

VOL. 14 / 2023

NO. 2

JOURNAL ON EUROPEAN HISTORY OF LAW



JOURNAL



STS
SCIENCE CENTRE



JOURNAL ON EUROPEAN HISTORY OF LAW



VOL. 14 / 2023 NO. 2

Editorial staff

JOURNAL ON EUROPEAN HISTORY OF LAW:

- Prof. Dr. Christian Baldus**
Faculty of Law, Heidelberg University, Germany
JUDr. PhDr. Stanislav Balík, Ph.D.
Faculty of Law, Westbohemia University, Plzeň, Czech Republic
Prof. Dr. Barna Mezey
Faculty of Law, Eötvös-Loránd-University Budapest, Hungary
Prof. JUDr. Jozef Beňa, CSc.
Faculty of Law, Comenius University in Bratislava, Slovak Republic
Doc. JUDr. PhDr. Jiří Bílý, CSc.
Metropole – University Prague, Czech Republic
Daniela Buccomino, Ph.D.
University of Milan, Italy
dr hab. Piotr Fiedorczyk
Faculty of Law, University of Białystok, Poland
Alberto Iglesias Garzón, Ph.D.
Charles III University of Madrid, Spain
Prof. Dr.iur. Dr.phil. Thomas Gergen, MA
Institut Supérieur de l'Economie, ISEC Université Luxembourg
Prof. Dr. Gábor Hamza
Faculty of Law, Eötvös-Loránd-University Budapest, Hungary
Doc. JUDr. Vilém Knoll, Ph.D.
Faculty of Law, Westbohemia University, Plzeň, Czech Republic
JUDr. David Kolumber, Ph.D.
Faculty of Law, Masaryk University, Brno, Czech Republic
izv. prof. dr. sc. Ivan Kosnica
Faculty of Law, University of Zagreb, Croatia
izv. prof. dr. sc. Mirela Krešić
Faculty of Law, University of Zagreb, Croatia
Prof. zw. dr hab. Adam Lityński
Faculty of Law, Humanitas University in Sosnowiec, Poland
Doc. Dr. Olga Lysenko
Faculty of Law, Lomonosov Moscow State University, Russia
Tony Murphy
Department of Law & Criminology, Sheffield Hallam University, UK
ao. Univ. Prof. Dr.iur. Christian Neschwara
Faculty of Law, University of Vienna, Austria
Prof. Dr. Dmitry Poldnikov
Faculty of Law, National Research University, Higher School of Economics, Moscow, Russia
Dr Dr Guido Rossi
Edinburgh Law School – University of Edinburgh, UK
Doc. JUDr. Karel Schelle, CSc.
Attorney at Law, Brno, Czech Republic
Dr. Gábor Schweitzer, Ph.D.
Institute for Legal Studies of the Hungarian Academy of Sciences, Hungary
Adw. Ewa Stawicka
Poland
Dr. Magdolna Szűcs, Ph.D.
Faculty of Law, University of Novi Sad, Serbia
Doc. JUDr. Bc. Jaromír Tauchen, Ph.D., LL.M.
Faculty of Law, Masaryk University, Brno, Czech Republic
Dr. Norbert Varga
Faculty of Law, University of Szeged, Hungary
Prof. Dr. Wulf Eckart Voß
Faculty of Law, University of Osnabrück, Germany

TABLE OF CONTENTS

<i>Gabriele Schneider</i> : Women as Judges and Public Prosecutors in Austria: A Historical Overview	2
<i>Jaromír Tauchen</i> : Die gelenkte Wirtschaft, ihre Rechtsgrundlage und ihr strafrechtlicher Schutz im Protektorat Böhmen und Mähren (1939–1945)	12
<i>Andrew Watson</i> : The Legal Education Revolution that Failed – Attempts to Establish a Legal University in Victorian Britain	28
<i>Ivan Kosnica</i> : Naturalisations in the Independent State of Croatia	40
<i>Aleksejs Jelisejers</i> : From <i>Bona Fides</i> to <i>Laba Ticība</i> : Historical Interpretation of the Good Faith Principle in Latvian Law	46
<i>Jelena Nikčević</i> : Development of Security Instruments of Maritime Loans on the Eastern Adriatic Coast, with Particular Reference to the Ordinance-Law on Property Rights on Ships and Maritime Liens from 1939 ...	58
<i>Zdeňka Stoklásková</i> : Die Armenfürsorge als Rechtsproblem in der Österreichischen Monarchie	67
<i>Lenka Šmídová Malárová</i> : Jews and Anti-Jewish Rules in the Czech Codification of Church Law of 1349.	78
<i>János Erdődy</i> : In XII minuendi sumptus sunt lamentationisque funeris – sed ea non tam ad religionem spectant quam ad ius sepulcrorum: Restrictions on Funeral Luxury in Rome	82
<i>Gábor Schweitzer</i> : Der Rechtsstatus und die Selbstverwaltung der Hauptstadt Budapest in der bürgerlichen Ära.	91
<i>Csaba Cservák</i> : The Constitutional Development of Transylvania	97
<i>Péter Nagy</i> : Hungarian Scholar of Czechoslovak Law in the USA. The Life and Works of Miklós Ujlaki.	104
<i>Viktor Papp</i> : Conflicts, Compromises and Professionalization. The Case of Hungarian Trainee Lawyers in the late 19 th Century.	113
<i>Tamás Antal</i> : A Hungarian Jurist's Views on 19 th -Century English Juries.	121
<i>Thembi Pearl Madalane</i> : Western Europe Immigration Laws on Diversity in International Arbitration. A Historical Perspective on Africa and the Influence of English Law.	128
<i>Balázs Arató</i> : The Historical Roots of Family Businesses, the Entail and the Unification of Wealth.	137
<i>Réka Pusztahelyi</i> : Undue Influence as a Civil Law Concept in the Hungarian Legislation and Judicial Practice (Investigation of the Drafts of the Hungarian Civil Code between 1900 and 1928 and the Corresponding Literature and Practice)	144
<i>Roman Savulici</i> : Codex Theresianus of 1766: Codification Works, Structure, main Content and Significance of Roman Law Reception during its Conclusion Process	156
<i>Vinicius Magalhães Casagrande</i> : Rechtsnormen und Logische Analysis: ein Briefwechsel - Was Kelsen tricked?	176
<i>Thomas Gergen</i> : Durchsetzung von Ansprüchen auf Bescheidung und Gewährung von Pensionsleistungen als Vertragsbedienstete von verschiedenen EU-Behörden – Rechtsgeschichte der frühen Jahre der EU als „Lehrmeisterin“ und gutachterliches „Handwerkszeug“	182
<i>Stefano Barbati</i> : Il postliminio di Ostilio Mancino	189

ANNEX: XVII. JAHRESTREFFEN DER JUNGEN ROMANISTEN

<i>Radek Černoch</i> : Introductory Remarks on the Essays of the Speakers of the XVII th Young Scientists Meeting on Roman Law	206
<i>Michael Binder</i> : The Capability to sue or be a Defendant in the Context of Matrimony with filii familias: An Analysis of D. 15.1.38.1 and D. 24.3.22.3	208
<i>Stefan Schmatzberger</i> : Der prozessuale Erwerb scheidungshalber entwendeter Sachen in D. 25.2.22 pr.	214
<i>Robin Repnow</i> : Die Rückgabe konfiszierter Güter in einem Kaiseredikt aus dem frühen 4. Jh.	224
<i>Emese Újvári</i> : Die Haftung der Erben der Munizipalmagistrate. Beispiele aus dem Bereich der magistratischen Vormundsbestellung.	236

BOOK REVIEWS

<i>Hans-Christian Hermann (Hg.)</i> : Die Strukturkrise an der Saar und ihr langer Schatten. Bilanz und Perspektiven von Montanregionen im europäischen Vergleich	246
<i>Michael Röhrig (Hg.)</i> : Königshof und Landgemeinde. Geschichte Völklingens von den Anfängen bis zur Mitte des 19. Jahrhunderts	247
<i>Alfred Söllner, Christian Baldus</i> : Römisches Recht	248
<i>Ulrike Babusiaux, Christian Baldus, Wolfgang Ernst, Franz-Stefan Meissel, Johannes Platschek, Thomas Räfner (Hrsg.)</i> : Handbuch des Römischen Privatrechts	249

REPORTS FROM HISTORY OF LAW

<i>Christoph Schmetterer</i> : Tagungsbericht: Ausnahme und Vielfalt im Recht der Vormoderne	252
<i>Thomas Gergen</i> : Stephan Toscani: Jurist, früherer Minister und Landtagspräsident, nunmehr Träger „Professor Alfred Diwersy Ehrenpreis“	254
Guidelines for authors	257

JOURNAL ON EUROPEAN HISTORY OF LAW

© 2023 STS Science Centre Ltd. / The European Society for History of Law

All contributions / papers are subject to a peer-review. The journal is indexed in SCOPUS and ERIH PLUS. All rights reserved. Neither this publication nor any part of it may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of STS Science Centre Ltd. or The European Society for History of Law. Published semiannually by STS Science Centre Ltd. and The European Society for History of Law. „Journal on European History of Law“ is a registered trademark of STS Science Centre Ltd. and The European Society for History of Law. Issued twice a year. Printed in the EU.

www.sts-books.co.uk / www.historyoflaw.eu

ISSN 2042-6402

Undue Influence as a Civil Law Concept in the Hungarian Legislation and Judicial Practice (Investigation of the Drafts of the Hungarian Civil Code between 1900 and 1928 and the Corresponding Literature and Practice)

Réka Pusztahelyi*

Abstract

At the very beginning of the twentieth century, during the period of heightened endeavours for the codification of the private law in Hungary, not only the influence of the “great” civil codes (BGB, ABGB, ZGB) was observable. This paper aims to demonstrate the special impact (or, unique renaissance) of the English equity doctrine of undue influence, among the invalidity rules concerning juridical acts, contracts or testaments. Since this examination cannot be carried on separately from scrutinising the legal thoughts and legislation on immoral and usurious contracts, after some general remarks, this work deals with relevant issues of the Hungarian legislation of usury, independently of civil code drafts or embedded into them. Then, it demonstrates the emergence of the undue influence doctrine in the academic discussion, in the civil code drafts and parallelly, in judicial practice. At this point, we should highlight the special interplay between these “sources of legal thinking”, and as a consequence, how the approach to the notion of undue influence was forming in that period, alongside the draft texts (from the year 1900) up to the Proposal for a Private Law Bill (Private Law Bill, 1928). Although this writing focuses on invalidity issues of contractual transactions, one chapter is dedicated to showing the development of the concept of undue influence relating to testamentary dispositions.

