CUSTOMARY LAW VS. CODIFIED LAW IN 1930S HUNGARY: INSIGHTS FROM THE WORK OF KÁROLY SZLADITS

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ABSTRACT

This chapter explores the delayed codification of Hungarian private law, tracing its roots to ideological divisions and historical circumstances unique to Hungary. While neighbouring states codified civil law early to signal modernization, Hungary relied on customary law, leading to sustained debates between anti-codification advocates and proponents of a formal code. Compelling arguments were presented both in favour of maintaining the characteristically uncodified, customary nature of Hungarian private law, akin to the common law system, and for establishing codified civil law. Key figures, such as Károly Szladits, argued for codification as a means to modernize Hungarian law. The eventual codification under the Soviet regime in 1959, and in principal the new Civil Code of 2013, still reflects a compromise between codified law and the flexibility of customary principles, capturing Szladits's vision of a living legal system.

Keywords: *Hungary, codification, customary law, civil law, Károly Szladits.*

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1. BELATEDNESS? A BASIC REFLECTION ON THE HISTORICAL CONTEXT OF HUNGARIAN PRIVATE LAW CODIFICATION

In the history of Hungarian private law, Act IV of 1959 was the first Civil Code, except for the short, few years of application of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB) (between 1853–1861).

If we look at this historical fact from a comparative legal point of view, a clear picture of belatedness emerges, especially if we consider the fact the Civil Code was undertaken by the 1848 legislature in a programmatic act.[1] Practically all states in the region had enacted a written civil code: for example, Moldova had its own code in 1817, Serbia in 1844, the newly established Romania in 1864, and the Croatian, Slovenian, and Czech territories belonging to the Habsburg Empire had the ABGB in force from the beginning of the 19th century.[2]

However, belatedness in this case is an incredible oversimplification. On the one hand, the states that adopted their own civil codes were precisely those that were in the most disadvantaged political environment, integrated into the Ottoman Empire: Serbia and Romania gained their independence decades after their civil codes came into force, only in 1878. The legal transplant of civil codes (Austrian for Serbia and French for Romania) was triggered by the impossibility of organic development. The adoption of Western legal models, which were fundamentally incompatible with the local social structures, also served as a political statement reflecting a strategic intention to align with Western development trajectories. This choice was not merely a legal reform but a deliberate effort to signal modernization and integration into the broader framework of Western political, economic, and legal norms. Thus, the motivation behind the codification effort in Serbia

1 Act XV of 1848 on the abolition of the *aviticitas* (i.e. strict succession order) states that 'the Ministry shall draw up a civil code on the basis of the complete and total abolition of *aviticitas* and submit a proposal for this code to the next Diet' (§ 1).

2 On the beginnings of civil law codification in the East Central European region and further details and refinements, see Veress, 2022, pp. 174–178.

and Romania was fundamentally different from that underlying the Hungarian question of the creation of the Code.

The Austrian imperial context was also different: in the Slovene, Croatian, and Czech territories, the codification, that is, the enactment of the ABGB, was justified not only by the (moderate) modernisation dictated by enlightened absolutism, but even more so by the idea of imperial unification. Hungary, also under Habsburg rule, opposed legal unification from the outset, leading Austria to avoid imposing the Austrian Civil Code (ABGB) in Hungary during the first half of the 19th century, unlike in other Habsburg territories.

However, in the absence of civil codification, the medieval private law based on customary law remained in force. After the fall of the revolution in 1848–49, the ABGB was introduced in Hungary as a political sanction, but this meant only a few years of forced application of a law that was considered alien. In the words of the justice Kamill Sándorfy, 'In 1853, the Austrian Civil Code of 1811 arrived on the new Austrian stagecoach'.[3] The National Conference of Judges decided to repeal the ABGB stating that 'the Hungarian private civil substantive law shall be restored…' (1861). Later the civil law professor Károly Szladits (1871–1956), the protagonist in this chapter, wrote that , 'since 1861, the rule of written law in Hungarian private law has been suspended, so that the most delicate legal relationships are regulated by case law'.[4] (This 'case law' – as Szladits named it: *esetjog* – in Hungarian context was the customary law identified and applied by the courts). Indeed, the primary source of Hungarian private law, beside isolated acts, was customary law, and indeed, the greater part of Hungarian private law was customary law rather than statutory law: a mass of legislation developed through practice. According to Szladits,

> *the collective will that creates a legal rule can manifest in two ways. First, when the body designated for lawmaking by the community declares something to be a legal rule. Second, when the community, in its external order – in so-called legal life or legal transactions – engages in a certain mode*

3 Sándorfy, 1941, p. 86.

4 *Pesti Napló*, 24 November 1929, p. 36.

