fideicommissa*. In case of alienation the prior consent of the court had to be asked for. In case the possessor planned to make some changes to the agricultural or sylvicultural substance of the *fideicommissum*, the approval of the Minister of Agriculture was also needed. The current possessor was responsible for the conservation of the property. Every *fideicommissum* had a curator appointed by the court who had to observe the interests of the expectant heirs. It was his obligation to report to the court any torts committed by the possessor. The curator did not receive any remuneration for his work. The Minister of Agriculture was in charge of ultimate legal supervision, exercising his powers together with the *fideicommissum* courts and the economic and forest administration of that county where the property was situated. If the *fideicommissum* was exposed to any risks, the curator could apply for a judicial attachment, too.⁴²

The *fideicommissum* was terminated if every expectant heir died out, or in special cases the possessor and the expectant heirs could terminate it with the consent of the Head of State. In the latter case they also had to decide about the division of the property among themselves.⁴³

The most interesting part of this Act was the rule relating to the founding of a new *fideicommissum*. The foundation of new *fideicommissum* was permitted by the Head of State only in circumstances requiring special evaluation and in cases justified by the public good and only for those legally independent Hungarian citizens whose character was beyond

³⁹ §§ 2-9 of Act XI of 1936

⁴⁰ §§ 10-13 of Act XI of 1936; There was a huge debate on the extent of the proportion the descendants and collateral relatives should receive. Some supported the idea to distribute the liberated land equally between all relatives, but the Act provided for giving 2/5 of the land to the next *fideicommissa* expectant, 2/5 to the male descendants of the current possessor and 1/5 to the brothers of the possessor. A családi hitbizományról és a hitbizományi kisbirtokról szóló törvény tárgyalására vonatkozó képviselőházi és felsőházi összes kiadványok. [All materials of the Upper and the Lower House of the Hungarian Parliament concerning the debate of the bill on the family *fideicommissa* and the *fideicommissa* smallholdings] Budapest, 1936, p. 501.

⁴¹ § 30 and § 33 of Act XI of 1936

⁴² §§ 37-56 of Act XI of 1936

⁴³ §§ 59-64 of Act XI of 1936

reproach, who meritoriously served the country in the field of public services, science or arts and freely disposed over their property.⁴⁴ Only those were entitled to found a *fideicommissum* whose fortune exceeded the amount of 200.000 pengős and the income from their property also had to meet the designated purpose of the institution. It was possible to found a *fideicommissum* either in a transaction between living people or by will for the case of death. Besides the consent of the Head of State, the approval of the Minister of Justice and the opinion of the Minister of Agriculture were needed and the foundation document had to be made out in the form of an authentic public document. Lands could be brought into the *fideicommissum* only if they were suitable for farming and their cadastral pure income did not exceed the amount of 10.000 crowns and this was in accordance with the principles of the *Fideicommissum Act*.⁴⁵

The application for the foundation of a *fideicommissum* could be submitted to the Head of State for approval together with the attached foundation document, the detailed inventory of the properties (both movable and immovable) and the authentic land certificate together with the documents certifying the payment of the cadastral land-tax. The founder was also required to prove that he did not have any public arrears and that the foundation did not harm the rights of any third persons.⁴⁶

Besides regulating the family *fideicommissum*, Act XI of 1936 also created a new type of this institution by introducing *fideicommissum* smallholdings in the practice. This institution was quite similar to the family *fideicommissum* with the exception that no consent of the Head of State was needed for the foundation. Its aim was the prevention of the breaking up of land into little fragments mainly by giving a chance to those who lived from farming to have a piece of land producing enough income to provide maintenance for a family, with a size reaching at least 30 cadastral yokes and with a pure income of between 250 and 1.000 crowns.⁴⁷

A strong disappointment followed Act XI of 1936. The smallholder politicians and Members of Parliament had been expecting the liquidation of the existing *fideicommissa* in order to have the land problems solved. Unfortunately both the old-conservative and the new-conservative politicians – who were sometimes also in possession of huge *fideicommissum* lands – voted for the keeping of this legal institution. So the solution turned out to be only a semi-solution by the partial liberation of the *fideicommissa* properties. People had to wait until 1949, until Act VII of 1949 ordered the final abolishment of this institution introduced by Act 9 of 1887 based on foreign patterns and existing for more than 250 years.

⁴⁴ By these conditions the Act wanted to serve the creation of a new national, wealthy and patriotic middle-class. This was the opinion of Márton Lányi, presenter of the Bill in the Lower House of the Hungarian Parliament. A családi hitbizományról és a hitbizományi kisbirtokról szóló törvény tárgyalására vonatkozó képviselőházi és felsőházi összes kiadványok. [All materials of the Upper and the Lower Houses of the Hungarian Parliament concerning the debate of the bill regarding the family fideicommissa and the fideicommissa smallholdings] Budapest, 1936, p. 503

⁴⁵ §§ 65-71 of Act XI of 1936

⁴⁶ §§ 72-77 of Act XI of 1936

⁴⁷ §§ 78-109 of Act XI of 1936