

# SIC TUR AD ASTRA



EDITORS  
GERGELY GOSZTONYI  
MIRELA KRŠIĆ  
KINGA BELIZNAI BÓDI

Collection  
of student papers  
on **Hungarian**  
and **Croatian**  
legal history 2016

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Eötvös Loránd University / Faculty of Law / Department of the History of Hungarian State and Law / 2017

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## **Croatian-Hungarian Legal History Summer School**

The Croatian-Hungarian Legal History Summer School was organised for the first time in 2016 in Budapest as a result of the cooperation of the Eötvös Loránd University Faculty of Law and the University of Zagreb Faculty of Law. The two History of State and Law Departments of these universities have a long tradition of scientific cooperation, which resulted in the publication of the book entitled *Kroatisch-ungarische öffentlichrechtliche Verhältnisse zur Zeit der Doppelmonarchie* (ISBN 978-963-284-608-8, ELTE Eötvös Kiadó, Budapest, 2015, 346 p.).

On the basis of the collaboration of the professors of our departments, we also decided to launch a summer school for our students. The first year's topic was 'The development and the progress of the civil law's institutions between 1848 and 1945'. Twelve students (from the Master and Ph.D. level) held their presentations, eleven of which are listed in this book.

We hope that our students will actually reach the stars and that we will find their names and scientific achievements in similar publications in the future as well.

Budapest–Zagreb, 2017.

The Editors

# **Darija ŽELJKO: The Changing Position of Women in Croatian Society: Legal Framework (1848–1945)**

**University of Zagreb, Faculty of Law**

## **1. Introduction**

The main aim of this paper is to explain how the position of women changed in Croatian society in a turbulent period from the revolutionary year of 1848 until 1945, mostly due to specific changes in Croatian legal framework that were connected with improving political and social circumstances in Croatia and neighbouring countries. The position of women and sensibility for the women's question improved slowly due to both industrial and political (civil) revolution of 1848 that had shaken Europe. This paper will try to provide an answer to the question how Croats threatened their mothers and wives in the aforementioned period of our national history and will try to represent slow, but continuous evolution of legal framework that was dealing with the position of women.

## **2. Position of women in Croatian history until 1848**

In almost all societies throughout history women were mostly seen only as objects of their father's, husband's or/and king's power and therefore, in most cases, they did not get an opportunity to act as active subjects in the public sphere. From historical perspective women were – both legally and virtually – quite inferior to men. That is the reason why human history unfortunately remembers only few great women rulers, warriors and politicians.

Croatian society was always under a strong influence of the Catholic Church, traditional patriarchal values and principles that gave men almost never-ending power over their wives, mothers, sisters and daughters. The husband, known also under the Latin term *pater familias*, was the head of a typical Croatian family and represented his women on every occasion, so it is not surprising that women were excluded from the public sphere. Nevertheless, Croatian history mentions several notable women and few of them will be discussed later on in this paper.

The legal status of women in the dark medieval times can be traced in the provisions of some medieval Dalmatian statutes which, among other things, regulated the matter of family law (especially property relations in marriage). According to the famous Dubrovnik Statute *Liber Statutorum* from 1272, a woman was even able to be an independent legal actor in all relations but only in a rare case if she was not married and if her father or brother(s) died before her.<sup>1</sup> Numerous historical documents have proven how independent women were suspected of witchcraft in Croatia or how when the first son in family was born, the whole neighbourhood celebrated, but on the other hand how family needed to deal with compassionate neighbours if a baby girl was born.<sup>2</sup>

### **3. Importance of ABGB and relevant social circumstances**

Without any doubts, the 19<sup>th</sup> century Kingdom of Croatia and Slavonia was predominantly a rural country with the small bourgeoisie class, where it was very hard to be born as a woman. In a famous flyer titled *Husbands of Illyrian Period* among 59 actors of Croatian National Revival or Illyrian movement that took place from 1835 until 1849 only if you look carefully enough, you will notice the names of two women who fought equally against Hungarisation and Germanisation like their more famous male colleagues. The first woman, Sidonijja Rubido (1819–1884), was a noble and patron of Illyrism and the second one, Dragojla Jarnević (1812–1875), was a teacher and the first Croatian woman alpinist, who wrote several novels and a famous 2000 pages long diary in which she makes lucid observations about many topics, including gender inequality that she as an unmarried woman and activist faced every day.

From the beginning of 16<sup>th</sup> century Croatia had been closely related with Habsburg Monarchy and the most progressive Civil Code of its time, Austrian General Civil Code (ABGB), was introduced in Croatia-Slavonia in 1853 by imperial patent.<sup>3</sup> Although the act actually improved legal position of Croatian women, in accordance with the conservative

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<sup>1</sup> MARGETIĆ, Lujo: Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo [Croatian Medieval Family and Inheritance Law], Narodne novine, Zagreb, 1996, p. 183.

<sup>2</sup> ČULINOVIĆ, Ferdo: Žena u našem krivičnom pravu [Women in our Criminal Law], Belgrade, 1934, p. 9., 16.

<sup>3</sup> Austrian General Civil Code is one of the most important European codification of private law and in Austria was valid from 1811. ABGB hasn't entered into force in all Croatian regions at the same time, but in Istria in 1815, in Dalmatia 1816 and in Croatia and Slavonia on 1.5.1853.<sup>1</sup> More about ABGB see in: ČEPULO, Dalibor: Hrvatska pravna povijest u europskom kontekstu [Croatian Legal History in the European Context], Zagreb, 2012, p. 24, 151-154.

spirit of ABGB, women were still under the rule of men in all aspects of their everyday life. Still it is important to mention that women had more rights listed in ABGB, then, for example, in the French Code Civil that entered into force in 1804. Provisions of the French Code Civil affirmed the legal right of men to control women and actually codified the subservience of women in marriage, in particular Code ensured that married women owed their husband obedience, and were forbidden from selling, giving, mortgaging or buying property. The basic characteristic of marital law according to ABGB was inequality of spouses since all norms evidently supported superiority and dominance of men over women (although there were some provisions in which gender equality was explicitly emphasized), which was also social reality in the traditional Croatian society before the outbreak of the First World War. Therefore, through marriage women came under the rule of their husbands (previously they were under their father's rule). A husband's duty was to support his wife and he was her only legal representative on all occasions.<sup>4</sup> The mother, unlike the father, had no rights towards her children but only duties. However, only the mother had family relation and obligation to the so called illegitimate children that were born outside the institution of marriage.<sup>5</sup>

The gender division of labour was a central feature of Croatian society: women helped in agriculture and did activities related to the house and childbearing, so the roles designated for women were those of dedicated housewives, wives and mothers. Either their work was not paid at all or their income was very low and inadequate for their hard work. More educated women worked as servants, but only 11 % of women in Croatia were literate in 1869,<sup>6</sup> so although educational reform was truly necessary for the entire Croatian population, it was even more urgent for women.

#### **4. Reforms of Viceroy Ivan Mažuranić**

The Croatian viceroy Ivan Mažuranić (1814–1890), who ruled from 1873 until 1880, did open several sensitive women questions in some of his reforms. Intensive and serious

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<sup>4</sup> More about ABGB marital law see in: ŽELJKO, Darija: Obiteljskopравни položaj žena u Hrvatskoj u razdoblju od 1914 do 2014 [The Position of Women in the Family Law of Croatia from 1914–2014], *Pravnik*, 47, 2 (96), 2014, pp. 29–31.