> *of action (practice or custom) from which it is unequivocal that conformity to this order is demanded with the force of law (…) In the case of customary law – even if it is written down – it is not the text itself that is binding, but rather the legal idea (principle) manifested in practice. Consequently, customary law is not considered written law.*[5]

What is the reason for this – as we have seen – apparent delay in codification? There was deep tension between two groups of Hungarian private lawyers on the issue of codification from the 19th century until the introduction of the Soviet-style dictatorship. The group representing the ultimate impossibility or impracticality of codification (the creation of a written code) was incredibly tenacious. It is not simply a question of the late flowering of Savigny's historical school, but of a line of thought that was organically rooted in Hungarian legal thought. In many cases, Savigny's work was not even the direct basis of the anti-codification attitude, but the evolution of Hungarian private law resonated positively with anti-codification views. The great Hungarian private lawyers of the post-1848–49 era, Gusztáv Wenzel (1812–1891)[6] and Imre Zlinszky

5 Szladits, 1933, pp. 27–28. See also Wenzel, 1863, pp. 50–60.

6 Wenzel noted, somewhat curiously, that 'there is a school of thought that assigns to the judiciary the limited role of faithfully applying established laws.' In his view, if a civil code were to be drafted, it would require the utmost care and thoroughness. He believed that the 'achievements and attempts' at codification aimed primarily at the simplification of civil law through comprehensive and systematic codes. However, he pointed out that this simplification is, strictly speaking, merely formal and has only a limited impact on the substantive elements of civil rights, which are their essential aspects. See Wenzel, 1878, pp. 30–31. For Wenzel, domestic law represented an expression of national legal life and legal consciousness. See Wenzel, 1863, pp. 5–6. He also acknowledged, however, that 'our entire contract law is in a noticeably disordered state.' Thus, his position on codification was not entirely dismissive; rather, he advocated for the careful use of historical experience and prudence. See Wenzel, 1878, pp. 35–36. He explicitly supported the adoption of specific laws (regulating issues such as bills of exchange, commerce, industry, railways, and telegraphy), viewing their creation as regulations required by societal progress.

(1834–1880),[7] were also proponents of this attitude and of the historical school.

They were opposed by a group of pro-codification advocates, such as László Szalay (1813–1864)[8] and Rezső Dell'Adami (1850–1888)[9], who sought the development of Hungarian private law through the creation of a civil code. Szalay's fundamental idea held that a legal code, by its very nature, sought to inaugurate a new era by dissolving historical elements and disrupting the fabric of gradual development. He also believed that the French Code exemplified the best approach to achieving this vision of progress.[10]

However, the confrontation was not limited to the historical moment described above but spanned generations. Moreover, the dividing line between the two groups was not clear. This phenomenon was captured vividly in the context of the law professor Béni Grosschmid (1851–1938), probably the most original thinker in Hungarian private law. As far as the codification of civil law is concerned, Grosschmid can be seen as the prism of the entire period [1867[11]-1914[12]]: in the afternoon he writes a code of laws in the government committee, and in the morning he teaches in his lectures on private law that codification is a useless exercise, because 'it is only a certain imperceptible historical process that can create institutions which bear the characteristics of the nation deeply imprinted on them'.[13]

7 According to Zlinszky, the legislator establishes private law regulations *arbitrarily*. In contrast, customary law norms 'have developed and evolved based on demands expressed with regard to the various relationships between individuals and in relation to things.' He also clearly acknowledged that there are issues and areas in which customary law proves insufficient, 'and thus the necessity emerges for state authority to formulate, establish, and declare the principles and rules of law explicitly and definitively (…) Yet, no matter what degree of internal or external perfection these laws achieve, they can never completely strip customary law of its significance.' Zlinszky, 1902, pp. 39–40.

8 On László Szalay, see, for example, Nizsalovszky, 1964, pp. 17–27.

9 On his life, see Stipta, 2017, pp. 475–487.

10 Nizsalovszky, 1964, p. 24.

11 The Austro-Hungarian compromise in 1867.

12 Beginning of World War I.

13 Mádl, 1960, p. 59.

It is essential that this fault line is not approached along black and white, good-bad value judgments. There was a great deal of truth and even more (still valid) lessons to be learned in the high-quality arguments of both groups: anti-codification and pro-codification. The debate is ultimately about the very essence of law: How is law made?

The realisation of the 1848 commitment to create a civil code was temporarily blocked by the fall of the Revolution and the repression that followed. However, the Austro-Hungarian reconciliation (1867) created the context for codification to be back on the agenda. The ideas on codification are illustrated by the debate on the Transylvanian question. Since the Battle of Mohács (1526) and the division of the country into three parts, Transylvania has followed a particular legal development path.[14] One of the fundamental demands of the 1848–49 revolution was the reunification between Hungary and Transylvania, which was briefly achieved, and then, because of the Reconciliation, accomplished again. Thus, the problem of codification began with how to create legal unity in the Hungarian legal space, in the reunified country. In 1853, based on a separate imperial pact, the ABGB came into force also in Transylvania, but the work of the Conference of the Judges in Hungary could not cover Transylvania, which was still a separate entity at that time. Thus, at the moment of reunification (1867–1868), the ABGB was still in force in Transylvania.