Keywords: undue influence; usurious contract; unfair exploitation; contracts contrary to good morals; law of succession; Hungary.

1. Introduction

This study aims to highlight the parallel influence of the English equity doctrine of undue influence and the impact of § 138 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) upon the codification of the private law in Hungary, at the very beginning of the twentieth century. In our point of view, the two concepts, or rather, the two different approaches to and legal assessments of unfair exploitation, the usurious contract and the undue influence intertwined in the pre-codification stage of modern Hungarian Private Law. Moreover, the legal expression of undue influence reflected in the Hungarian jurisprudence and legal literature between 1900 and 1959, before the adoption of the first Civil Code of Hungary (i.e. the old-HCC), gained a special interpretation differing not only from the original German approach to usurious contracts, but also from the common law doctrine of undue influence. For this reason, we cannot set aside dealing with the Hungarian regulatory development of the usurious contract and then show the slight influence of the English equitable doctrine of undue influence.

These two concepts are ‘in different layers’ and they overlap each other while covering the relevant cases of application. Furthermore, according to some academic thoughts from the period to be examined, the English concept of undue influence was considered equivalent to a type of exploitative contract.¹ In addition, these concepts cannot be assessed separately from the whole system of invalidity grounds, as well as regarding the defects of consent. For the reason of length, however, this paper focuses on contractual transactions and exploitative (usurious) contracts.

In the field of contract law, the Hungarian Civil Code in effect contains specifically neither a rule for unfair exploitation nor a rule for undue influence. The concept of undue influence or unfair exploitation had merged with other concepts, concepts of contracts contrary to good morals or usury, and were built into the oldHCC, meanwhile, these rules today do not reflect all the subjective elements elaborated by the civil code drafts between 1900 and 1928.² Although the fact that the Commercial Code of 1875³ contained provisions which

* Doc. JUDr. Réka Pusztahelyi Ph.D, associate professor, Institute of Private Law, Faculty of Law, University of Miskolc, Hungary, email: reka.pusztahelyi@uni-miskolc.hu / ORCID: 0000-0002-4779-2290.

¹ SZLADITS JR., K., *Az angol jog kútffői*. [Sources of English Law] Budapest, 1937, p. 135-136.

² For a comprehensive introduction to this topic see VEKÁS, L., The Codification of Private Law in Hungary in Historical Perspective. In: *Annales Universitatis Scientiarum de Rolando Eötvös Nominatae, Sectio Iuridica*, vol. 51, Nr. 4, 2010, p. 51-63; HOMOKI-NÁGY, M., Die Kodifikation des Ungarischen Zivilrechts im 19. Jahrhundert. In: *Rechtsgeschichtliche Vorträge*, vol. 25, 2004, Budapest, p. 3-10. For an introduction to the debate and early plans and drafts of the civil code, see BALOGH, J., How to Make a Civil Code: Plans and Drafts of General Rules in 19th Century Hungarian Private Law. In: *Journal on European History of Law*, vol. 11, Nr. 2, 2020, p. 95-103.

³ Law on commercial transactions no. XXXVII of 1875.

were generally applied to non-commercial obligations as well, due to the lack of codified civil law,⁴ did not provide any rule on unfair influence.

On the contrary, taking into account the law of succession and the invalidity issues of wills, the approach to undue influence upon the testator's will had been considered differently. As it is scrutinised in chapter 5, "*dolosa circumventio*" was closely connected to other invalidity grounds concerning errors of consent, such as deceit or duress. Consequently, the direct relationship with the invalidity rules of the Austrian Civil Code (*Österreichisches Allgemeines Bürgerliches Gesetzbuch, ABGB*)⁵ would be established here, as Emília Weiss also put it in her comprehensive work.⁶ However, Lajos Králik reported that after 1848, our judicial practice in the application period of the ABGB became rigid as it interpreted error and threat in a very concrete way.⁷

By the time of the Private Law Bill of 1928, the Hungarian private law had reached the stage of development so that this draft contained unfair influence [in Hungarian: "tisztességtelen befolyásolás"] in Article 1709 as a *sui generis* ground for challenging a will – replacing the term "undue influence" [i.e. "illetlen befolyás"] used in the Third Draft of 1913–, independently of the concept of good morals, usury, error or threat. It means that before 1959, the undue or unfair influence was recognised by both the judicial practice and the legislation (in civil code drafts) independently of the unilateral or bilateral nature of the legal transaction at issue.⁸

Although the old HCC of 1959 omitted almost all the subjective elements from the invalidity rule of usurious contract, and the unfair influence did no longer constitute a *sui generis* contractual invalidity rule in the judicial practice, the notion of undue influence, as an invalidity ground of the law of succession, a cause that fundamentally shaped the testator's will, still exists and is being in effect,⁹ in the Hungarian Civil Code of 2013 (hereinafter HCC)¹⁰, among other special rules regarding challenging a testamentary disposition, thus, relatively separately from the invalidity grounds of contract law.

Nevertheless, this study only aims to examine how changed the legislative, judicial and the academic approaches to the cases and legal concepts where the unfair influence was in the focal point which caused contractual dysfunctions, regarding the period of the XXth century drafts for a Hungarian civil (private) code, and its continuation.

2. General remarks on legislative approaches to the undue influence

Taking a retrospective, historical point of view and searching for the signs of direct or indirect impact of the undue influence doctrine upon the Hungarian legal culture, we can agree with Wagner's observations: 'Above all, however, undue influence represents a legal institution that has proven itself in practice by the courts to this day, so that an analysis of its development regarding both continuities and ruptures promises valuable insights overall.'¹¹ We hope that this examination serves a better understanding of the invalidity grounds of usury or immorality, as well.

Considering the scope of the legally relevant notion of undue influence, one should create a conceptual framework for defining which are the relevant invalidity grounds and how their interplay could be examined. In this regard, we could generalise Attila Menyhárd's thoughts. As he put in connection with usurious contracts, one can distinguish between two approaches of the national law systems to usurious contracts as a ground of invalidity: (1) the legislator formulating the rule could start with the objective conditions (excessive benefit or unfair advantage) and continue with the subjective elements (any exploitation of the party's weakness or situation) or, alternatively (2) the formulation emphasises the subjective elements firstly (causing an error of will) and subsequently, the objective criteria would be added to it.¹²

For example, in HCC, the rule for usury pertains to the group of invalidity grounds entitled 'Error in the intended legal effect'. Moreover, similarly to the German Civil Code to-

⁴ HORVÁTH, A., A magyar polgári magánjog történeti alapjai (1848-1945) [Historical foundations of the Hungarian Private Law (1848-1945)]. In: Mezey, B. (ed.), Magyar jogtörténet. [Hungarian legal history]. 4th edn. Budapest, 2007, p. 162.

⁵ Cf. § 869-874 of ABGB (as in effect in 1900, before the revision started in 1904).

⁶ Weiss, E., A szerződés érvénytelensége a polgári jogban. [Invalidity of Contract in the Civil Law] Budapest, 1969, p. 31.

⁷ KRÁLIK, L., A magyar általános polgári törvénykönyv tervezetének 991.§-ához: Az illetlen befolyás. [On § 991 of the Draft of the Hungarian General Civil Code – Undue Influence] In: *Magyar Jogász Egyleti Értekezések*, Vol. XXI, Nr. 3, 1901, p. 71–92. (Extractions published: KRÁLIK L., A magyar általános polgári törvénykönyv tervezetének 991.§-ához: Az illetlen befolyás. In: *Jogtudományi Közöny*, vol. 36, Nr. 3, 1901, p. 17–19). p. 86.

⁸ It should be added here, contrary to its limited applicability as it was foreseen by academic literature, the rule of usury was proven to be applicable to one-sided transactions, such as gift contracts as well. We found evidence for this in the case law. According to a Curia decision from 1940, a gift between betrothed couples, as a result of psychological pressure, shall be challengeable as a usurious contract. Cf. Curia decision of 4, June of 1940, Nr. P. III. 937/1940. See NIZSALOVSKY, E., et al. (eds.), *Grill-féle új döntvénytár* (1940-1941). Volume XXXIV. Budapest, 1942, p. 243-248.