<sup>5</sup> *Ibid.*, p. 31.

<sup>6</sup> GROSS, Mirjana – SZABO, Agneza: Prema hrvatskome građanskom društvu [Towards the Croatian Civil Society], Zagreb, 1992, p. 35.

'modernization from the inside' started during Mažuranić's viceroyalty.<sup>7</sup> His laws aimed to modernize Croatia and were inspired by the corresponding Austrian laws. In fact, the reforms regarding the rights of citizens were of secondary importance in Mažuranić's reforms so we can conclude that comprehensive and important reforms were actually dealing with the position of women just incidentally. The most important Mažuranić's reform for women was educational reform. In 1874 the law on the Organization of Elementary Schools (known also under the term School Act) gave female children the right and obligation of compulsory five-year education. But the problem was that parents who lived in villages did not send their female children regularly to school, only under strict penalties of taking children away and placing them in institutions of social welfare. Girls from better families went to girls' schools in Zagreb, Karlovac, Varaždin and Osijek where they mostly learnt practical skills like sewing and foreign languages that could only help them to marry better and consequently enter high-society. In Croatia there was a law which was a rarity in the entire Monarchy – the law that guaranteed the same salary for male and female teachers, but the problem occurred when women teachers married and therefore had to leave their profession. In 1876 the law on the Establishment of Midwifery School came into force. According to provision of that law the midwifery school would accept: '...each women, married or not, between 20 and 40, who knew to read and write'. Due to extremely high infant mortality rate in Croatian society, education of midwives was a significant way of providing a better medical care for pregnant and child-bearing women as well as for newborns.

Emphasizing the position of women it is important to mention that in Mažuranić's Code of Criminal Procedure from 1875 women were not allowed to be jurors, judges, defenders or not even court witnesses. The right to vote at the local level has been given to Croatian woman under the Law on the Organization of City Municipalities in 1881, as a result of parliamentary intervention in the government's bill. Mažuranić's government has in fact been afraid of the spread of voting rights to the category of the population which was in public considered practically non-independent and incapable of responsible voting. Ultimately, the government nevertheless accepted the Parliament proposal, so the right to vote in elections for city representation had all the parishioners (including female

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<sup>7</sup> More about Mažuranić's reforms see in: ČEPULO, *op. cit.*, pp. 188–197.



entrepreneurs) who paid a certain (high) amount of tax. Limited women's suffrage will be for women already lost due to changes in the Law during government of Khuen Hédervary.

Still, due to above mentioned Mažuranić's reforms in general Croatia underwent a slow transition from a traditional into a modern society. Considering theme of this paper, it should be mentioned that Mažuranić's famous granddaughter Ivana Brlić Mažuranić (1874–1938) is today known as Croatian Hans Christian Andersen. Her magic tales secured her two nominations for the Nobel Prize for literature (in 1931 and 1937) and in 1937 she became the first woman ever to be elected to the Croatian Academy of Sciences and Arts.

## **5. Interwar period and 1945 and women's right to vote**

There were huge social and political changes<sup>8</sup> everywhere in Europe in the beginning of the 20<sup>th</sup> century and during the interwar period. These changes largely improved the position of women also in Croatian patriarchal society. For instance, in the beginning of the 20<sup>th</sup> century Croatia witnessed the emergence of its first women entrepreneurs which was a significant step forward in the social and economic scene, logical mostly because men were on many battlefields throughout Europe. Marija Jurić Zagorka (1873–1957) was the first Croatian professional journalist, feminist icon and editor of *Female paper* (1938–40) and *Croatian woman*. In 1903 she led the first women's protest in Zagreb, so just like suffragettes around Europe, Croatian women also fought for their rights. In 1901 the first female student started to study Philosophy at the University of Zagreb, and the first female student was enrolled at the Faculty of law as late as 1918.<sup>9</sup> Provisional Assembly of the Kingdom of Serbs, Croats and Slovenes (as the legislative body of the Kingdom of SHS) discussed women's right to vote. In a turbulent debate representatives of the Radical Party were the most consistent

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<sup>8</sup> After First World War and disintegration of dynastic Habsburg Monarchy in 1918 until 1945 there were many significant (constitutional) changes in Croatian political and legal system: from transitory State of Slovenes, Croats and Serbs, Kingdom (Kraljevstvo) of Serbs, Croats and Slovenes (1918–1921), Kingdom (Kraljevina) of Serbs, Croats and Slovenes (1921–1929), Kingdom of Yugoslavia, Banovina of Croatia, Independent State of Croatia (1941–1945) and Democratic Federal Yugoslavia. More about historical changes in studied period in Croatian political and legal system see in: ČEPULO, *op. cit.*, pp. 257–282.

<sup>9</sup> In the academic year of 1919/1920 there were twenty female students. Among them was and later longtime secretary of the Faculty Dr. Božena Bukovinac, who was the first woman to obtain a doctorate of Law at the Faculty of Law in Zagreb. At the end of that period, female students already make up one sixth of the total number of students enrolled. Thus, in the academic year 1940/41 1,259 male students and 238 female students enrolled. – More about the history of the Faculty of Law see in: Pravni fakultet Sveučilišta u Zagrebu, Prilozi za povijest fakulteta, Sv.1. [Faculty of Law, University of Zagreb, Contributions to the History Faculty, Volume 1], Pravni fakultet, Zagreb, 1996

opponents of women's suffrage. They claimed it would be unnatural to give women political right when they are in an inferior position both economically and socially. Deputies of the Radical Party pointed out that women are incapable of independent reasoning. The only true advocates of women's suffrage vote were members of the Yugoslav Club led by V. Deželić, who taking into account the efforts of women said the following: 'In our agricultural economy, a woman is equally important as a man. This is even more evident when it comes to women workers, and the position of women intellectuals is clear as well. If women are denied the right to vote, the illiterates will vote, but women teachers, doctors and lawyers will not.'<sup>10</sup>

The most positive change for women's rights happened in 1945, when for the first time women finally used their hard-won right to vote in the elections for the Constitutional Assembly on 11th November 1945. Article 25 of the Constitution of the People's Republic of Croatia from 1947 stipulated: 'Women are citizens with equal rights as men in all areas of the state, economic and social and political life.' Finally, Croatian and other women from Yugoslavia got power in the public sphere and some of them, like Savka Dabčević Kučar became great politician of that era. It can be concluded that, after the Second World War, like almost everywhere in the world, women in Croatia also got a chance to prove themselves as separate and independent individuals, and a profound evolution of roles within the family began that continues to this day.

## **6. Conclusion**

To summarize, the period from the end of the 19<sup>th</sup> century until 1945 is also significant for Croatian society because of the great improvements in the emancipation of women. Altogether, the issue of equal rights for women in Croatia had a long and turbulent way – firstly, women had to gain an access to education, then political and social rights (in particular right to vote, right to education and work) and finally an access to various professions that they undoubtedly deserve.

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<sup>10</sup> ENGELSFELD, Neda: Značajke prvog zakonodavstva Kraljevine Srba, Hrvata i Slovenaca [Characteristics of the first legislation of the Kingdom of Serbs, Croats and Slovenes], Hrestomatija povijesti hrvatskog prava i države, svezak II., Zagreb, 1998, p. 302.

In conclusion, I would like to briefly mention the position of women in Croatia nowadays. After more than 150 years of fight for gender equality, can we say that we are finally a society that gives equal possibilities and rights to both genders?