Subsequently, it was determined, though not without substantial debate, that there was insufficient justification to pursue immediate legal unification, given the imminent completion of the Hungarian Civil Code. This (unfounded) optimism is illustrated by the speech of Miklós Szabó Nárai (1821–1907), State Secretary for Justice[15]:

> *It is natural that Transylvania should wish to free itself from the Austrian law as soon as possible, as we ourselves did, and once the first opportunity presented itself we immediately eliminated it.*[16] *But there is a very important difference between us and the situation in Transylvania. At the time when,*

14 On the development of Transylvanian law, see Veress, 2020.
15 Later President of the Curia, the supreme court of Hungary.
16 Reference to the Conference of National Judges.

because of the Conference of the Judges, Hungary repealed the Austrian laws, it restored the old Hungarian laws. Transylvania, however, does not want to do this, does not want to restore the laws that were in force there – in Transylvania – before the Austrian laws were introduced, but wants to introduce Hungarian laws, that is to say, completely new laws. I would find this very natural in the case of Hungary having well-ordered codified laws (...) According to Gál (...) it would take decades for a civil code to be enacted.[17] *But I am not of this opinion (...) Thus, I would consider it far more practical to have this legislation enacted in Transylvania when there are finalized in Hungary, rather than to have new laws enacted there twice within three years (...).* [18]

Codification efforts have indeed started in the post-1867 Hungary, but the rapid creation of a civil code has proved impossible. There was no new civil code to be extended to Transylvania, where the ABGB was still in force at the time of the change of sovereignty (annexation of Transylvania to Romania – 1918/20) and remained in force until World War II.[19] At the same time, the first 19th-century partial drafts did not seem convincing to many and were severely criticized by legal scholars and practitioners.[20] These failures further strengthened the bias against codification.

17 János Gál, a Member of Parliament, argued that 'the codification which the opposition believes will free us from Austrian law is not as simple as some may think. Elsewhere in Europe, a private law code has been created, but it took decades of work to achieve. How can we expect, for example, that it will be completed in Hungary within a single year? (...) The principles of constitutionalism and the Union [between Hungary and Transylvania] require that Austrian law should no longer weigh upon Transylvania.' Historical events ultimately validated János Gál's perspective.

18 Cited in Sándorfy, 1941, p. 106. The full debate, which is extremely interesting and worthy of detailed analysis, can be read in the section of the Chamber of Deputies Journal on the national session of 8 December 1868. *Az 1865-dik évi december 10-dikére hirdetett Országgyűlés Képviselőházának Naplója*, 1868, pp. 427–432.

19 For details, see Veress, 2019b, pp. 157–171.

20 In 1871, for instance, Pál Hoffmann prepared the general part of the code, but even Rezső Dell'Adami, a supporter of codification, rejected it. Similarly, István Teleszky's draft on the law of succession faced significant criticism from Béni Grosschmid. On Teleszky's draft, see Pólay, 1974, pp. 3–48.

In this context, Károly Szladits (a former student of Grosschmid) emerged onto the stage of the codification debate,[21] as a new phase of the codification struggle began. Szladits graduated in law in Budapest (1895) and soon became involved in codification work. During the drafting of the first complete official Civil Code proposal in 1900, he served as an assistant member of the Codification Committee, delegated as associate judge. In the reconstituted Codification Committee from 1906 to 1908, he contributed primarily to the inheritance law chapters as a court of appeals judge.[22] He was appointed as a university professor in Budapest in 1917. From 1922, he also worked on the Private Law Bill, a new version of the civil code[23], to be completed in 1928.[24]

In contrast to the ambiguous position of Professor Béni Grosschmid, already mentioned, his disciple, Károly Szladits strongly supported the pro-codification position. In particular, after the conclusion of the Private Law Bill in 1928, he was strongly in favour of codification as seen in two of his significant writings, *A Magánjogi törvénykönyv* (*The Private Law Code,* 1931)[25] and *Szokásjog és kódex* (*Customary Law and the Code,* 1936).[26]

2. ARGUMENTS FOR AND AGAINST CODIFICATION

2.1. CODIFICATION AS A MORAL OBLIGATION

In the following, I will contrast several anti-codification arguments with the views and arguments of Károly Szladits. My aim is to provide an overview of Szladits's pro-codification stance and reasoning, focusing primarily on the 1930s – a period when there was genuine hope

21 On his life and work, see Vékás, 2019, pp. 81–96.

22 As a result of this work, the second and third versions of the text were completed in 1913, followed by the fourth version in 1915.