⁹ For analyses of current judicial practice of undue influence on testators' will, with the special regard to the Curia case No. 270 of 2020, see PUSZTAHELYI, R., A végakarat tisztességtelen befolyásolása mint érvénytelenségi ok a magyar bírói gyakorlatban. [Unfair Influence upon Last Will as Invalidity Rule in the Judicial Practice] In: *Miskolci Jogi Szemle*, vol. 16, Nr. 3, 2021, p. 90-104; PUSZTAHELYI, R., A végrendelkező akaratának tisztességtelen befolyásolása. [Unfair Influence upon the Testator's Will] In: *Jogtudományi Közöny*, vol. 76, Nr. 9, p. 397-408; PUSZTAHELYI, R., Interplay between undue influence, usury, and immoral contracts in the light of the recent case law of Hungary. In: *European Integration Studies*, vol. 18, Nr. 2, 2022, p. 33-41. <https://doi.org/10.46941/2022.e2.33-41>

¹⁰ See Art 7:40 (1) point c) titled with 'Defects in the intention of the person making the disposition': A testamentary disposition shall be invalid if: the testator had been coerced into making the disposition by the use of threat or unfair influence; provided that the testator would not otherwise have made the disposition.

¹¹ WAGNER, S., *Interzession naher Angehöriger, Eine Untersuchung in historischer und vergleichender Perspektive*. Tübingen, 2018, p. 10.

¹² MENYHÁRD, A., A magánjogi uzsora. [Usury in Civil Law] In: FILÓ, M. (ed.), *Tanulmányok az uzsoráról* [Studies on Usury]. Budapest, 2016, p. 227.

day (Art. 138 BGB), it constitutes a subgroup of contract that is contrary to public policy (i.e. immoral contract) meanwhile the grounds of defects of consent (in contractual will) are separately regulated. In common law, its functional equivalent¹³, the doctrine of undue influence, was developed by the Courts of Equity and it is closely connected to other types of error of will (especially duress and coercion). However, beside the cases of abuse of a position of trust, the cases of the unfair exploitation of a person's difficulties are also dealt with in Anglo-American law as instances of undue influence, which are covered by the notion of exploitative contracts in the Continental legal systems.¹⁴ Compared to an elaborated set of model rules, in the Draft of Common Frame of References (DCFR), which incorporates the rule from Principles of European Contract Law (PECL)¹⁵ *verbatim*, only with slight differences in wording, unfair exploitation is also formulated in the group of vices of consent (II.-7:207.)¹⁶.

Accordingly, the examination of the development of undue influence in Hungarian civil law would not be complete without taking into consideration and focusing on other legal concepts such as usurious and immoral transactions, since these concepts intertwined with each other at the time, as our research led us to this first conclusion. We need to separate the concept of undue influence from other errors of intention, such as (fraudulent) misrepresentation, coercion or duress. We stress as the most important difference that the undue influence results in an excessive benefit or grossly unfair advantage to the detriment of the persuaded person, meanwhile the influence upon the contracting party's will is subtler than in the cases of coercion or duress; generally speaking.¹⁷

3. Usurious contracts and contracts contrary to good morals in the era of XXth century codification attempts in Hungary

As far as usury is concerned, the Hungarian act on usury and the provisions of the drafts on the civil code were being elaborated parallelly with other national, either criminal or civil law legislation in Europe.¹⁸ It is necessary to point out here that Act XXV of 1883 on usury and harmful credit transactions limited the offence of usury *as a criminal offence* to the cases of credit transactions and deferred payment.¹⁹ Cases of so-called *usury in kind* were not considered usury offences but were usually referred to as exploitative contracts. For example, when a wholesaler buys from an untrained or needy producer significantly below the market price or otherwise takes advantage of the situation of constraint, ignorance or recklessness of another to obtain undue unilateral advantage.²⁰

The first draft of the Hungarian General Civil Code of 1900 (Magyar Általános Polgári Törvénykönyv, Máptk.)²¹ contained the German model of the usury contract in Art. 957²², and contrary to the above-mentioned law, it covered all types of usurious contracts, providing for the general consequence of nullity. The second draft (1913)²³ omitted the usury contract precisely because it would have been the subject of a dedicated bill. As this law was not adopted, the so-called Commission text of the draft of the Civil Code (1915) returned to the codification of the concept of exploitative transaction, i.e., unfair exploitation.²⁴

It is worth noting that the Máptk (1900) had already regulated the contract contrary to good morals and public order

¹³ RALE, M., The Functional Method of Comparative Law. In REIMANN, M., ZIMMERMANN, R. (eds), *The Oxford Handbook of Comparative Law*, (online edn., 9 May 2019), Durham, North Carolina, 2019, p. 345-389. <https://doi.org/10.1093/oxfordhb/9780198810230.013.11>. Cf. ZWEIGERT, K., KÖTZ, H., (translated Tony Weir): *An Introduction to Comparative Law*. Oxford, 1998, p. 329-331.

¹⁴ Cf. ZWEIGERT, K., KÖTZ, H., *An Introduction to Comparative Law*. op.cit., p. 428.

¹⁵ Article 4:109 PECL: Excessive Benefit or Unfair Advantage.

¹⁶ Art. II.-7:207. in DCFR: 'A party may avoid a contract if, at the time of the conclusion of the contract:

(a) the party was dependent on or had a relationship of trust with the other party, was in economic distress or had urgent needs, was improvident, ignorant, inexperienced or lacking in bargaining skill and

(b) the other party knew or could reasonably be expected to have known this and, given the circumstances and purpose of the contract, exploited the first party's situation by taking an excessive benefit or grossly unfair advantage.'

See VON BAR, Ch., (et al.) *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR) Outline Edition*. Prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group) Based in part on a revised version of the Principles of European Contract Law. Munich, 2009. [DCFR Commentary] p. 532. See also: Article 4:109: Excessive Benefit or Unfair Advantage of PECL (Principles of European Contract Law).

¹⁷ Thus, considering invalidity, always there is an objective condition to be assessed.

¹⁸ For example, see BALOGH, J., Vélemény az uzsora és az ehhez hasonló gazdasági visszaélések tárgyában teendőkről. [Proposal for Agenda Concerning Usury and Economic Offences] In: *Budapesti Hírlap, könyv*, Budapest, 1905, p. 1-25. <http://real-eod.mtak.hu/8757/>.

¹⁹ Art. 1 of Act XXV of 1883.

²⁰ For an illustration of the development of private usury and the distinction between credit usury and usury in kind see: MENYHÁRD, A., *A magánjogi uzsora*, op. cit., p. 228 et seq. Cf. VERESS, E., Az uzsora magánjogi következményei. [Civil Law Sanctions of Usury] In: KOLTAY, A. (ed.), *Balás P Elemér Emlékkönyv. Tisztelegés és antológia sajtójogi, szerzői jogi és személyiségi jogi műveiből halálának 70. évfordulóján*. Budapest, 2018, p. 107-133.

²¹ M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A magyar általános polgári törvénykönyv tervezete. Első szöveg* [Draft of the Hungarian General Civil Code. First Draft], Budapest, 1900.

²² 'Any contract shall be void in particular whereby one party, by taking advantage of the inexperience, recklessness or situation of crisis of the other party, obtains for himself consideration disproportionately exceeding the value of his own services (usurious contract).' Cf. *Ibid.*, p. 216.

²³ M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A magyar általános polgári törvénykönyv tervezete. Második szöveg*. [Draft of the Hungarian General Civil Code. Second Draft] Budapest, 1913.

²⁴ As will be shown later (see below), the impact of the English doctrine of undue influence upon the legislation was traceable at this point.

(Art. 956) separately, which was followed by the rule of usury contract (Art. 957). Therefore, we share the opinion of József Trócsányi that according to this regulatory approach, the usury contract, i.e., formerly a special case of immoral transactions, ceased to be a type of contract contrary to good morals *per se*, since it became a separate ground for invalidity by virtue of a special statutory provision.²⁵ This approach complied with the viewpoint adopted in this period of codification that the concept of immoral contract is *not to apply* to cases of undue influence and usury.²⁶ Thus, situations in which one party persuades the other party to conclude a contract by using unconscionable means do not imply that the contract is null and void based on immorality.²⁷

Compared to German development, Hans-Peter Haferkamp puts it that the law on usury of 1880 had brought huge difficulties in proving the subjective elements of unfair exploitation. Accordingly, the courts were inclined to infer economic constraints from the obvious disproportionality.²⁸ After 1900, the judicial interpretation was continued, now under the Art. 138(2) BGB. Before 1914, for the *Reichsgericht*, the presumption rules already tried and tested under the law on usury made it sufficient to establish the subjective criteria of Art. 138(2) BGB to fight against usury.²⁹ However, in other categories of cases, case law already from 1900 showed a tendency to bypass the difficult-to-prove subjective prerequisites of paragraph 2 and to arrive at the relief of the conditions in special cases through paragraph 1, i.e. immorality (*Sittenwidrigkeit*).³⁰

50 years after the Act XXV of 1883, and after the world economic crisis, as a success achieved in parallel with the civil law codification, the new Act VI of 1932 on usury was adopted and repealed the relevant provisions of the predecessor act. This law distinguished between usurious contract and its special subtype, the so-called exploitative contract, due to the political and academic debate³¹ mainly on issues of usury in kind³². Its provision determined the concept of the usurious contract as mainly applied to credit transactions (this concept covered

usury in kind as well, provided that any kind of lending transaction was included).³³

The law prescribed the criminal and civil law consequences of the usurious contracts and contained provisions relating to the relative nullity of the exploitative transactions as civil law consequences. Nevertheless, it did not exactly determine the interactions between the relative nullity and the other civil law consequences elaborated by the judicial practice based on the civil code drafts.³⁴ It is remarkable that the exploitative transactions were not deemed as criminal offences³⁵ and their civil law consequences were determined also by the general civil law rules, not only the provisions of this special law. In the case of the exploitative transactions (Art. 9), the subjective conditions were the same, however, the exploitative transaction was not intended to be related to lending or a postponement of service, it was mainly related to cases where the performance and counter-performance are given simultaneously.³⁶ The second difference was that it required either a contractual agreement on or an acquisition of a gratuitous advantage or a manifestly excessive profit resulting in substantial damage to the other party, instead of striking obvious disproportionality of value between service and consideration, as it was provided by the rule of usurious contract under Art. 1.