*De iure* women are equal to men in Croatia, but *de facto* gender inequality is strongly presented in Croatian society even in 2016. Although the first woman president was elected in 2015, after early parliamentary elections in September 2016 only 12,6 % women were elected in Parliament, about 30 % of business is women owned and only 16,3 % of women are in top management and on boards. These facts lead us to the conclusion that there are more than enough places for improvement when we are discussing gender equality in Croatia nowadays. Our generation's task is to continue brave women's struggle for gender equality so that we can finally break unacceptable glass ceiling and that as a consequence Croatia finally becomes society of equal opportunities for both men and women.

# **Gréta ZANÓCZ: The development of the matrimonial property law in the civil era**

**Eötvös Loránd University, Faculty of Law**

Both generally and legally the causes of the female discrimination goes back to the very ancient times in history. The initial reason of the discrimination began with the weakness of female gender. It was believed that only men were able to keep the booty and take care of it. However, this attitude became untenable in the commodity production societies, and another approach appeared, which would be determinative in the domestic hierarchy, until the formation of the capitalist societies. According to this, the female's only "respectable mission is to take care of their children, the housekeeping and the childbearing". Therefore, women were completely inferior to their husbands without any social roles. This was not sustainable as commodity production became ruler, and women's work efficiency was potentially unutilised. Although, family hierarchy remained, still the first signs of emancipation appeared. Later, due to the formation of capitalist society, equal rights were declared. In Hungary it was proclaimed in Act XLIII of 1948.<sup>1</sup>

There was a significant point in the regulation of the matrimonial property law, when the civil marriage became obligatory, because female got the most important rights via marriage. Even after the Compromise there were a lot of people against the civil marriage. György Schopper was one of them, because he believed that the marriage was the root of the family and the society as well. He considered that the marriage was more than a contract, because he thought that it was "the root of whole and indissoluble unity of two people with different kind of sex, which is mediated by a physical and mental bondage".<sup>2</sup> Human laws are not enough to regulate the marriage, it needs to be regulated by God. That was the reason why he preferred church wedding "which is bound in front of the Church according

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<sup>1</sup> NIZSALOVSKY, Endre: A család jogi rendjének alapjai [The base of the legal order of the family], Budapest, 1963, Akadémiai Kiadó, pp. 27–29.

<sup>2</sup> SCHOPPER, György: Polgári házasság [Civil marriage], Buda, 1868, Magyar Kir. Egyetemi Nyomda, p. 6.

to the laws of the Church and God".<sup>3</sup> In spite of the resistance, civil marriage was made compulsory in 1894.

During the development of the history, the female rights had been increasing, until their rights achieved to the level of male rights. In our national law the venereal ward wasn't an unknown legal institution, but it stopped when the unmarried got married. This regulation was declared in 1874. This law also stated, that women become legally aged, when they got married. Based on this, female's disposing power only can be complete when they get married. After all, the husbands and the wives can stay together as equal partners with the same rights.

The Hungarian regulation about the marriage is mixed, because it takes ideas from the Roman and the German system. "In the roman dotalic system the equality of the spouses was expressed, and the German system expressed the community life of the spouses." In the separate property system the contracting parties have the free right of disposal about their own properties, which is not derogated by the marriage. It expresses the principle which says that "the marriage is the union of two people with equal rights". György Jancsó in his work, *The Prenuptial Agreement* divides eleven components of the separate property. Beside the separate property the wife has the right of use, the right of disposal and the right of possession, according to the legal institution it results property. Although our law follows the German system about the acquisitions which were obtained during the marriage and because of it the Hungarian law acknowledges the system of common acquisition. This system admits that those properties which were acquired during the marriage become collective.<sup>4</sup>

After the formation of the special women rights, the wife obtained property which was independent of the husband's treatment. The elements of the special women rights system can be divided into three groups. In the first group there are the rights which belong to the prenuptial agreement: separated property, gift for the betrothal, dowry, common acquisition and dos. To the second group belong the alimony rights: unmarried women's

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<sup>3</sup> *Ibid.*, p. 3.

<sup>4</sup> JANCÓS, György: A magyar házassági vagyonjog [The Hungarian matrimonial property law], Budapest, 1888, Published by Viktor Honyászký, p. 29.

rights, dower. In the third group there is the right which is connected to the law of succession: maiden quarter.

The gift for the betrothal legally belonged to the female's separated property, which was qualified as a gift. However, gift for the betrothal only can be those gifts, which are given to the female at the engagement or at the marriage. The characteristics of this legal institution had been crystallized by Werbőczy's time: "According to Werbőczy's Tripartite, gift for the betrothal qualified are those personal assets (typically clothes and jewels) which were given to the woman because of the engagement or the nuptial and which she got from her husband, from her parents or from her familiars." During the civil legislation the Act 16 of 1840 dealt with this legal institution, which was replaced by the Act 37 of 1875 (Commercial Code). In these laws the activities of the traders were regulated, and which is linked to the gift for the betrothal is that "the traders have to registrate the quantity of the gift of the betrothal during the signature of the firm, because the woman's gift was protected from the execution".<sup>5</sup> At the 20<sup>th</sup> century the gift of the betrothal lost its significance and it was replaced by the wedding present. The difference between the two legal institutions is that the wedding present is qualified as common acquisition.

The dowry is a presentation for the husband in the name of his wife. The husband's obligation is to maintain his family, and it was a practice to reduce these expenses by giving something what is useful for a family. This useful thing could have been anything which is why the dowry contained both rights and materials. The dowry giving was not bound to any person and because of it everyone could donate freely. However, only the husband could have received the dowry, because its legal aim is to reduce the expenses of the household which just the husband was responsible for. Although the dowry remained in the property of the woman or of the giver, on which the husband only has usufruct. The result of it was that, the dowry belonged into the wife's separate property, which was disposed by the husband. The significance of the dowry is that it was returned to the wife after the marriage ended, and had a priority against everything which charged the husband's property. The regulation of the legal institution has changed in the civil era. At that time goods could have

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<sup>5</sup> POMOGYI, László: Magyar alkotmány- és jogtörténeti kézikönyv [Dictionary of the Hungarian Constitutional and Legal History], Budapest, 2008, Mérték Kiadó, p. 503.

been dowry only if it was given, especially as a dowry and the transmission was proved by a notarial document.<sup>6</sup>

The morning-gift was a legal institution to enhance the female's position in the law of property in the case of the husband's death. There was a difference in the concept of the *dos*, still in the civil period, there were the legal and the written *dos*. First of all, the concept of the legal *dos* was determined by Werbőczy: "the *dos* was a reward from the husband's estate which was given to the wife after she carried out her tasks in connection with the marriage", this activity based on customary law. This legal institution was stopped by the Act 12 of 1946. The other kind of *dos* was the written one. This legal institution got its name because it was valid only if it was written into a contract. "The right for the *dos* is being at a standstill during the marriage, and it is only can be claimed after the marriage breaks up".<sup>7</sup> The conditions of the institution have changed in the civil period. "It could have been given to the wife not only at the time of the death of her husband and in case of separation from bed and board, but also because of the invalidation of the putative marriage and moreover when the husband was legally declared dead."<sup>8</sup> The only exception from the regulation is the Act of Bankruptcy, which allowed the wife to claim the *dos* from her husband even if he is in red ruin. Furthermore, in the civil period they knew another legal institution, which name was counter-*dos*. In this case the wealthier wife ensured the *dos* to her husband, but it could have been only written *dos*.