23 The Private Law Bill was effectively the fifth version of the Hungarian draft code.

24 See Vékás, 2019, p. 82.

25 Szladits, 1931, pp. 54–57.

26 Szladits, 1936, pp. 272–279.

for the adoption of the Private Law Bill, although this ultimately did not occur.

The Private Law Bill was an outstanding intellectual creation, fully suitable for enactment as a legal code.[27] Szladits fought for the acceptance of the Private Law Bill. However, the conflict between supporters and opponents of codification, rooted in the 19th century, did not diminish over time; instead, the debate continued and repeatedly reignited.

Szladits's fundamental position was expressed as follows: 'It is the moral duty of this generation to carry out the command left to its successors by the legislature of 1848 to draft the Civil Code'.[28] He noted with a sense of historical continuity and urgency that the Private Law Bill was presented to the House of Representatives in 1928, precisely 80 years after the original commitment made in 1848.[29] For Szladits, the bill was more than a legal framework; it symbolized a fulfilment of a long-standing national obligation, expressing the legal aspirations of successive generations. By advocating for codification, Szladits sought to resolve the legal inconsistencies stemming from the coexistence of customary and fragmented statutes, promoting a unified legal code that would bring Hungary in line with contemporary European legal standards.

2.2. TIMELINESS

The period between the two World Wars (the '*interbellum*') was characterised by ideological, economic, and social upheavals, transformations, and tensions. Therefore, according to those opposing codification,

> *a turbulent, transitional era, marked by evolving legal concepts, social structures, and legal sensibilities, is not suitable for the creation of a general code intended to last for an extended period, as its amendment would soon become extremely difficult. This risks exposing the legal system to the*

27 For the details of my position, see Veress, 2019a, pp. 17–32.
28 Szladits, 1931, p. 56.
29 Szladits, 1936, p. 272.

> *danger that, despite rapid changes in legal concepts and sentiments, the code – outdated and out of place – might obstruct legal development, the pursuit of substantive justice, and the flexible application of law needed to accommodate rapidly changing social realities.*[30]

In contrast, Szladits held a different viewpoint: 'Precisely because everything is in motion, because there is a tide of turbulent waters threatening from all sides, it is good for us to flee to the safe island of our own code'.[31] In his opinion, there was no sense in waiting for the 'empires' to form their positions: he examined the foreign, 'boiling' processes and came to the conclusion that many of the ideas that emerge as confused in them can already be found clarified in Hungarian practice and in the draft code. Thus, rather than being swept into confusion by foreign influences, Hungarian law could assert its unique character and values through codification.[32] In Szladits's view, the moment was particularly opportune for codification because it offered the chance to enshrine the distinctive elements of Hungarian law free from external pressures. Codification, then, was not merely a legal exercise; it was a way of safeguarding Hungary's legal heritage and ensuring a cohesive system that could endure the upheavals of the interbellum and beyond.

2.3. THE DURABILITY AND ROBUSTNESS OF CUSTOMARY LAW

Szladits considered the strength and tenacity of customary law to be the main reason for previous codification failures.[33] The customary law perspective asserts that the Code imposes rigidity, making the application of substantive justice challenging in individual cases. Decisions must adhere strictly to the precisely defined rules of the Code, often neglecting

30 Szigeti, 1938, p. 560. For the sake of accuracy, it should be noted that Szigeti, as a student of Szladits, took a pro-codification position, and in fact only synthesised the counterarguments.

31 Szladits, 1936, p. 277.

32 On this issue see also Szladits, 1936, pp. 276–277.

33 Ibid., p. 272.

the unique circumstances of each case that cannot be accommodated by abstract, prior, general rules. In contrast, the customary-law doctrine evolves through individual cases, transforming into a general doctrine rooted in practical experiences and specific life circumstances. This evolution occurs organically, influenced by changes in legal perception without legislative intervention. The customary rule slowly adapts its scope and wording, and occasionally, an entirely new customary rule may emerge from public tradition in special situations. The Code struggles to keep pace with evolving society, resulting in a disadvantage for future generations. Applying rules suitable for the circumstances of past generations to the transformed life of their descendants compromises material truth and disrupts the living sense of law shaped by contemporary public opinion, as it becomes entangled in outdated, abstract rules. [34]

Szladits also took a completely different view on this issue. He regarded the private law code as a necessary part of the integral realisation of the rule of law:

> *the most important requirement of the rule of law is legal certainty. And legal certainty has two elements: one is the certainty of the independent judge, the other is the certainty of the law, that is, the desire that the citizen of the state in his life circumstances should be able to anticipate the consequences of the law known to him.*[35]