All this was accomplished by this special law in such a way that the Private Law Bill of 1928,³⁷ in its Art. 977, paragraphs 1 and 2, had provided for this simultaneously in the following way. Nevertheless, not using the expression *undue influence*:

'A contract concluded with a person with an impaired mental disability by a person who took advantage of that disability is void if he knew at the time of concluding the contract that the other party would suffer substantial damage to property or other substantial detriments.

Likewise, a contract by which a person, taking advantage of another's inexperience, recklessness, dependence, or distress, or of his relationship of trust with him, concludes or obtains for himself or a third person a gratuitous advantage or

²⁵ TRÓCSÁNYI, J., *Erköstelen ügyetek (turpis causa)*. [Immoral Contracts (Turpis Causa)] Budapest, 1909, p. 47.; However, in legal practice, the opposite was also experienced, since decisions of the Curia stipulated usurious contracts contrary to good morals, and therefore, null and void. Cf. for example decision of Curia of 11 February 1920. P. ÍH. 1712/1919. sz.), cited as case No. 82 in SZLADITS, K. (ed), *Magánjogi döntvénytár*. [Collection of civil law decisions] Volume XIII, 1921, Budapest, p. 105.

²⁶ See below.

²⁷ Menyhárd pointed it out: MENYHÁRD, A., *A jó erkölcsbe ütköző szerződések*. [Contracts contrary to good morals] Budapest, 2004, p. 26-28.

²⁸ HAFERKAMP, H-P., *Sittenwidriges Rechtsgeschäft; Wucher*. In: SCHMOECKEL, M., RÜCKERT, J., ZIMMERMANN, R., (eds.), *Historisch-kritischer Kommentar zum BGB*, Tübingen, 2003, p. 725-726.

²⁹ Ibid.

³⁰ Ibid.

³¹ From the rich scientific literature, the work of Béni Grosschmid should be mentioned here: GROSSCHMID, B., *Hitel és reáluzsora*. [Usurious credit transactions and usury in kind] Budapest, 1902.

³² Or more precisely, exploitative transactions other than lending/credit contracts.

³³ BALÁS P, E., *Az uszóról szóló 1932:VI. törvénycikk magyarázata*. [Commentary on Act VI of 1932 on usury] Budapest, 1932, p. 19.

³⁴ See remarks below on the Art. 782 of the third draft (1913).

³⁵ BALÁS P, E., *Az uszóról szóló 1932:VI. törvénycikk magyarázata*, op. cit., p. 101; WEISS, E., *Die Entwicklung des Vertragsrechts im Lichte der Ungarischen Zivilrechtlichen Kodifikationsarbeiten*. In: CSÍZMADIA, A., KOVÁCS, K., *Die Entwicklung des Zivilrechts in Mitteleuropa*, Budapest, 1970, p. 292.

³⁶ BALÁS P, E., *Az uszóról szóló 1932:VI. törvénycikk magyarázata*, op.cit., p 99. The condition of immediate and simultaneous fulfilment was also noted by VERESS, E., *Az uszora magánjogi következményei*. op. cit., p. 130.

³⁷ For a new edition of the Private Law Bill with an introduction written by Emőd Veress, see VERESS, E. (ed.), *Az 1928. évi Magánjogi törvényjavaslat*, [Private Law Bill of 1928] Cluj-Napoca, 2019.

disproportionate profit, to the substantial detriment of the other party, is also null and void.’³⁸

As we stressed above, in this time of early civil codification attempts, it was not only the German BGB or the Austrian ABGB that had influence upon the drafts. Antal Almási remarked that among the situations of a usurious contract the party could exploit, one of them, i.e., the abuse of the relationship of trust (or reverence, or dependency), reflects the impact of the English concept on undue influence.³⁹ Endre König pointed out the same.⁴⁰

According to our research, this different approach to exploitative contracts was originated from Lajos Králik who proposed to complete the conceptual framework of fraudulent misrepresentation and threat with undue influence.⁴¹ This paper presents this phenomenon in the following sections.

4. The emergence of the doctrine of undue influence in the Hungarian civil law academic debate and its effects upon the drafts of Civil Code and judicial practice

4.1 On the fruitful interplay between judicial practice, legal literature and civil law codification

In 1860, the October Diploma abolished the constitutional application basis of the ABGB by restoring the authority of the Hungarian Parliament. In 1861, the Provisional Rules of Legislation (Ideiglenes Törvénykezési Szabályok, ITSZ) cancelled the temporary and mandatory application of the Austrian Civil Code (ABGB).⁴² While the Hungarian Civil Code was being drafted from the 1870s onwards,⁴³ the possibility to continue applying the ABGB remained a minority point of view in the High Judge Conference (Országbírói Értekezlet) convened by the Emperor in 1861.⁴⁴

Without statutory national civil law, the judicial practice and thus, customary law had an extraordinary role in the elaboration of the modern civil law of Hungary. As Judit Balogh also pointed out, ‘judicial practice has played an extraordinary role in the unification of Hungarian law. The decisions of the Curia (Supreme Court) eliminated legal loopholes, as well as further developed old institutions. Its in-principle decisions were binding on the courts, and therefore, the application of this type of consuetudo has put down deep roots in Hungarian legal thinking.’⁴⁵

It is remarkable that this particular interplay between statutory law, customary law (*consuetudo*) and legal science was *expressis verbis* worded even in the Private Law Bill. According to Art. 6 of the Private Law Bill (Mty, 1928) ‘on a legal question which is not governed by law, the court shall decide in accordance with the spirit of domestic law, the general principles of law and the scientific findings’. Thus, this provision above articulated the fact that judicial practice and civil code drafts influenced, developed and improved each other at that time.⁴⁶ After the failure of the codification of the Hungarian Civil Code before the Second World War, like the antecedent drafts, the Private Law Bill was also not considered to be an authentic legal source but rather a frame of references to define the content of the customary law, a source of the vivid civil law.⁴⁷ Károly Szladits described the continuous convergence between the drafts and judicial practice as a bridge-building process.⁴⁸

For example, the concept of undue (unfair) influence embedded in Art. 751 of the Commission draft of the Civil Code (1915) (in detail, see below)⁴⁹ had appeared in judicial practice relatively soon. As Antal Almási wrote: ‘Nothing proved this better than the decision of the Curia No. P VII. 2908/1920, which showed the direct impact of the Commission’s text on judicial practice, i.e., the (re)discovery of undue influence as a private law institution’.⁵⁰ According to our research, earlier decisions

³⁸ VERESS, Az 1928. évi Magánjogi törvényjavaslat, op. cit., p. 195.

³⁹ ALMÁSI, A., *Ungarisches Privatrecht*. Band I. Berlin-Leipzig, 1922, p. X.; ALMÁSI, A., Uzsorás szerződés és kizsákmányoló ügylet. [Usury and Exploitative Transactions] In: *Jogtudományi Közlöny*, vol. 67, Nr. 32, 1932, p. 181-183.

⁴⁰ ‘Finally, it provides protection for those who were persuaded by their own trusted person, abusing their relationship of trust, to enter into an unfavourable contract: and thus covers cases of undue influence, as it is known in English law.’ See KÖNIG, E., A kizsákmányoló ügylet. [Exploitative Transaction] In: *Jogállam*, vol. 25, Nr. 7., 1926, p. 383.

⁴¹ KRÁLIK, L., A magyar általános polgári törvénykönyv tervezetének 991.§-ához: Az illetlen befolyás, op.cit., p. 73.

⁴² The Austrian civil code remained in force Transylvania, Croatia, Slavonia, the Banat of Temeswar, the Military Border Area and Fiume. Cf. Vékás, L., The Codification of Private Law in Hungary in Historical Perspective. In: *Annales Universitatis Scientiarum de Rolando Eötvös Nominatae Sectio Iuridica*, vol. 51, 2010, p. 51-63. It should be added here, that in Transylvania, the AGBG remained in force technically until the Second World War, despite the fact that in 1867, the Transylvanian Great Principality was reunited with Hungary. Cf. VERESS, E., Private Law Codifications in East Central Europe. In: SÁRY, P., (ed.), *Lectures on East Central European Legal History*. Miskolc, 2022, p. 179, https://doi.org/10.54171/2022.ps.loecelh_8.

⁴³ The codification work was ordered in 1876 by the Minister of Justice Boldizsár Horvát. Cf. KÉPES, Gy., The Birth and Youth of the Modern Hungarian Private Law. In: *Journal on European History of Law*, vol. 7, Nr. 2, 2016, p. 112.

⁴⁴ VERESS, E., *Fejezetek a Magyar magánjogi kodifikáció történetéből. Európai kitekintéssel*. Cluj Napoca, 2022, p. 90.

⁴⁵ BALOGH, J., Debates in Articles (Positions in the Legal Literature on the Possibilities of Private Law Codification, 1866-1900). In: *Journal on European History of Law*, vol. 11., Nr. 1, 2020, p. 130-131.

⁴⁶ ALMÁSI, A., A bírói gyakorlat jelentősége a magyar magánjogban. In: *A Jogállam könyvtára*, vol. 52, 1935, p. 20.

⁴⁷ VERESS, E., Private Law Codifications... op. cit., p. 181.

⁴⁸ SZLADITS, K., Magánjogi törvénykönyv és bírói gyakorlat. [Private Law Code and judicial practice] In: *Polgári jog*, vol. 5, Nr. 8, 1929, p. 372.

⁴⁹ M. KIR. IGAZSÁGÜGYMINISZTERIUM, A Polgári Törvénykönyv törvényjavaslatának tárgyalása a Képviselőház külön bizottságában, vol. II, Bizottsági jelentés. Budapest, 1916, p. 204-206.