The *dos* had another version which was spread by the customary law and it was called morning-gift. It was bound between the bride and the groom before the marriage. From the civil period the subject-matter of the contract was mainly real estate and its execution was connected to conditions, such as: "the woman gets the morning-gift only if she lived together with her husband for five years or they have children".<sup>9</sup> They have also known the "counter morning-gift", which had the same conditions as the original morning-gift contract, but its subject-material was offered by the wife to her husband.

The matrimonial property law regulates both the spouses' property relationship to each other, both the spouses' property relationships with other individuals. The systems of

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<sup>6</sup> *Ibid.*, p. 450.

<sup>7</sup> JANCSÓ, *op. cit.*, 1888, pp. 229–230.

<sup>8</sup> POMOGYI, *op. cit.*, pp. 432–433.

<sup>9</sup> *Ibid.*, p. 782.

the matrimonial property law can be categorized into two categories. There is the total separation of the property system, in which system the marriage doesn't make any changes in the property of the husband's or the wife's. The other system is the total property union system, in which every property will be common, both the property which was obtained before and during the marriage. At the civil period in the Hungarian legal system there was only a middle property system, in which the system of the special women's rights secured for the women wealthy independence from their husband's wealth.<sup>10</sup> Although the formation of the system of the separate women rights can be appreciated as a great leap, as it resulted the existence of a still operating and emancipation reflecting matrimonial property law.

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<sup>10</sup> WEISS, Emília: A családjog alapjai [Basics of the family law], Budapest, 1999, ELTE Jogi Továbbképző Intézet, pp. 16–20.



# **András SZABÓ: The history of the Hungarian commodity and stock exchange**

**Eötvös Loránd University, Faculty of Law**

## **1. Exchanges in Europe**

The exchange is a concentrated market, where a definite circle of persons trade with replaceable products and values systematically in accordance with the existing customs, with a public price schedule, when goods are not present in the room, and the exact delivery and payment will happen at another place and another time.<sup>1</sup> The history of exchange can be divided into two parts: the evolvement of the commodity and the stock exchange. The prior showed up in the 16<sup>th</sup> century, due to the fact that the products were not present at the markets. Only the traders agreed that they would deliver definite amount of products in the defined quality, by a definite deadline. In Antwerp a mansion was built in order to ensure a place where businessmen could deal with the products, without being there physically.<sup>2</sup> Later the focus of the exchange moved to Amsterdam in the 17<sup>th</sup> century.

## **2. Exchange in Hungary**

The corn traders assembled in Pest cafes already in 1847 to buy and sell there. In 1860 the nations of the empire were ordered by an Austrian imperial letter patent to establish a commodity and stock exchange to give a statutory frame for the trade of products and security. This order corresponded with the intention of the Pest Chamber of Commerce and Industry, because they also wanted to open a stock exchange.

Between the foundation of the first commodity and stock exchange only a short period of time lasted, exactly ten years, compared to the Western-European examples (in Holland it was ninety-one years). In 1854 a commodity exchange was founded under the name "*Gabonacsarnok*", which translates "*Cornhall*". Both institutions were linked to the Pesti-Lloyd Corporation. The "*Cornhall*" was subordinate to the corporation and the stock

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<sup>1</sup> MEZEY, Barna (ed.): Magyar jogtörténet [Hungarian Legal History], Osiris Kiadó, Budapest 2007, p. 221.

<sup>2</sup> KORÁNYI, G. Tamás: A Budapesti Áru- és Értéktőzsde története 1864–1948 [The history of the Budapest's Stock Exchange 1864–1948], Budapest, 2014, p. 15.

exchange was independent from them and also from the government.<sup>3</sup> The stock exchange only had to submit its bylaws to the government, otherwise it did not stand under its influence. This also led to conflicts since the commodity exchange was not able to form their own customs, during its ten-years-work, while the stock exchange formed these after its foundation. These customs were taken over by the "*Cornhall*", as its own customs. Later, in April of 1864, agreements were made between the two institutions, to make the commodity exchange to accept the customs (formerly it accepted them voluntarily, not under an agreement). The exchange court rules were also accepted then by the institution founded before, however two judicial committees were evolved. Twelve forints of membership fee was charged per person, which was shared by the two institutions.

The agreement made in 1864 was broken by the "*Cornhall*". This was mainly due to the jealousy of the management for the independence of the stock exchange, and also for the opening hours of the two exchanges, the stock exchange opened at half past 10 which took away customers from the commodity exchange which was open between 6 and 12. Because of the break a committee was set up with the mission to unite the institutions. The two former managements delegated seven-seven members, and their task was to receive an agreement upon the conditions expecting ineffective negotiations from the general meeting. The two institutions united in 1868, first under the name of Pest-Budai Commodity and Stock Exchange, and later in 1873, when Pest-Buda was named Budapest, the institution got the name Budapest Commodity and Stock Exchange. The separate rooms remained, but the opening hours became identical: in the summer from 6 to half past 11, in the afternoon from 2 to 8. In the winter in the morning from 7 to half past 11, and in the afternoon from 2 to 6 in the evening. The number of members of the united committee increased to thirty and the court also remained. They also made an agreement about defining a new bylaw.<sup>4</sup>

The exchange committee worked until 1879 in the same form which was established in 1868. Back in 1864 the committee consisted of only six members and twelve if needed. This was increased to eighteen in 1865 and the members were elected secretly. The exchange received state supervision in the person of the imperial exchange supervisor. An

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<sup>3</sup> FÉLEGYHÁZY, Ágost: A budapesti tőzsde története 1864–1895 [The history of the Budapest's Stock market 1864–1895], Budapest, 1896, p. 26.

<sup>4</sup> *Ibid.*, p. 29.

interesting fact is that the supervisor was not practically imperial, given the fact that Hungary did not have an emperor at that time.

In 1879 the bylaw was altered and the exchange committee was renamed to Board of Directors of the Exchange. The membership was also reformed which was made even stricter by the 1893 bylaw alteration.

### **3. Membership conditions**

The membership conditions went through more changes during the 84-year-long work of the exchange. At the foundation the only criteria was that the person who intended to enter had to be immaculate and a man. Women were not allowed to take part in the exchange trade until the reopening in 1990. From 1879 the members, the visitors and the strangers were differentiated. The members had to pay an annual fee which was introduced in 1865. The visitors represented companies the managers of which were members of the exchange. The strangers were allowed to visit the exchange free for three days with a permit from the committee. In 1893 there were new restrictions in the conditions: the member had to own a whole investment paper for at least three years and be a Budapest tradesperson for at least one year.<sup>5</sup> Only lawful brokers were allowed to trade, later they were renamed to stockbrokers. The former type of members ceased by the 1875 Commercial Code, and the later, with a bylaw alteration in 1897.<sup>6</sup> In 1895 a new measurement was introduced which meant that somebody could only be a member having a reference from three exchange member patrons being exchange members for three years to the member entry committee. Against this decision everybody could appeal to the board, but receiving a dismissal judgement they were not allowed to apply for entry again in the next six months. From 1897 the broker activity was freed until 1900, when a Budapest residence, the knowledge of the Hungarian language and a two years exchange membership were made a condition.<sup>7</sup> This was changed in 1912: those who did not have Budapest residence and had not had any exchange activity for six months were cleared from the registration.