Károly Szladits notes that Béla Szászy[36], who played a central coordinating role in the drafting of the 1928 Private Law Bill, firmly believed in the necessity of a regular code of law to provide the level of legal certainty essential for a forceful legal framework. Szászy astutely highlighted the slow and challenging process, often involving significant sacrifices by parties seeking justice, through which customary (consuetudinary) law rules are accepted through judicial practice. He emphasised the inherent uncertainty and instability of such rules. According to Szászy, a legal system compelled to formulate a distinct law for each new case,

34 Szigeti, 1938, pp. 560–561.
35 Szladits, 1931, p. 54.
36 The father of the renowned law professor István Szászy.

effectively at the parties' expense, does not constitute an affordable legal system for a less affluent nation. [37]

Szladits acknowledged that Hungarian judicial practice may yield as many, or possibly even more, rules compared to those outlined in the proposed draft bill. However, he pointed out a crucial deficiency in these customary law rules – they lack coherence and a well-thought-out system, making it challenging to rely on them with absolute certainty. He contends that the written legal system, particularly its perfected form, the code, is directly connected to the concept of the rule of law. Szladits emphasized that various codified areas of law in Hungary, such as commercial law, matrimonial law, and procedural laws have enhanced legal certainty within their respective domains. In his view, the code of general private law should be no exception to this principle.[38]

Despite the conflicting arguments, it is indisputable that the customary law system remained functional in the interwar period, largely due to the expertise and proficiency of highly skilled legal professionals and the strength of a well-established legal culture. Andor Juhász, the president of the Curia, for example, representing the anti-codification position, stated the following in 1929, after the draft Private Law Bill had been completed:

> *This important part of the proposal, which deals with succession (...) – I consider it to be only a sketch (...) I propose that we ask the broad strata of the people what their wishes are, how they imagine succession to be. In this way, we will be able to ascertain what lives in the nation, what desires, what wishes, what resides in the nation as a noble tradition to be preserved in the matter of succession.*[39]

Which position the journal publishing Andor Juhász's words prominently sympathised with is clear from the concluding sentence of the report: 'After these words of the President of the Curia, one of the architects of

37 Szladits, 1932, p. 146.
38 Szladits, 1931, p. 54.
39 *Előörs*, 1929, p. 15.

the proposal, Károly Szladits spoke and muttered something. What he muttered – it is not important.'[40]

The Code, in reality, is not the constraint its opponents feared. When applied and interpreted by the judiciary, a well-crafted and sufficiently abstract code establishes boundaries that allow for the necessary flexibility to account for individual circumstances. In the process of drafting a code, the level of abstraction that needs to be regulated can be examined on a rule-by-rule basis. Determining the appropriate level of abstraction for each rule is a critical process that requires careful assessment. This approach allows drafters to decide how broadly or narrowly each provision should be framed, balancing the need for clarity with the need for flexibility. Higher levels of abstraction in certain rules can accommodate a wider variety of circumstances and allow for judicial interpretation to evolve alongside societal changes, preserving the code's relevance over time. Conversely, some provisions may require more specific language to provide clear guidance and reduce interpretative ambiguity. This is still a legitimate aspect of the analysis and *'testing'* of any private law draft. Szladits expressed in lines of literary beauty that the

> *paragraphs of the Private Law Bill are, so to speak, filled with rootlets that draw nourishing strength from the living soil of life. They are full of safety valves through which the conflicts between life and legal regulations are diffused. It is filled with blank spaces, upon which the ever-evolving life can continue to embroider the rich cloak of law.* [41]

László Szigeti, a scholar of Szladits, argues that the imprecision of customary law rules and their frequent existence in multiple versions (such as varying formulations of liability rules for dangerous activities) render them significantly less effective than a codified system in meeting the standards of legal certainty and supporting the requirements of legal development.[42]

40 Ibid.
41 Szladits, 1936, p. 278.
42 Szigeti, 1938, p. 568.

As a believer in codification, Ignác Balla, an attorney, taking the position of Szladits a little further, and making a gesture towards the customary law position, stated his opinion that

> *every legal system requires firm, unequivocally defined principles that bind the judge, just as the human body requires a skeleton not just soft, flexible tissues. The skeleton alone is not a person, but without a skeleton, a person is equally incomplete. The same applies to law. Case law, without fixed principles, leads to chaos, while fixed principles without judicial adaptability result in the ossification of justice. Thus, the solid framework of justice is what we aim to establish with legislation, and because life does not stand still, customary law will continue to play an equal role alongside the code, just as it has in the past – sometimes supplementing, and potentially even modifying, the written law through the force of practice.* [43]

The framers of the Code clearly did not intend to overtly endorse customary law, as doing so would have weakened the authority of the written law. Nevertheless, § 7 of the draft stated that the term 'law' in this Code shall also include 'customary law', suggesting that Balla's interpretation – that customary law is explicitly acknowledged as a legal source – is well-founded. Thus, the drafters foresaw and accommodated the parallel existence of custom within the legal framework.