⁵⁰ ALMÁSI, A., *Kötelmi jog*. Budapest, 1926, p. 14. Cf. (no author) *Szemle*. In: *Jogtudományi Közlöny*, vol. 56, Nr. 4, 1921, p. 32.

also show the same reflections.⁵¹ Furthermore, Article 977 of the Private Law Bill (see below) was also referred to by the judicial practice.⁵² From the year 1932, regarding contract law cases, the decisions mostly referred parallelly to the new law on usurious and exploitative transactions (i.e. Act VI of 1932).⁵³

4.2 Legal literature and codification: Králik's critical reflections and their spillover effects

Here, we would like to touch upon the special movement in the legal literature of that period, which, as stated above, was originally triggered by Lajos Králik's lecture delivered at the meeting of the Hungarian Lawyers' Association in 1901, and by his subsequent publications.⁵⁴

In his critical reflections on Art. 991⁵⁵ of the 1900 draft of the Hungarian General Civil Code (Máptk), Lajos Králik proposed the legal formulation of the concept on undue influence, in a way that would cover all legal transactions, especially with regard to family law relationships⁵⁶ and law of succession (testamentary dispositions). In his proposal, Králik placed undue influence as a ground for challenging a contract among the defects of consent and treated it as a ground for avoidance.

In order to present his concept and its influence upon Hungarian legal thinking, it is worth outlining briefly the origin of the doctrine. Besides the English law, Králik also pointed out the connection to the French *ancien droit* concept on *captation*, alongside the common Roman law traditions. And these similarities are not coincidental. According to Bell, at an early and

key stage in its development English law was directly influenced by ideas from France. As Romilly commented on the precedent case *Huguenin v. Baseley* (1807) on undue influence, his knowledge of French law (especially Pothier's *Traité*s) enriched the English legal doctrine.⁵⁷

According to *du Plessis* and *Zimmermann*, through French law influence, the Roman civil law tradition established the equitable doctrine of undue influence before the Court of Chancery.⁵⁸

By the time of Králik's research, the equitable doctrine of undue influence had been well-developed in English law.⁵⁹ In order to protect the freedom of formation of the consent, common law concentrates rather on the procedural fairness of the negotiations, instead of assessing the substantive justice of contracts. Today, there is no sharp borderline between the categories of economic duress, undue influence and unconscionable bargain, however, they are not interchangeable.⁶⁰ In most cases of undue influence, if the agreement has been obtained with improper pressure, this pressure did not amount to duress.⁶¹

Although in French law today, no legislative text provides expressly for undue influence, the doctrine and the jurisprudence acknowledge *captation* and *suggestion*.⁶² Despite their vague meaning, in practice, these terms are used to denote dishonest conduct calculated to overreach a donor or testator and improperly influence the disposition of his or her property.⁶³ According to Bell, among the institutions of the applicable law, drawing a parallel between the French cases and their English

⁵¹ Case nos. 1094/1919. and P VI 2736/1914. listed by Lajos Vadász. Cf. VADÁSZ, L., *Magánjogi törvénykönyvrünk és élő tételes jogunk*. [Our Private Law Code and Our Vivid Positive Law] Vol. II., Kötelmi jog [Law of Obligations]. Budapest, 1930, p. 31. According to the decision in Curia case nr. P VI 2736/1914, a contract for disproportionately high attorney's fees, where the attorney induced the party to conclude it by taking advantage of his or her distraught state of mind, may be challenged.

⁵² Cf. Curia decisions (case nos. P. I. 5865/1929, P. V. 648/1930, P. VII 6618/1930, P. III. 6074/1930) compiled in ISAÁK, Gy., PETROVAY Z., NIZSALOVSZKY E., TÉRFY, B. (eds.), *Grill-féle döntvénytár* [Grill Case-Book] 24. 1930-1931. Budapest, 1932, p. 265-266.

⁵³ SZLADITS, K., ÚJLAKY, M., VILLÁNYI, L. (eds.), *Magyar magánjog mai érvényében. Törvények, rendeletek, joggyakorlat. 3. rész. Kötelmi jog. I. kötet*. [Hungarian Private Law in Effect. Laws, Regulations, Practice. Third Part, Law of Obligation, First Volume] 2nd edition. Budapest, 1942, p. 74 et seq. It should be mentioned here that the new law on exploitative contracts left the question opened for debate whether the civil law consequences already elaborated by the judicial practice could be applied or not in the future alongside the provisions of the new law (see below).

⁵⁴ KRÁLIK, L., A magyar általános polgári törvénykönyv tervezetének 991.§-ához: Az illetlen befolyás. op.cit.

⁵⁵ Cf. Art 991 of Máptk: 'A party who has been induced to conclude a contract by fraudulent misrepresentation or unlawful threats is entitled to challenge his contractual agreement. Such an act committed by a third party shall not be a ground for avoidance unless the other party knew of it at the time of the conclusion of the contract or could have known of it with due care, or would have obtained a free advantage or disproportionate benefit from the contract to the detriment of the injured party.' Cf. IGAZSÁGÜGYMINISZTERIUM: *A magyar általános polgári törvénykönyv tervezete*, op. cit., p. 223.

⁵⁶ By that time, the act on matrimonial law was adopted (Act no. XXXI of 1894) and protected the free consents of the spouses from coercion, threat or duress (cf. Arts. 38 and 53). It is remarkable that in the evolving judicial practice, the doctrine of undue influence was also applied to family relationships, and in close connection with the above-mentioned defects of consent, especially mental duress. For example: a legal transaction concluded with the help of psychological pressure on the wife to solve her husband's serious situation (criminal investigation, arrest) is considered ineffective. cf. Curia case nr. 4625/1921 compiled in SZLADITS, K., FÜRST, L., *A Magyar bírői gyakorlat. Magánjog*. [Hungarian Judicial Practice, Private Law] Volume II, Budapest 1935, p. 67.

⁵⁷ BELL, A. P., Abuse of a Relationship: Undue Influence in English Law and French Law. In: *European Review of Private Law*, vol. 15, Nr. 4, 2007, p. 575.

⁵⁸ J. DU PLESSIS, J., ZIMMERMANN, R., The Relevance of Reverence; Undue Influence Civilian Style. In: *Maastricht Journal of European and Comparative Law*, vol. 10, Nr. 4, 2003, p. 363.

⁵⁹ Králik relied on the work of Pollock. Cf. POLLOCK, F., *Principles of Contract: Being a Treatise on the General Principles Concerning the Validity of Agreements in the Law of England*. 1885, p. 556-596.

⁶⁰ MENYHÁRD A., *A jó erkölcsbe ütköző szerződések*, op.cit., p. 47.

⁶¹ PEEL, E., TREITEL, G.H., *The Law of Contract*. London, 2015, p. 506-507.

⁶² SCALISE JR, R. J., Undue influence and the law of wills: A comparative analysis. In: *Duke Journal of Comparative & International Law*, vol 19., Nr. 2008, p. 60-61.

⁶³ BELL, A.P., Abuse of a Relationship..., op.cit., p. 568.

counterparts, it seems that *dol* (fraudulent misrepresentation) is the closest in meaning to undue influence.⁶⁴

Králik's proposal was adopted with spectacular speed⁶⁵ by the Hungarian legal professional and academic circles. The general public saw in it a rediscovery of the achievements of ancient Hungarian private law, an effective means to fight against more subtle cases of manipulation of (contractual) intent not covered by misrepresentation and threat.⁶⁶ Thus in 1909, in the third edition of his Handbook on Hungarian Private Law, in connection with the contractual will based on Králik's study, Ferenc Raffay proposed the formulation of the legal concept of undue influence as an additional ground to challenge the contract, other than mistake, misrepresentation or threat.⁶⁷

In the progress of the Hungarian civil law codification, one can also observe the problem faced by a legislator, i.e. the way of the legal formulation of unfair influence (an error of consent or error of intended legal effect) and its close connection to the above-mentioned legislative efforts on usurious contracts. In the next point, the challenge of the transcription of the vague phenomenon of undue influence into legal provisions will be examined.

4.3 The fate of *undue influence* upon contractual intent in the drafts between 1913 and 1915 (within the wording of the usurious contract and independently of it)

As stated above, the Second Draft of the Civil Code of 1913 did not contain any provision relating to usurious contract or undue influence.⁶⁸ However, the Third Draft of the Civil Code, which was slightly revised⁶⁹ by Jenő Balogh⁷⁰, Minister of Justice and submitted to the parliament⁷¹ (the Bill of Civil Code,

Draft presented to the Parliament on October 8,⁷² 1913)⁷³, prescribed the followings, in Art. 782:

'If, by taking advantage of another's inexperience, recklessness, mental or moral infirmity, subordinate, dependent position or constrained situation, or position of trust in him, he deliberately induces him to enter into a contract with him, from which he or a third party benefits, to the material detriment of the other, without justification, the other party - the injured party -, may, at his choice, either demand the termination of the contract or the reduction of the obligation or burden assumed under the contract in proportion to what is equitable.'⁷⁴

As it reads, this rule contained the subjective elements of undue influence, the means of unfair exploitation, however, it was not formulated only as an invalidity rule. It provided for the injured party a relatively great power to rescind the disadvantageous contract, since he was entitled to withdraw from it or claim its judicial modification, and at the same time, to claim for damages, respectively.⁷⁵ According to the Justification of the Draft, 'if the law were also to render the validity of legal transactions conditional on the intellectual capacity of the persons making the transactions, to a greater or lesser degree, or on their other personal circumstances, it would create an uncertainty which would fundamentally disturb the circulation of the transactions'.⁷⁶ It means that instead of invalidity,⁷⁷ the injured party is entitled to decide upon the effectiveness of his or her contractual obligations.⁷⁸

One can observe, that in Art. 782, three special rules were embedded, one against the exploitation of intellectual or psy-

⁶⁴ Ibid.