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<sup>5</sup> ENGEL, Emil: A budapesti tőzsde története 1864–1914 [The history of Budapest's Stock Market 1864–1914], Budapest, 1914, p. 25.

<sup>6</sup> *Ibid.*, p. 40., 44.

<sup>7</sup> *Ibid.*, p. 46.

#### 4. Structure of the Exchange

The biggest organization of the Exchange was the general meeting which assembled in January every year in order to elect the members of exchange committee and later the Board of Directors of the Exchange. Those participants had the right to elect (or vote for) a person who had been a member for at least one year. The general meeting only had a quorum if there were seventy members present before, and hundred after the World War I.<sup>8</sup> The exchange committee and later the Board of Directors of the Exchange were elected by the general meeting. Its tasks included accepting new members, excluding them, regulating business, recognizing customs, assigning stock brokers, setting the prices and creating permanent exchange arbitration tribunal. The committee counted eighteen members before 1868, after it thirty, and with the 1893 bylaw alteration the number of members grew to forty.

A board meeting was established taking some tasks from the Board of Directors of the Exchange. The members of the board meeting were the president of the Board of Directors, the two vice-presidents and the nine-twelve members of it. It was the duty of the board meeting to accept the members and the visitors, being the discipline board, collect the incomes, pay the outcomes and also to make suggestions to list the investment papers and make the pricelist. The Board of Exchange dealt with the relief fund set up at the exchange. This was founded to help the broken members and to function as a pension fund. The brokers could not expect any state pension, which at that time was in an early stage, so that they founded their own pension fund to ensure their old-age living. The condition of the quorum of the board meeting was five present members.<sup>9</sup>

#### 5. Exchange Court

Before the foundation of the stock market an elected court worked since 26 March 1850. It was set up to make decisions in ambiguous situations evolved in trade matters. In 1861 the court of the "*Cornhall*" evolved in which seven ordinary and six substitute members decided in the arguments of traders.<sup>10</sup> The exchange courts were permanent special courts,

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<sup>8</sup> KORÁNYI, *op. cit.*, p. 118.

<sup>9</sup> FÉLEGYHÁZY, *op. cit.*, p. 118.

<sup>10</sup> *Ibid.*, p. 134.

making decisions in a five-member committee, among which two-two members were chosen by the parties. The chairman of the board in the given argument was selected by the two-two chosen judges who were among the fifteen persons chosen by the chamber of trade at the beginning of each year. It was the ordinary court's responsibility to carry out the verdict of the special court hence the exchange court did not possess this authority. The Exchange Court knew the institution of petition before 1870. In this case it was only possible to renew the trial which was negotiated at the Curia, if there was a formal problem during the first trial.<sup>11</sup> The legal redress was only available since 1870, when the representation at the council became also allowed.<sup>12</sup>

In 1868 an act was published about the courts which did not have a provision about the exchange courts, but said that every court that is not mentioned in the act loses the authority to judgement. The legislation tried to make up the deficiency with a bill in 1869 which became operative in 1870.<sup>13</sup> This change was forced by the jurists, because before the act in 1868 not just commercial cases were held at the exchange court and that took the jurists' work away. The Act 2 of 1870 did not only restore the court of the Pest Commodity and Stock Exchange, but also the courts of those markets that had had one before 1868. The exchange courts were defined by the procedure novel of 1881, as a localized continuously working court, which became a constant and supplementary part of the court's organization.

## **6. Endeavors inside the Exchange**

Inside the commodity exchange were (or existed) efforts to establish smaller, independent exchanges. One of these was the flour exchange that was founded on 5<sup>th</sup> November in 1872, which was not successful because they only persuaded little business so it was closed in 1873.<sup>14</sup> A similar endeavor was the establishment of wine exchange. The members of the exchange committee decided so because of the success of the weekly organized wine exhibition. It would have been founded inside the commodity exchange,

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<sup>11</sup> ENGEL, *op. cit.*, p. 217.

<sup>12</sup> *Ibid.*, p. 221.

<sup>13</sup> FÉLEGYHÁZY, *op. cit.*, p. 179.

<sup>14</sup> *Ibid.*, p. 38.

but they were unable to meet certain requirements since instead of the necessary eighty-nightly tradesmen only thirty-seven applied.

The trade on the Stock Exchange was only allowed with papers permitted by the Board of Directors which meant a certain reliability. In 1867 due to the establishment of more private limited companies, the stock exchange enjoyed a boom. At that time the number of the marked securities increased from twenty-eight to one hundred-fifteen. Beside the treasury bonds, securities and lottery tickets after the World War I it was also possible to subscribe war-loan bonds.

## **7. Venues of the exchange**

During the existence of the Budapest Stock Exchange trade took place in three buildings. Between 1864 and 1872 Lloyd Palace, the building of Pesti-Lloyd Corporation housed the members of "Cornhall" and the stock exchange. However, it turned to be too small for the organization because of the increasing number of salesmen. The sale of security took place not only in the halls but also on the stairs and corridors and in order to solve this situation the Budapest Commodity and Stock Exchange moved to a building called "New-Building" by technical literature. In 1905 this building proved to be small too and the exchange moved to the Exchange Palace.<sup>15</sup> Both the commodity and stock exchange got the same space because the property was built with a symmetric inner arrangement. The literature highlights the fact about the building that the new home to the exchange was built cheaper than the 4.4m coronas for which it had been planned to be built. The new exchange building was working continuously until 13<sup>th</sup> of November 1948 with smaller and bigger intervals.

## **8. Exchange during the World Wars and after them**

During the World War I the exchange was closed and the building became a hospital, but those tradesmen who were not recruited continued their trade.<sup>16</sup> After the surrender, between 21<sup>st</sup> of March and 20<sup>th</sup> of October 1919 the exchange was closed again and lost the

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<sup>15</sup> KORÁNYI, *op. cit.*, p. 155.

<sup>16</sup> *Ibid.*, p. 62.

building as well for that time.<sup>17</sup> During the World War II the sale of security had not stopped until the Soviet army surrounded Budapest and the institution had to close again until February 1945. This was followed by a period of turmoil because it was closed or opened monthly or every second month or only the commodity exchange worked.<sup>18</sup>

However, on the 13<sup>th</sup> of November 1948 the working of Budapest Commodity and Stock exchange stopped for more than forty years and was reopened for the salesmen on the 21<sup>st</sup> of June 1990. During this 42-year-long interval the socialist theory managed to turn the people against the securities by issuing peace-loan bonds. From 1982 companies needed credit so they made the bond law turning back to the anti-free market concept. In 1987 so called exchange days were held because there was a need for the organized structure of security sale. In 1989 these days were already held 3 times a week, which became one of the last steps of the seven-year preparation of the reopening of the exchange. After the 1990 reopening, the exchange has continued its work in the same form but in a different venue.

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<sup>17</sup> *Ibid.*, p. 67.

<sup>18</sup> *Ibid.*, p. 101.