2.4. THE UNCODIFIED CODE

The most interesting question of general, academic interest arising in connection with the Private Law Bill of 1928 is the start of application of the Bill in judicial practice. The Private Law Bill, which did not enter into force, *'shared the fate of the Tripartite:*[44] *it did not become a law, but as*

43 Balla, 1936, p. 26.

44 The *Tripartitum*, formally known as *Opus Tripartitum* or *Tripartitum Opus Juris Consuetudinarii Inclyti Regni Hungariae*, is a compilation of Hungarian customary law from 1514 by the jurist István Werbőczy (1465–1541).

a law … it passed into practice'.[45] However, this fact was interpreted in a completely different way by the pro- and anti-codification *'groups'*.

Opponents of codification say the judicial application of the draft code is a success story. In a 1934 publication, Béla Reitzer (who died in 1942 while serving in a labour battalion) described the Private Law Bill as an illegal code, noting that, since it was never enacted, it lacked formal legal status. He characterized it as a peculiar genre – essentially a compilation of provisions that, despite not having the force of law, were nevertheless applied in practice as if they were legally binding.

Reitzer said,

> *we both have a civil code, and we do not. That is, as a formally enacted law, it does not exist, but as living law, it does. Not only does it exist, but in practice, it is applied with almost the same regularity as if it were written law.* […] *It is interesting to observe that while initially references to specific provisions of the code were made only sporadically and, one might say, timidly – and primarily within the submissions and arguments of the parties – gradually, referencing the code's provisions has become systematic, appearing in judicial, and even supreme court, rulings.*[46]

Professor Lajos Vékás, in confirming this process, noted that many of the solutions of the Private Law Bill 'have been applied by the judiciary in a customary law way'.[47]

I contend that interpreting the practical application of the draft as a judicial enactment of the Private Law Bill is misguided. In judicial practice, the Private Law Bill was not regarded as a formal source of law; rather, it served to clarify the substance of customary law. Since the Bill was largely seen as a compilation of existing Hungarian private law principles, it was applied in the capacity of customary law rather than as a codified legal text. Professor Attila Menyhárd rightly pointed out that

45 Mádl, 1960, p. 67.
46 Reitzer, 1934, pp. 77–78.
47 Vékás, 2015, p. 567.

> *although popular opinion holds that the 1928 Private Law Bill functioned as a code despite not being enacted into law, this claim is unsupported. The courts were not bound by the Bill, and although it was indeed frequently referenced and even used as a point of reference in difficult cases offering multiple decision-making alternatives, it cannot be concluded that it was regarded as a source of law.* [48]

In my view, the courts have utilized the Private Law Bill as a written record of customary law, rather than recognizing the Bill itself as a formal source of law. Instead, it was the customary law, documented within the Bill, that was acknowledged in judicial practice. Furthermore, this phenomenon was not unique to the Private Law Bill; earlier versions of the draft text also influenced judicial practice and served as points of reference (similarly to the ABGB in certain cases). Thus, this approach was not a new development that emerged only after 1928.

However, Béla Reitzer's perspective is worth returning to. He viewed the Private Law Bill as a positive development that had gradually gained application within the judiciary. For Reitzer, the Bill's greatest strength and legitimacy derived from its acceptance by the public as an authoritative source of rights, perceived as binding law without the need for external enforcement.

> *It is a rather basic truth that all written laws are rigid, generalized, and lack sensitivity to the nuances and distinctions inherent in individual life situations. When there is a written statute, the judge is often compelled to apply it, even if they feel that the specific circumstances of the case, in terms of equity or subtle nuances, do not lead to a fully satisfactory decision. This strict adherence to the law frequently results in judgments that do not meet the general sense of justice, the expectations of the parties involved, or even the judge's own conception of fulfilling their judicial role properly. The judge's task is much easier if their hands are not tied, while still being able to find guidance within the law. In cases where, due to the specific nature of the situation, the judge considers it reasonable to depart from the statute, they may do so without conflict – conflict that often*

48 Menyhárd, 2016, pp. 322–323.

> *arises when the judge's personal convictions clash with the formal command of the law. Therefore, we may confidently say that the circumstances around private law codification have led to an almost ideal solution. It would be a mistake to alter this by pushing for formal legalization.* [49]

In other words, this perspective brings us back to the inherent "flexibility" of customary law that underpins the anti-codification stance.

Reitzer's concept of an *'uncodified code'* does not impede the continuous refinement necessary in law. If judicial practice reveals that a rule in the reference text fails to keep pace with societal realities, it can be adjusted without delay. This approach avoids the common problem where a rule, though recognized in practice as poorly drafted, must still be applied by judges who otherwise face years, or even decades, waiting for formal amendments.