⁶⁵ Here, we only point out the work of the special commission to compile the critical studies and opinions attached to the Drafts, from 1900.

⁶⁶ KRÁLIK, L., 1901, *op.cit.*, p. 86.

⁶⁷ RAFFAY F., *A magyar magánjog kézikönyve*. Vol 1. Győr, 1909, p. 135 et seq. and footnotes.

⁶⁸ Its § 747 provided for nullity of contracts contrary to good morals or public policy. Cf. A magyar általános polgári törvénykönyv tervezete. Második szöveg. [Second Draft] Budapest, 1913, p. 188.

⁶⁹ The government saw no reason to substantially revise this second draft. Cf. STIPTA I., Balogh Jenő, az igazságügy református minisztere. In: *Jogtörténeti Szemle*, vol. 2017, Nr. 4, p. 42.

⁷⁰ We think his amendment was not a coincident, because as legal scholar of criminal law and politician, he fought against usury. This can be observed from his remarks made during the general discussion of the Third draft. See: M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A Polgári Törvénykönyv Törvényjavaslatának tárgyalása a Képviselőház külön bizottságában. Volume I: Általános tárgyalás*, Budapest, 1915, p. 91; and cf. BALOGH, J., 1905, *op. cit.*

⁷¹ VERESS, E., *op.cit.* p. 163.

⁷² For the date see: LÁNYI B., *A Polgári Törvénykönyv javaslata a Parlament előtt*. In: *Jogállam*, vol. XVI, Nr. 1-2, 1916, p. 20-33.

⁷³ It was published in 1914. See M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A Polgári Törvénykönyv Törvényjavaslata. Az országgyűlés elé terjesztett szöveg*. [Hungarian Royal Ministry of Justice: Bill of the Civil Code. Draft presented to the Parliament.] Budapest, 1914.

⁷⁴ Ibid, p. 196.

⁷⁵ For this interesting question of the consumer's right of withdrawal as a complementary tool of protection against claims stemmed from a null and void contract. See LORENZ, S., Grundsatz der Doppelwirkung und Verbraucherschutz bei der Vertragsanbahnung. In: DAMMAN, J., GRUNSKY, W., PFEIFFER, T. (eds.), *Gedächtnisschrift für Manfred Wolf*. München, 2011, p. 77-89.

⁷⁶ See in Proceedings of the Chamber of Deputies of the National Assembly convened for 21 June 1910: *Képviselőházi irományok (1910-1915)* Volume XXXIII: A Polgári Törvénykönyv javaslatának indokolása 3. része, Budapest, 1914, p. 29-30. According to Hamza G., the author of the Justification was Gusztáv Szász-Schwarz in general. Cf. HAMZA G., Szász-Schwarz Gusztáv és az európai magánjogtudomány. [Gusztáv Szász-Schwarz and the European civil jurisprudence] In: *Magyar Tudomány*, vol. 46, Nr. 12, 2001, p. 1495.

⁷⁷ We can only briefly refer to the academic debate of that time on the types (nullity or avoidability) and subtypes (e.g. relative nullity) of invalidity. Cf. WEISS, A szerződés érvénytelensége... *op.cit.* p. 38 et seq.

⁷⁸ Several years later, actually, in the light of the judicial practice (the customary law), Almási exactly pointed out the optional tools available to the influenced party such as the right to terminate the contract, to claim for amending or to challenge the contract based on invalidity and the right to damages in all the three cases: According to him 'folge derselben is nach der Wahl der Beeinflussten alternativ: Ungültigkeit, Rücktrittsrecht oder Modifizierung des Vertrages, alle drei mit Schadenersatz verstärkt.' Cf. ALMÁSI A., *Ungarisches Privatrecht*, *op. cit.*, p. X.

chological handicaps, one against the unfair and lucrative exploitation of a constrained situation, primarily addressing usury cases, and one against the unfair exploitation of relationship of trust.

It is remarkable that this approach to legal consequences of unfair exploitation differs from the nullity and the BGB origin. As anticipated above, the civil law codification was closely connected with the political fight against usury, a general legislative challenge⁷⁹ of this era in all European countries. The Hungarian legislation was influenced by the contemporary foreign usury laws and civil law codifications concerning unfair exploitation, among them, the Swiss one. The new Swiss Code of Obligation (Obligationenrecht, OR, in effect from January 1, 1912), in Art. 21 provided the legal consequences quite the same way: within one year, the party is entitled to withdraw from the contract, refuse performance, or claim reimbursement of performance already given.⁸⁰ Here, we can trace the influence of the OR on the Hungarian Draft.

Károly Szladits, who worked for the Ministry of Justice between 1895 and 1916,⁸¹ in close collaboration with Jenő Balogh⁸², published a summary of the new OR in 1912, emphasizing the moderate approach of the state protection reflected by the above-mentioned rule in OR.⁸³ Many years later, he kept supporting this one-year statutory period concerning relative nullity claims based on exploitative contracts.⁸⁴

This provision on the meaning of undue influence [illeték-telen befolyásolás] was a referential rule for other invalidity rules in the Third Draft, in the field of law of succession. Since these provisions were not influenced by legislative considerations concerning usury, a separate chapter of this work is dedicated to them. As far as the legal transactions between spouses (matrimonial contracts) are concerned, the judicial practice also applied the rule for undue influence.⁸⁵

The special codification committee led by Ferenc Nagy, began to discuss this Draft in 1914, and the provisions in Art. 782 received mixed reviews.⁸⁶ During the discussions of the special committee, this Article was changed significantly and was reshaped to a ground for invalidity. The explanation was that the injured party would not be only entitled to enforce a relative claim against the persuader but would also gain a higher level of protection through invalidity, which legislative goal was also reflected by the amendment of the rule of invalidity of immoral contracts since the word “content” (of the contract) was dropped out.⁸⁷

According to Art. 751(1) of the so-called Commission Draft of the Civil Code of 1915,⁸⁸ a contract concluded with a person with a disability in order to take advantage of that disability is null and void if the person was aware at the time of concluding the contract that the other party would suffer substantial financial loss or other disadvantages. Other cases of undue influence were governed by Art. 751(2): ‘A contract is also void whereby a person, taking advantage of another’s inexperience, imprudence, dependence, or situation of constraint or his position of trust and confidence, concludes or obtains for himself or a third party a gratuitous advantage or disproportionate profit to the significant detriment of the other party.’⁸⁹ The common legal consequence was the relative nullity in favour of the contracting party who suffered detriment. As mentioned above, Almási pointed out the same: ‘It applies the principles of undue influence by way of legal effect and, in particular, by estoppel, as known in English law, to usurious transactions and transactions with a mentally handicapped person (§ 751) and establishes this legal effect in relative nullity.’⁹⁰

It should be noted here, that the above-mentioned rule for cases of undue influence was connected to the protection of free contractual intention of persons of impaired mental capacity.

⁷⁹ For a brief assessment of the Hungarian law on usury of 1883 cf. Harrison, W.M., Foreign Usury Laws. In: *Journal of the Society of Comparative Legislation*, vol. 1, Nr. 2, 1899, p. 222-223.

⁸⁰ For citation of the original wording cf. Hedemann, J. W., Die Fortschritte des Zivilrechts im XIX Jahrhundert: Ein Überblick über die Entfaltung des Privatrechts in Deutschland, Österreich, Frankreich und der Schweiz, Erster Teil, Berlin, 1910, p. 133.

⁸¹ HAMZA G., SÁNDOR, I., *Szladits Károly (1871-1956), a Magyar Tudományos Akadémia rendes tagja*, 2016, <https://mta.hu/ix-osztaly/jubileumi-megemlekezesek-106146>

⁸² For this fact cf. A szakmák küldöttsége az igazságügyminisztériumban. In: *Népszava* (23 November 1913), p. 7-9. This newspaper article contains a minutes on the hearing of the press unions in the Ministry of Justice, when Balogh sent somebody for Szladits, said: ‘We have to consult a private lawyer.’ and later on: ‘Coming soon, my esteemed friend Szladits...’

⁸³ ‘However - and this is also a sign of these times - there is a certain temperance in the law regarding these protective rules.’ Cf. SZLADITS, K., Az új svájci kötelmi jog. In: *Jogállam*, vol. 11, Nr. 4, 326-332. p. 329.

⁸⁴ SZLADITS, K., A kizsákmányoló ügyletek. [Exploitative transactions]. In: *Jogtudományi Közöny*, vol. 67, Nr. 9, 1932, p. 53-54.

⁸⁵ For example: Matrimonial contract may be challenged on the grounds of unlawful moral constraint when the man was only willing to marry the woman whom he had seduced and promised to marry for years if the woman signs the contract. See Curia decision no. 1563/1914. P. I., cf. SZLADITS, K., ÚJLAKY, M., VILLÁNYI, L. (eds.), *Magyar magánjog mai érvényében*. op. cit., p. 114.

⁸⁶ Mentioning a few: Mihály Niamessny welcomed this rule as a manifest of social and economical considerations upon the aims of a civil code. (See. M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A Polgári Törvénykönyv Törvényjavaslatának tárgyalása a Képviselőház külön bizottságában. Volume I: Általános tárgyalás*, Budapest, 1915, p. 50.) Elemér Hantos saw in this rule a failure, an erroneous means to protect the ‘weaker parties’ which jeopardises the confidence in the binding force of the contract. *Ibid.* p. 70.