# **Martina PROTEGA: Unification of civil law in the interwar period in the Kingdom of Yugoslavia**

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## **1. Introduction**

Civil law, as one of the biggest and the most important law branches, has very significant place in every legal system. The importance of civil law was much bigger in the Kingdom of Yugoslavia because it was a multi ethnic state with unsolved national issues and different cultural and historical heritage. So, the unification of civil law played a role of some kind of a sticker between different legal systems and different political situations, or better to say, it was a way of overcoming those many differences. So, it is clear how important civil law is and how hard but significant unification process is. Firstly, in this paper, I am going to say something about historical background of the interwar period. Then, I would enumerate legal sources and judicial instances of the six different legal areas which existed in the Kingdom of Yugoslavia. Thirdly, I am going to say something about the supervisory authorities and foreign and domestic legal sources, which influenced to the unification process in the Kingdom of Yugoslavia. The central parts of this paper are the Preliminary Principles of the Civil Code for the Kingdom of Yugoslavia, as an effort to make a fundamental legal source for civil law. To sum up, I would give some short conclusion on importance of the Preliminary Principles.

## **2. Kingdom of Yugoslavia - historical background**

When we talk about the interwar period, we think about the period between 1918 and 1941. In the Kingdom of Yugoslavia, it was marked by the change of political regimes, meaning two periods of constitutional government and one dictatorship. It shows us how unstable and mutable political situation was. At the beginning of this period, in October 1918, the National council of Slovenes, Croats and Serbs was established and it was the



highest representative body of the Southern Slavs in Austro-Hungarian Monarchy.<sup>1</sup> On 29 October, the areas of Croatia entered into a new state – State of Slovenes, Croats and Serbs.<sup>2</sup> They entered into a new state, because the Croatian Parliament (Sabor) brought up a decision by which all state and legal relations and ties between Kingdom of Croatia, Slavonia and Dalmatia on the one side and Kingdom of Hungary and the Empire of Austria on the other were terminated. The State of Slovenes, Croats and Serbs lasted until 1 December 1918, when it united with the Kingdom of Serbia into a new state, the Kingdom of Serbs, Croats and Slovenes (from 1929 the Kingdom of Yugoslavia). According to the Constitution from 28 June 1921 (so-called St. Vitus' Day Constitution), this new state was parliamentary and hereditary monarchy. Many inter-ethnic disputes and political crisis, as a main characteristic of the interwar period, reached its top when Croatian representatives were killed in the National assembly in Belgrade, in 1928.<sup>3</sup>

King Alexander could not deal with these problems so he carried out a coup and introduced the so-called "January 6<sup>th</sup> Dictatorship" in 1929. Two years later, he declares a new constitution, so-called the Octroyed Constitution but with almost no changes since the King was still the central part of the state power.

On August 26 1939, with the Decree of the Banate of Croatia, the Banate of Croatia (Banovina Hrvatska) was established based on agreement between Croatian politician Vladko Maček and the Prime Minister Dragiša Cvetković. The purpose of forming the Banovina was solving a so-called Croatian issue and creating conditions for survival the Kingdom of Yugoslavia in the circumstances of the beginning of the Second World War.<sup>4</sup> According to the administrative and judicial autonomy, the Banovina had significant feature of statehood.<sup>5</sup> That was the first step towards federalisation of Yugoslavia but, unfortunately, it was never realised because of the beginning of the Second World War.

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<sup>1</sup> About the beginning of a new state see more in: KREŠIĆ, Mirela: Yugoslav private law between two World Wars, *Modernisierung durch Transfer zwischen den Weltkriegen*, Vittorio Klostermann, Frankfurt am Main, 2007, p. 151.

<sup>2</sup> ČULINOVIĆ, Ferdo: Jugoslavija između dva rata, knjiga I. [Yugoslavia between two World wars, first book] Historijski institut Jugoslavenske Akademije znanosti i umjetnosti, Zagreb, 1961, p. 69.

<sup>3</sup> See more: KREŠIĆ, *op. cit.*, pp. 152–153.

<sup>4</sup> See more in: ČEPULO, Dalibor: Hrvatska pravna povijest u europskom kontekstu [Croatian Legal History in the European context], Zagreb, 2012, pp. 276–277.

<sup>5</sup> KREŠIĆ, *op. cit.*, p. 153.

### **3. Legal areas**

The fact that this interwar state was consisted of different nations and that they had their own political, cultural and not less important, economic heritage was reflected to the legal regulations. This is the reason why it had six different legal areas and maybe the argument for the claim that the Kingdom of Yugoslavia just represented an aspired ideal of the federal state.

The first legal area was consisted of Slovenia and Dalmatia with its islands where Austrian and autonomous regional laws were in force and the highest court was the Table of Seven with its Department B. The second legal area was the former Kingdom of Croatia and Slavonia where autonomous Croatian law, Croatian-Hungarian law and law introduced during the Bach's absolutism (ABGB for example) were in force. The highest court was the Table of Seven with its Department A. The third legal area were Vojvodina, Međimurje and Prekomurje where Hungarian and Austrian law were in force and the highest court was the Court of Cassation with its Department B in Novi Sad. The fourth legal area was Bosnia-Herzegovina with the largest number of legal sources, f.i. Ottoman law, particular law of Bosnia-Herzegovina, customary law on family and successions of non-Muslims, Sharia for Muslims as well as Austrian law. The highest court was the Supreme Court of Sarajevo. The fifth legal area was the former Kingdom of Montenegro where laws introduced before 1918 were in force. The highest court was the Supreme Court in Podgorica. The last legal area was the former Kingdom of Serbia with Serbian laws introduced before 1918 in force. The highest court was the Court of Cassation in Belgrade.<sup>6</sup>

### **4. Supervisory authorities of the unification process**

In order to take care about the unification process, in 1919 was established the Department of Private Law with Permanent Legislative Council. With changing of the political regime, changed the supervisory body. When the king Alexander introduced the dictatorship, Permanent Legislative Council was replaced by the Supreme Legislative Council. Despite the differences between names of supervisory bodies, its purpose was the same - to lead the unification process. In order to make a civil code, was established a board

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<sup>6</sup> *Ibid.*, pp. 153–154.

with purpose of drawing up a civil code which had to be applied in each of these six legal areas, without an exception.<sup>7</sup> According to the St. Vitus' Day Constitution, for laws with purpose of the unification, was provided a shorter procedure passing laws and this directive was limited for a period of five years after Constitution entered into force.<sup>8</sup>

## 5. Unification/codification of civil law

Each of these six different legal areas had its own civil code but it is important to say that all of them originated from the Austrian *Allgemeines Bürgerliches Gesetzbuch* (ABGB). So, despite the differences between these legal areas, most of them have something in common and this fact was an argument for the unification. The ABGB was effective in Slovenia and Dalmatia (with so-called *Teilnovellen*) as well as in Croatia and Slavonia (without *Teilnovellen*). In Bosnia–Herzegovina and Vojvodina it was applied by judicial practice while the Serbian Civil Code was an abbreviated translation of the ABGB. Montenegro was an exception of using the ABGB because there was applied the General Code of Property which had been worked out by Croatian professor Baltazar Bogišić.

The process of unification of civil law began after an agreement on how to construct a new civil code but government's instructions did not provide any sort of law reforms, so the only solution was to follow the ABGB. But, the members of the board had different opinions on how deep the changes were to go. The result of that preparatory work were Preliminary Principles of the Civil Code in 1934, usually called "*Predosnova*". Besides the influence of the ABGB, the Swiss Civil Code, the German Civil Code, the Liechtenstein Civil Code and the Swiss Civil Code of obligations influenced on the Preliminary Principles.<sup>9</sup> Their influence was crucial for the modernization of the legal system in the Kingdom of Yugoslavia and that is the biggest reason why they were used. The Preliminary Principles covered just civil law because the regulation of f.i. commercial law was left to the special codifications.<sup>10</sup> The

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<sup>7</sup> *Ibid.*, pp. 156–157.