According to Béla Reitzer, the informal, semi-structured system that has developed is a more effective solution than full codification. He did not believe that judicial application of the Private Law Bill demonstrated a need for formally codified law. Rather, he viewed the judicial use of the Private Law Bill as a triumph of uncodified, living law. In this way, Reitzer saw himself as a continuator of Grosschmid's theory, whereby the uncodified code became a value in itself.

In contrast, Szladits and his circle viewed the judicial application of the Private Law Bill as a strong argument in favour of its formal adoption, underscoring the necessity and irreplaceability of a codified system. The Bill was frequently referenced by courts, reflecting a clear need for systematic, written legislation to support the effective functioning of the judiciary. From this perspective, it was the formal adoption and enactment of the Code that could establish the required legal order. Conversely, customary law was seen as an inadequate vehicle for implementing needed reforms:

> *Without formal legislation, even the freest judicial discretion cannot implement the reforms that Hungarian legal life has long been ripe for. In*

49 Reitzer, 1934, p. 77.

numerous matters, the courts are tyrannically bound by old written laws – laws that have long been outpaced by both societal development… [50]

2.5. THE EXAMPLE OF ENGLISH LAW

Anti-codification advocates frequently cited England as an example, highlighting the advanced state of its private law system despite the absence of a formal code. They underscored the unique and similar developmental paths of Hungarian and English private law, emphasizing customary law as a defining national characteristic. They argued that it would be regrettable to replace the benefits of this flexible, customary approach with the rigid, written rules of a codified system. [51]

In contrast, Szladits argued, 'do not cite England, the ideal legal state, whose private law is based on case law. English private law, with its system of binding precedents, is a far more detailed body of written law than that of any continental state. While it is not a systematic codification, it is a digest-like collection of written legal material.' [52] Szladits likened English law to a coral reef, built up layer by layer from countless individual judgements. [53]

One of Szladits' students also pointed out that the English-Hungarian parallel is not accurate, as there is a fundamental difference between the two legal systems, English and Hungarian:

In English law, judicial decisions and precedents themselves create customary law, whereas in our system, a judicial ruling does not constitute customary law but may potentially initiate it. Through the accumulation of precedents, English customary law forms a much more detailed written legal system than ours.[54]

50 *Pesti Napló*, 1929, 36. The unknown author sent a message to the Parliament through the newspaper, arguing for the adoption of the Private Law Bill.
51 Szigeti, 1938, p. 563.
52 Szladits, 1931, p. 55.
53 Szladits, 1936, p. 274.
54 Szigeti, 1938, p. 563.

A key distinction in Hungarian law is that judges did not establish general legal rules; rather, their judgments reflected the legal principles they considered binding. Customary law principles generally became recognizable through repeated application, though even a single manifestation of legal consensus could sometimes express a rule. Most often, established doctrines within judicial practice served to temporarily define legal principles until they solidified into customary law. [55]

The previously mentioned Szigeti adds to this argument something Szladits did not write explicitly but likely thought: unlike in England, 'in Hungarian law, the fact that private law was not codified with statutory force was not a matter of principle but rather the result of misfortune and unfavourable circumstances.' [56] Szigeti was undoubtedly referring to the historical promise of codification made in 1848.

2.6. CODIFICATION AS AN OBSTACLE TO THE SUCCESS OF REVISIONIST POLICY

Opponents of codification argued that, given the revisionist policy[57] central to the interwar period, adopting a new code would have undesirably disrupted legal continuity with Hungary's former historical territories, which had been ceded to other states under the Treaty of Trianon (1920). Had the new Civil Code been adopted by the smaller, post-World War I Hungary, it would have posed an obstacle to the revision of the Treaty of Trianon and hindered the potential for a successful settlement following any future territorial revisions. József Illés, a legal historian, explained in 1929 that *'while Hungarian law continues to exist in the seceded parts despite all violent repression, it is not possible for a new law to take the*

55 See Szladits, 1931, p. 31.

56 Szigeti, 1938, p. 563.

57 The revisionist policy was a key political objective in Hungary between the World Wars, aiming to reverse or mitigate the territorial losses imposed after World War I by the Treaty of Trianon in 1920. Hungary sought to reclaim lost lands and reintegrate regions with significant Hungarian populations, aspiring to restore its pre-Trianon borders and cultural unity.

place of the old one in Smaller-Hungary'.[58] An important scholar of civil law, Bálint Kolosváry argued in a similar fashion: the Hungarian private law in force in the taken *territories*

> *is still an important factor of spiritual and intellectual unity … it embraces the Hungarian nation both within and beyond the new borders as an invisible spiritual wall. Its uncodified state is very, very ripe for codification,*[59] *but this codification would also cause irreparable loss.*
>
> *It would mean the destruction of private law unity – a new Trianon in the realm of private law (…) The new code's private law, in contrast, would be confined to the limited geographic area of a truncated Hungary, thereby initiating (alongside many other unfortunate factors) a slow process of estrangement, leading to psychological barriers far more damaging than physical ones.* [60]