⁸⁷ Under Article 747 ‘the contract contrary to public policy or good morals is null and void’. See. M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A Polgári Törvénykönyv Törvényjavaslatának tárgyalása a Képviselőház külön bizottságában. Volume II, Bizottsági jelentés*, Budapest, 1916, p. 204-206.

⁸⁸ Published in: M. KIR. IGAZSÁGÜGYMINISZTERIUM, *A Polgári Törvénykönyv Törvényjavaslatának tárgyalása a Képviselőház külön bizottságában. Volume III: A Törvényjavaslat bizottsági szövege*, [Discussion on the Civil Code Bill within the Special Commission of the Chamber of Deputies. Volume III. Commission Text of Draft Civil Code]. Budapest, 1916.

⁸⁹ *Ibid.*, p. 215.

⁹⁰ ALMÁSI A., *A Polgári Törvénykönyv Bizottsági javaslata* [Commission Draft of the Civil Code]. In: *Jogállam*, vol. 14, Nr. 7-8, 1915, p. 502.

In other cases, where the party's weakness was of a different nature⁹¹, the condition of this protection was that the other contracting party had gained a gratuitous advantage or disproportional profit.

Kőnig also drew attention to the fact that, compared to the original text, the proposal did not require gratuitous advantage or excessive profit as an additional condition in the case of exploitation of mental weakness (impaired mental capacity), although substantial damage to property or other substantial disadvantages must also be proved in this case.⁹²

4.4 The academic debate on undue influence continued

Nevertheless, Article 751 of the Commission Draft did not gain unanimous approval in the academic circles either. In our opinion, before 1932, without statutory regulation of unfair exploitation and due to a limited concept of usurious contract, and on account of changing codification ideas, the approach to the subjective elements of usurious contract had changed in legal practice and in academical opinions of that time. The undue influence upon contractual intention was deemed as an error of will (i.e., vitiated consent or intention), rather than an error in the intended legal effect (as usurious contract and unfair exploitation as referred to in Act VI of 1932). Therefore, Almási criticised the fact that the Civil Code Draft of 1915 (Commission Draft) introduced Art. 751 among the errors of the intended legal effect by sacrificing the former Art. 782 (among the errors of contractual will). Since, he put an emphasis on the obvious disproportionality regarding the willpower and efficacy of the contracting parties.⁹³

Tibor Lőw (1926) also pointed out that the undue (illegal) influence of contractual intention as a concept comprises all grounds of coercion, misrepresentation, or unfair exploitation of the party's situation. He emphasised that this undue influence refers to the contract concluded in such a way which is contrary to good morals.⁹⁴ As he pointed out, limiting the word *usury* to the credit contracts had the effect that other 'transactions which could be called usurious because they are also the result of the exploitation of the distress or imprudence or inexperience of one party and provide the other party or a third party with a consideration disproportionate to the service rendered, all fall

into the category of transactions contrary to good morals.' Furthermore, he also explained that there may be further instances of undue influence on the will to enter into a contract, which are different from typical examples of immoral contract.⁹⁵ Szladits stated also that an exploitative contract is voidable not because of its object (the intended legal effect), but because of the vice of consent.⁹⁶

László Szigeti also examined the subjective elements of the concept of usury. In his opinion, its very essence and the *differentia specifica* of usury is that the usurious party has obtained this disproportionate advantage by taking advantage of the distress, imprudence, mental weakness, inexperience, dependence or relationship of trust of the party who has contracted with him. 'Usury is nothing more than the use of unfair influence to negotiate credit terms.'⁹⁷

One can also agree with his further conclusion that 'The concept of undue influence is a broadening of the scope of contracts with defective intent. Usury is therefore usurious and void, not because there is a striking difference in the value of the service and consideration, but because the benefit is obtained by taking advantage of the involuntary defective condition of the party being impaired.'⁹⁸

Several years later, István Szászy also confirmed the same idea. He also noted the common law origin of undue influence as a ground for invalidity in judicial practice. However, he also pointed out a fundamental difference: while the English doctrine of undue influence is based on the unfair exploitation of a dependent legal situation, in Hungarian judicial practice the concept 'includes all the notions of unlawful threat, fraudulent misrepresentation and exploitative contract, i.e. all cases in which one party induces the other to enter into a transaction by unlawful means.'⁹⁹ Consequently, in judicial practice before 1959, the notion of undue influence covered wide range of instances from the field of defects of consent reaching (extending) to the conceptual scope of mental duress (i.e. psychological pressure).¹⁰⁰

Thus, invalidity based on unfair influence appeared in Hungarian academic works primarily as an institution for the protection of contractual freedom, and within it the freedom

⁹¹ A contract is also null and void by which someone, because of someone else's inexperience, credulity, dependence, situation of constraint or relationship of trust or confidence in him, to obtain or conclude for himself or a third party, to another's considerable detriment, a free advantage or disproportionate profit. Cf. Commission Text of Draft Civil Code, Budapest, 1916. p. 215. (Art. 751).

⁹² Cf. KŐNIG, E., A kizsákmányoló ügylet, op. cit., p. 383.

⁹³ ALMÁSI, A., Az ügyleti akarat hiányai a Ptk. bizottsági szövegében. [Vice of consent in the light of Commission Draft of the Civil Code] In: *Jogtudományi Közöny*, vol. 50, Nr. 38, 1915, p. 402-403.

⁹⁴ LŐW, T., A szerződési akaratelhatározás jogellenes befolyásolása. [Unlawful influence upon contractual intention] In: *Jogállam*, vol. 25, Nr.3, 1926, p. 140-149.

⁹⁵ *Ibid.*

⁹⁶ SZLADITS, K., A kizsákmányoló ügyletek. [Exploitative transactions] In: *Jogtudományi Közöny*, vol. 67, Nr. 9, 1932, p. 53-54.

⁹⁷ IFJ. SZIGETI, L., Szolgáltatások értékárnya visszerhes szerződésnél. [Proportionality of reciprocal contracts] In: *Polgári Jog*, vol. 9, Nr. 5, 1933, p. 252.

⁹⁸ *Ibid.*

⁹⁹ SZÁSZY, I., *A magyar magánjog általános része*. [General Part of Hungarian Private Law] Vol. II, Budapest, 1948, p. 256.

¹⁰⁰ Just one example from the wide range of cases should be mentioned here: 'If the wife, fearing the prospect of a scandalous divorce suit, has agreed to a legal transaction at the husband's initiative which is clearly detrimental to her living conditions and economic situation, she may challenge the transaction, due to a mental coercion causally linked to her husband's unlawful conduct' Cf. III. 734/1924 compiled in SZLADITS, K., FÜRST, L., *A magyar bírói gyakorlat. Magánjog*, op. cit., p. 68.

of contractual will. Even though the Private Law Bill of 1928 (Mtj.) provided undue influence only as an element of the usurious contract.

By the time of the Civil Code of 1959 (Act IV of 1959), the concept of undue influence had faded away in the judicial practice of contract law. Similarly, the assessment of the defects of consent as subjective factors existing at the period of the (usurious) contractual agreement were pushed into the background. The Council of the Supreme Court of Justice had omitted all subjective elements from the instance of usurious contract in 1950, arguing that it can be inferred from the fact that a contracting party enters into a transaction which gives it a free advantage or a manifestly disproportionate profit that it has taken advantage of the situation of economic distress or urgent needs of the other party.¹⁰¹ Consequently, the draft of the Civil Code of 1957 provided merely an objective rule for invalidity based on obvious disproportionality.

Act IV of 1959, the promulgated text of the Civil Code, in Art. 202, condensed the subjective elements of the facts into the phrase “by taking advantage of the position of the other party”. Meanwhile, objective disproportionality of value has also been included as a separate ground for invalidity in Art. 201(2) (rule of *laesio enormis*), where the principle of reciprocity was also stipulated in Art. 201(1).

As the last step, the new Hungarian Civil Code (Act V of 2013) incorporated the definition of usury with unamended wording, as follows: ‘If, by exploiting the other party’s situation, a contracting party gains excessive benefit or unfair advantage when the contract is concluded, the contract shall be considered null and void’.¹⁰²

5. Some additional remarks on the codification of undue influence in the Law of Succession

As aforementioned, Králik’s explanations on undue influence particularly focused on family law¹⁰³ and the law of succession. In the following, this chapter shows the relatively independent development of undue influence as a *sui generis* invalidity ground of the law of succession through the civil code drafts.

Králik considered this protection essential in the law of succession because in testamentary dispositions the will must be genuinely free and autonomous, especially since it is in a field of law highly prone to abuse of confidentiality and intimate human relationships. However, his arguments were taken into

consideration with no direct success in the following years, during the debate upon the first draft led by the special codification committee.

Ferenc Raffay also urged the application of the rule: ‘It is desirable that so-called undue influence should at least in this respect be recognised by the customary law as a ground of challenge; which is all the more advisable, because under Article 3¹⁰⁴ of Art XXVII of 1715 *dolosa circumventio* (in Frank’s translation: circumvention <*kerítés*>) is a ground for avoidance.’¹⁰⁵

As stated above, although the Second Text of the Draft of the Hungarian General Civil Code published in 1913 did not contain any provision expressly relating to undue influence, its version proposed as a bill at the end of 1913 (Third Text) provided rules referring to undue exploitation of particular situations. Consequently, Art. 1709 stipulated that the testament would be challengeable if someone persuaded the testator to make his will with undue influence (with the Hungarian wording ‘*illetéktelen befolyásolás*’) and for further explanation referred to the above-mentioned Art. 782, which rule, however, did not explain further what undue influence meant.¹⁰⁶ The situation was the same in the case of juridical acts for accepting or refusing the inheritance (in Art. 1852 of the Third Draft).¹⁰⁷

The Justification of the Third Text, explained in detail the connection between these two provisions and highlighted the special purpose of this provision among invalidity rules relating to testamentary dispositions, which is a means against legacy hunters.¹⁰⁸

As anticipated above, the Commission Draft of 1915 brought a new solution in Art. 751, among contract law rules and also reshaped the invalidity rule concerning testaments, cancelling the direct referencing between these two rules. Thus, Article 1716 provided as follows. ‘if a testator has been induced to make a will by unlawful threats or by taking advantage of his or her impaired mental capacity or of a relationship of trust and confidence.’ Thus, this special provision avoided the expression of undue influence, nevertheless, they created a more solid legal base for further developing the doctrine.