<sup>8</sup> St. Vitus' Day Constitution from June 28 1921, Art. 133, [http://www.pravo.unizg.hr/\\_download/repository/Ustav\\_Kraljevine\\_Srba%2C\\_Hrvata\\_i\\_Slovenaca.pdf](http://www.pravo.unizg.hr/_download/repository/Ustav_Kraljevine_Srba%2C_Hrvata_i_Slovenaca.pdf) [Access on 26th September 2016]

<sup>9</sup> KREŠIĆ, *op. cit.*, pp. 155–157.

<sup>10</sup> RADOVČIĆ, Vesna: Pokušaj kodifikacije građanskog prava u staroj Jugoslaviji (Predosnova građanskog zakona za Kraljevinu Jugoslaviju) [An attempt of codifying of civil law in old Yugoslavia. The Preliminary Principles of Yugoslav Civil Code], *Radovi Zavoda za hrvatsku povijest Filozofskog fakulteta u Sveučilišta u Zagrebu*, vol.7., no.1, 1975, p. 262.

Preliminary Principles dealt with property, obligations, successions and family. Property law is almost similar with the ABGB and law of obligations was consisted of traditional as well as new institutions. The biggest progress was in the area of family law with protecting the interests of children.<sup>11</sup>

As I have stated before, the Preliminary Principles had so much in common with the ABGB, f.i. its system, content, language, technique and phrases. Both first parts, of the ABGB and the Preliminary Principles, were consisted of personal and family law. But there was a difference in personal law between the ABGB and Preliminary Principles because the ABGB did not split personal law between natural and legal persons. The second part was almost the same because both dealt with property law, obligations and successions but the law of successions was included into real property law. The third part, which was called “The common rules”, of the ABGB and the Preliminary Principles was the same. It dealt with rules which were in common with personal and property law. It is important to emphasise that when we talk about similarities between the ABGB and the Preliminary Principles that we compare it with the Croatian translation of the ABGB.<sup>12</sup>

Later during the interwar period, the unification process was never at the same level as at the beginning of that era. So, it is usually, when we talk about the interwar period that we differentiate unified and non-unified law branches.<sup>13</sup> Civil law left non-unified due to the fact that Preliminary Principles were just a draft because of the beginning of the Second World War and problems within the Kingdom of Yugoslavia, especially because of the Decree on the Banate of Croatia which declared that “...this region was authorized to introduce an own civil law with the exception of the law of obligations...”<sup>14</sup> meaning that even the Preliminary Principles became a code, problem would be its application in the Banovina of Croatia.

## 6. Conclusion

The importance of civil law so as the civil code arises from the fact that represents framework of construction of legal system of each country. The Kingdom of Yugoslavia came into existence as a result of unification of territories which were different in every aspect, as

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<sup>11</sup> KREŠIĆ, *op. cit.*, p. 158.

<sup>12</sup> For detailed analysis see: RADOVČIĆ, *op.cit.*, pp. 263–301.

<sup>13</sup> KREŠIĆ, *op. cit.*, p. 155.

<sup>14</sup> *Ibid.*, p. 156.

well as in legal area which was visible in existence of six different legal areas. Therefore attempted to create unified legal system for entire country but until completing the unification process, they continued to implement earlier laws. The same was in the aspect of civil law because of the implementation of earlier civil laws. The ABGB marked civil-law regime in the Kingdom of Yugoslavia because of laws which were in force earlier as well as because of the fact that in the codification process the ABGB served as the base for the construction of the new civil code. As a result of the process of unification, which lasted for multiple years, were the Preliminary Principles which were an effort to overcome differences between six different legal areas. The beginning of the Second World War as well as domestic issues which were the result of different cultural and historical heritage of parts of the Kingdom of Yugoslavia, were the reason why Preliminary Principles never became a code.

# Monika RAKITNIČAN: Matrimonial regime in Croatia and Slavonia according to ABGB

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## 1. Introduction

The material, financial and civil matters regarding marriage, as well as systems of property ownership between spouses and its management are all subsumed under one term: matrimonial regime. The matrimonial regime of Croatia and Slavonia in the second half of 19<sup>th</sup> century and first half of 20<sup>th</sup> century<sup>1</sup> was regulated by one main legal source, the General Civil Code of Austria or *Allgemeines Bürgerliches Gesetzbuch* (also known under its abbreviation ABGB) which was introduced in the areas of Hungary, Croatia, Slavonia, Serbian Vojvodina and Banat in 1852. Although matrimonial regimes are generally closely connected to matrimonial law in terms of regulation, it is worth noting that this was not the case in Croatia and Slavonia at that time. An important part of matrimonial law related to validity, regularity and dissolution of marriage as well as prerequisites for forming marriage continued to be governed by Roman Catholic Church and Orthodox Church respectively.<sup>2</sup> On the other hand, chapter XXVIII (§§1217-1247) of ABGB contained articles regulating matrimonial regime<sup>3</sup> that were binding for all citizens, regardless of their religious affiliation.<sup>4</sup>

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<sup>1</sup> At that time, Croatia was divided into several different legal areas, each with its own systems of rules and regulations. This article will cover only the regulation of matrimonial regime in areas where Austrian General Civil code was applied, namely areas historically known as Kingdom of Croatia and Slavonia. More about legal areas in Croatia: ČEPULO, Dalibor: Hrvatska pravna povijest u europskom kontekstu - od srednjeg vijeka do suvremenog doba [Croatian Legal History in the European context], Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2012; GAVELLA, Nikola: Hrvatski pravni poredak u srednjoeuropskoj podskupini kontinentalnoeuropskog pravnog kruga [Croatian Legal Order as a part of a Middle-European subgroup of Continental – European Legal System], Zagreb, 1994, pp. 10–14.

<sup>2</sup> Matrimonial law can be regulated either by State or Church. At that time, only Roman Catholic Church and Orthodox Church had enough influence and worshipers to get exclusion of State matrimonial laws and were the only acknowledged religions. The Jews and Muslims were in all matters bound by ABGB. LOVRIĆ, Edo: Ženidbeno parvo [Matrimonial Law], Pravnički repetitoriji, Zagreb, no year, p. 5.

<sup>3</sup> Ch. XXVIII contained not only articles related to matrimonial regime, but also those related to inheritance between spouses.

<sup>4</sup> ALINČIĆ, Mira: Građanski brak sklopljen prema državnim propisima i u vjerskom obredu [A Civil Marriage Entered Into According to Government Regulations and a Religious Ceremony], Hrestomatija hrvatskog obiteljskog prava, Zagreb, 2010, p. 55.

## 2. Matrimonial regime systems

Presently there are two general systems of matrimonial regimes: system of separate property and system of community property. In the system of community property most assets acquired during marriage are owned jointly by both husband and wife. The object of marital property is comprised of pay checks, ownerships of estates and movable property acquired through work, money and savings etc. On the other hand, not all property in marriage is communal, and spouses are allowed to dispose with their sole property freely.<sup>5</sup>

The origin of separate property system can be found in ancient Roman law.<sup>6</sup> In separate property systems, spouses answer separately for their debts and have full rights to their separate, sole property. The community of property could be created through contract.