Szladits did not agree with this argument either: he did not feel a contradiction between revisionist policy and codification. He was pleased to see

> *the resilient strength with which centuries of Hungarian legal development resist the annihilative efforts of new powers. But we must not deceive ourselves: on the other side, many breaches have already been made in the Hungarian legal system, and the tidal wave of unifying codification is ready to flood it. Legal unity has been disrupted in so many areas that preserving it can no longer be a valid argument against Hungarian private law codification.* [61]

After the union and before the awarding of Transylvania to Romania after World War I (1868–1918/20), the unity of private law was only partially achieved (in the field of commercial law), but the ABGB remained

58 See Illés, 1930, p. 217.
59 In other words, Bálint Kolosváry considered codification otherwise necessary.
60 Kolosváry, 1932, p. 3.
61 Szladits, 1934, p. 246.

in force in Transylvania. Expressing a more explicit stance, Szladits emphasised that

> *the only argument against the code, which in our Trianon grief is difficult to dismiss, is that the new civil code would break the legal unity that still exists today in terms of general private law between the mother country and much of the transferred territories. Yet this is merely a dilatory objection. Czech unification efforts, unfortunately, have already brought us close to the point where legal unity with Upper Hungary will be permanently disrupted. Transylvania and the Military Frontier are under foreign legal systems.*[62] *Will it be worth maintaining the semblance of legal unity for the sake of the Partium and the Banat regions?*[63]

In support of codification, it was argued that if the Private Law Bill effectively codifies customary law, and if this customary law becomes codified law, then this 'cannot prevent it from continuing to be applied there as customary law; for the fact that it has been made an act in our country does not detract from its customary character there.'[64] While it is true that the Private Law Bill can largely be viewed as a compilation of existing customary law, it is also clear that this code was intended as more than a simple transition toward codified private law. Despite its foundations in customary law, the adoption of the Private Law Bill would have marked a definitive shift in Hungarian civil law, positioning the written code as a primary source of legal authority.

3. CONCLUSIONS

It is impossible to determine where this debate might have led, how it would have developed, or which position would ultimately have prevailed if Hungary had been able to sustain a path of organic historical development. The uncodified private law continued to function in

62 The ABGB.
63 Szladits, 1931, pp. 55–56.
64 Tóth, 1934, p. 35.

everyday life, albeit without the level of legal certainty Szladits had envisioned. Nevertheless, as previously indicated, it operated without creating an urgent need for immediate codification.

One certainty is that the Private Law Bill, drafted in the decade prior to World War II, was never enacted, despite it being an opportune period to do so. The bill's trajectory was ultimately disrupted by the profound political changes that swept through Hungary: World War II and the establishment of a Soviet-style dictatorship. After 1945, the application of the bill as uncodified law, or its potential adoption as codified law, virtually ceased.

The theoretical debate outlined above – of remarkable practical importance – was concluded outside the realm of organic development due to artificial shifts in power. Codification occurred under the Soviet-style dictatorship, when the advantages of customary law could no longer be effectively realized, with the adoption of Hungary's first Civil Code, Act IV of 1959. Nonetheless, Act IV of 1959 undeniably incorporated many elements from the Private Law Bill, and within the limits imposed by the period, provided a measure of continuity with the previous social order.

Szladits witnessed the early stages of Soviet-style restructuring in Hungarian law but did not live to see the enactment and implementation of the Hungarian Civil Code. He passed away in Budapest on May 22, 1956, at the age of 84.

The academic debates outlined above also played a role in shaping the drafting of the current Hungarian Civil Code (Act V of 2013), which was developed with an awareness of the arguments from both sides. The guiding principle was to design the Code in a way that would maximize the benefits of codified private law while minimizing its limitations. The high degree of abstraction within the Code allows judges to interpret its provisions flexibly and creatively, accommodating the detailed and infinitely varied circumstances of individual cases. In this context, Szladits' insights remain remarkably relevant:

> *I can only conceive the code and case law as a unified whole in the synthesis of living law. In my view, the code and case law necessarily complement each other. This part of the legal system is like an iceberg in the polar sea,*

> *with only one-tenth visible above the surface, while the remaining nine-tenths lie hidden beneath the water. This visible one-tenth represents the written law, while the other nine-tenths consist of the accompanying case law, which the judge must bring to the surface from the depths of the sea of life (...)The code does not aim to displace customary law but rather to make it a complementary part of living law alongside the code.* [65]

Thus, in the end, Szladits remains a continuator of the Grosschmid-legacy.

65 Szladits, 1936, pp. 272, 279.

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