Private Law Bill of 1928 (Mtj). strengthen the codification of unfair influence (i.e., with the wording “*tisztességtelen befolyásolás*”) as a ground for challenging the will in Art. 1953. In parallel with this rule, Art. 2069 provided for special ground challenging the declaration of acceptance or disclaimer of the inheritance or legacy.

¹⁰¹ Leading decision of the Council of Supreme Court of Hungary No 9 of 1950.

¹⁰² Art. 6:97 of HCC.

¹⁰³ In case of fraud or coercion.

¹⁰⁴ It reads: ‘All kinds of fraud and cunning trickery which are often practised against the testator [...] should always be avoided and guarded against under penalty of nullity.’

¹⁰⁵ RAFFAY, F., *A magyar magánjog kézikönyve*. [Hungarian Private Law Handbook] Vol. II, 3rd edn. Budapest, 1909, p. 639. Ignác Frank’s cited work cf. FRANK, I., *A közigazgatás törvénye Magyarhonban*. [Law of Public Justice in Hungary] Part I. Az osztó igazság törvénye Magyarhonban, Buda, 1845, p. 433.

¹⁰⁶ Izidor Schwartz criticised this method of legislation. Cf. SCHWARTZ I., *Magánjogi törvénykönyvünk javaslatának 977.§-ához*. [On Article 977 of Private Law Bill] In: *Polgári Jog*, vol. 10, Nr. 4, 1934, p. 225-226.

¹⁰⁷ A Polgári Törvénykönyv Törvényjavaslata. Az országgyűlés elé terjesztett szöveg, [Hungarian Royal Ministry of Justice: Bill of the Civil Code. Draft presented to the Parliament.] 1914. p. 470.

¹⁰⁸ M. KIR. IGAZSÁGÜGYMINISZTERIUM, *Indokolás a Polgári Törvénykönyv Törvényjavaslatához*. Vol. IV: Öröklési jog, Budapest, 1914, p. 103-104.

On the one hand, as stated above, Art. 977 of the Private Law Bill has abandoned the use of the expression *undue* or *unfair influence* in contractual transactions, and the *sui generis* ground of undue influence for invalidity of contractual transactions was merged again into the concept of usurious contract. On the other hand, through Art. 1953, Private Law Bill strengthened the well-established succession law rule of undue influence.

According to Art. 1953 paragraph 1 point 3 of the Private Law Bill, a testamentary disposition would be challenged if the testator has been persuaded to take the disposition by unlawful threats or undue influence, and if it can be assumed that the testator would not otherwise have made such a disposition. Here we should also briefly touch on the special corrective means of the Private Law Bill. 'If it can be established beyond reasonable doubt what the testator intended to do in place of the contested erroneous disposition, the disposition shall be so corrected.'¹⁰⁹

In view of the difficulty of proving undue influence, the special interplay between invalidity grounds relating to defects of testamentary will, and, not least, the respect for the will of the testator, published decisions on undue/unfair influence are rare in this period.¹¹⁰

Miksa Teller pointed out that the circumstance that the testator decides to make a will as a result of the persuasion of another person and follows the advice of another person in determining the content of the will does not in itself render the will invalid.¹¹¹ In the same way, persuasion, even if it is violent and intrusive, cannot be considered moral and psychological coercion. It has been held that unfair influence affects the validity of a will only if it is of such magnitude that no opposing will could have been formed or, if formed, could not have been enforced against the will which influenced it.¹¹²

We have found a case confirming the above: 'The fact that the testator made the will at the heir's insistence only renders the will invalid [for undue influence] if it can be established that the testator did not make the will of his own volition, al-

though it was made at the defendant's insistence, but against his better judgement and purely at the defendant's pressure, and even with a content different from his intentions and dictated by the heir.'¹¹³

Article 649 of the oldHCC provided unfair influence on the testator's will. According to the Justification of the oldHCC, the fact that the reason given for the testator's decision does not reflect the actual situation is taken into account much more widely in the law of succession than in contract law.¹¹⁴ The interest in the reliability of transactions and the protection of contractual freedom (as opposed to state paternalism) seems to outweigh the invalidity on account of shortcomings of the inner formation of the will.¹¹⁵ Contrary to this, a testamentary transaction not only can be contested on the same grounds as a sales and purchase transaction: duress, mistake, deception, but it is important to stress/underline that it can also be contested under 'less serious circumstances'.¹¹⁶

Furthermore, the undue influence, as a cause that fundamentally shaped¹¹⁷ the testator's will, still exists and is in effect in the Hungarian Civil Code of 2013.¹¹⁸

Nevertheless, not only English (commonwealth countries) courts have to face multiple interpretational problems with undue influence, especially in the field of challenged wills, but also the Hungarian judicial practice is very cautious to apply this rule. Despite its poor judicial practice, this rule is a "living part" of the body of Hungarian Civil Law. Its significance has recently been demonstrated by the decision of the Supreme Court of Hungary No. 270 in 2020.¹¹⁹

5. Conclusion

This study aimed to present the long development and elusive nature of the doctrine of undue influence in Hungarian legal thinking and jurisprudence which resulted in different approaches both in the field of transactions *inter vivos* (i.e., invalidity questions of contract law) and transactions relating to Law of Succession (i.e., the invalidity of testament). In Hungarian

¹⁰⁹ Article 1953 para. 2 of Private Law Bill.

¹¹⁰ For example: the will is challengeable if it is made by an elderly woman for the benefit of a man much younger than herself and having a love affair with her, where the will was written by the beneficiary, he provided witnesses and was present at the testamentary disposition, or where the influence was such that the testator could not have exercised a contrary will. Cf. KRENNER, Z., A végintézkedésekre vonatkozó legújabb bírói gyakorlat. In: Királyi Köjegyzők Közlönye, vol. 42, Nr. 1, 1943, (4-8), p. 4.

¹¹¹ TELLER, M., A végrendelet hatálytalansága. [Ineffectiveness of the testament] In: Szladits K. (ed.), *Magyar Magánjog*, vol. VI: Öröklési jog. Budapest, 1939, p. 375. (referred judicial case Nr.: 2696/1938. J. H. XII. 866.).

¹¹² The referred judicial case Nr. 3341/1936. J. H. XI. 12.; see *ibid.* p. 376.

¹¹³ NIZSALOVSKY, E. et al. (eds.), *Grill-féle új döntvénytár (1941-1942)*. [New Grill Case-Book] Volume XXXV, Budapest, 1943, p. 423.

¹¹⁴ A Magyar Népköztársaság Polgári Törvénykönyve [Civil Code of People's Republic of Hungary] Budapest, 1959, p. 508.

¹¹⁵ SZIGETI Jr., L., Szolgáltatások értékaránya visszatérhes szerződésnél, op. cit., p. 252.

¹¹⁶ TÓTH, L., *Magyar Magánjog – Öröklési jog*. [Hungarian Private Law – Inheritance Law] Debrecen, 1932, p. 272.

¹¹⁷ That is, however, not a quantitative, but a qualitative epithet.

¹¹⁸ See Art 7:40 (1) point c) HCC, titled with 'Defects in the intention of the person making the disposition': A testamentary disposition shall be invalid if: the testator had been coerced into making the disposition by the use of threat or unfair influence; provided that the testator would not otherwise have made the disposition.

¹¹⁹ Unfair influence occurs, among other things, when a person, or a person supported by him or her in order to benefit from the estate, engages in unethical conduct that may influence the testator's will. This is the case, in particular, where a person abuses the vulnerable position of the testator because of his or her old age and declining health or mental condition, by gaining the testator's trust, partially by formal gestures and false statements; by making false statements which misrepresent or discredit the chosen heir known to the testator.' Cf. Decision of the Supreme Court of Hungary Nr. 270 of 2020 (BH2020.270.).

contract law today, undue influence is not a *sui generis* ground of invalidity, however, it was intentionally chosen as a guiding element for analysing the related questions, rules and judicial practice. For this paper, there was no possibility to give a full review of the legal development with all related questions included (e.g. the errors of will, especially the issues on duress, coercion or misrepresentation), mainly the interplay between usurious contract and undue influence was put under examination in the light of the Hungarian private law codification attempts in the XXth century.

This writing was set out to emphasize the protection of the freedom of formation of the will, thus, the importance of the subjective elements in the concept of the usurious contract, the connection between the unfair influence upon the will of the contracting party and the concept of immoral contracts.

Although, by this time of the present period of Hungarian civil law, the concept of undue influence seems to be merged into other invalidity grounds in the practice and legislation, its close connection to the defects of contractual will highlighted by the legal literature from the period of the application of the Private Law Bill, or more precisely, the judicial practice of the time, from our point of view, had granted a special means to assess the unfair exploitation of the other party's weaknesses or situations of constraint, or a special relationship of trust, and provided a reason to formulate a *sui generis* rule for unfair influence in the field of law of succession, at least. The aim of this paper is to demonstrate that, in addition to the influence of Austrian-German law, the English doctrine of undue influence (as well as the common Roman law heritage) has had a clear impact on the development of modern Hungarian civil law.