### 2.1. Matrimonial regime according to Austrian Civil code

ABGB's matrimonial regime is mostly inspired by Roman law, applying the system of separate property (§1233).<sup>7</sup> The financial burdens of matrimony fell primarily on husband, who was considered head of the family<sup>8</sup> and whose duty was to manage joint household. Generally, every spouse was the sole owner of his personal property and did not claim any rights on the assets of his partner. However, based upon her tacit approval, husband had right of usufruct on his wife's property. Partners were able to agree differently, and wife was also allowed to explicitly revoke husband's management of her property (§1238).<sup>9</sup> The husband also had a legal right to represent his wife in matters related to property, both in and outside of court.

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<sup>5</sup> ALINČIĆ, Mira – HRABAR, Dubravka – KORAĆ GRAOVAC – Aleksandra: *Obiteljsko pravo* [Family Law], Narodne novine, Zagreb, 2007, pp. 498–514.

<sup>6</sup> ŽIHA, Nikol: *Imovinskopravni aspekti prestanka braka u rimskoj pravnoj tradiciji* [Matrimonial property regime after divorce in the Roman Legal Tradition], *Imovinskopravni aspekti razvoda braka*, Pravni fakultet u Osijeku, Osijek, 2011, p. 51.

<sup>7</sup> RUŠNOV, Adolfo: *Tumač Obćemu austrijskomu građanskomu zakoniku* [Commentary on the Austrian General Civil Code], Naklada Lav. Hartmana, Zagreb, 1893, p. 571.

<sup>8</sup> EISNER, Bertold: *Privatno-pravni položaj žene po današnjem pravu Jugoslavije i njegovo uređenje u jedinstvenom Građanskom zakoniku za Jugoslaviju* [Legal position of the women according to the Law valid in the Yugoslavia and according to the Yugoslav Civil Code], Globus, Beograd, 1934, p. 334.

<sup>9</sup> *Ibid.* p. 336.

As already stated, marriage didn't automatically lead to the creation of community property. However, spouses were able to agree otherwise through a contract. Once agreed and created, that community existed for life or until insolvency. If the spouses explicitly decided to form community property during life, all of their estates would be accounted into it, and rules of partnership would be applied.<sup>10</sup> However, ABGB had a presumption in favour of founding community property in cases of death (§1234), preventing further disposal of accounted assets *mortis causa*.

The Roman postulate *praesumptio Muciana*,<sup>11</sup> by which everything acclaimed during marriage was considered in doubt husbands', was incorporated in ABGB (§1237). The presumption was especially important in matters of execution of wife's property, since her creditors weren't able to settle their debts with property acquired during marriage and it generally contributed to financial inequality between men and women.

## 2.2. Specific institutes of matrimonial regime

Apart from regulating nuptial contracts, Chapter XXVIII of ABGB contained also articles related to specific institutes of matrimonial regime, such as dowry, ABGB's *donatio*, morning gift and widow's salary. While dowry and *donatio* were widespread and deeply rooted in Croatian tradition and community, sources of that time indicate that other institutes, those inspired by German tradition (morning gift and widow's salary) weren't used often.<sup>12</sup>

Dowry was property which wife or someone else for her gave or promised to her husband to relieve the burden of household expenses.<sup>13</sup> Interestingly, husband wasn't given absolute governance over dowry, only the right of usage and derivation of benefits, while wife continued to be the owner of it.<sup>14</sup> He was able to gain complete ownership over dowry if it was comprised of money, claims or other spendable things (§§1227, 1228). If he failed

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<sup>10</sup> RUŠNOV, *op. cit.*, p. 572.

<sup>11</sup> EISNER, *op. cit.*, p. 336.

<sup>12</sup> ABGB was received in Croatia and Slavonia with a certain amount of reserve, mainly because of the progressive ideas it contained. The people considered it to be imposed upon them and an aura of general distrust towards „foreign“ ideas and legislature was palpable. Furthermore, the use of ABGB was greatly impaired by the existence of traditional communal households, a special joint ownership system prevalent among lower classes, which Tripartite (fundamental Hungarian–Croatian law prior to ABGB) allowed, but ABGB didn't recognise. KREŠIĆ, Mirela: Entitlement of Female Descendants to Property of Croatian Communal Household, *Journal on European history of Law*, vol. 2, 2011, no.2, STS Science Centre Ltd., p. 75.

<sup>13</sup> RUŠNOV, *op. cit.*, p. 560.

<sup>14</sup> EISNER, *op. cit.*, p. 337.



to request dowry before entering marriage, he would lose the right to do so later.<sup>15</sup> Dowry primarily came from personal property of future wife if she was of age. If her property appeared to be insufficient, that obligation was passed to her father or other members of her family (§§1219 - 1221). The law doesn't contain an exact definition what adequate dowry was: usually the personal status of wife's family and their income would imply certain estimation.<sup>16</sup> After the death of her husband or her own death, it would be either returned to wife or inherited by her successors.<sup>17</sup>

ABGB has its own equivalent of roman institute *donatio propter nuptias* (§1230).<sup>18</sup> It represented property given by groom or third party to augment dowry.<sup>19</sup> The difference between Roman *donatio* and ABGB's institute is reflected in the fact that ownership of *donatio* was transferred to wife after her husband's death. Although there was no obligation for husband's family to provide him with *donatio*, they were obliged to present him with certain personal property like furniture, clothes and other necessities.<sup>20</sup>

The institute of morning gift came to be implemented in Croatia and Slavonia through old German tradition by the way of ABGB. It was an honorary gift given by husband to his wife the first morning of marriage as a sign of her virtue. Morning gift was due to be presented the first morning of marriage, regardless if it was consummated or not.<sup>21</sup>

Another important institute inspired by German tradition was widow's salary, financial support which husband would give to his wife, by contract or last will, in case of his death. The salary could have consisted either of money or other spendable things and was given 3 months in advance. If widow's salary was contracted, wife would lose the right to usual alimony prescribed by the law,<sup>22</sup> which was paid up to 6 weeks after the death of husband, or 6 weeks after the birth of their child, if the husband died while his wife was pregnant (§1243).<sup>23</sup>

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<sup>15</sup> RUŠNOV, *op. cit.*, p. 565.

<sup>16</sup> *Ibid.*, p. 562.

<sup>17</sup> *Ibid.*, p. 567.

<sup>18</sup> It is translated as '*uzmirazje*' in Croatian, or literally 'with dowry', emphasizing the fact that *donatio* didn't exist without dowry, EISNER, *op. cit.*, p. 338.

<sup>19</sup> RUŠNOV, *op. cit.*, p. 565.

<sup>20</sup> EISNER, *op. cit.*, p. 338.

<sup>21</sup> RUŠNOV, *op. cit.*, p. 571.

<sup>22</sup> However, most legal theoreticians of that time claimed that, if widow's salary was stipulated via testament without wife's consent, her right to adequate financial support through usual alimony was not annulled. *Ibid.*, p. 579.

<sup>23</sup> EISNER, *op. cit.*, p. 341.

### 3. Conclusion

Croatian families in the late 19<sup>th</sup> and early 20<sup>th</sup> century were based upon traditional values and principles where husband/father was considered head of the family and the main caretaker and his wife was in all matters subjugated to his will.<sup>24</sup> Although dowry was supposed to be withdrawn primarily from wife's personal property, in reality there weren't many cases where she actually had any substantial property to give. If she did, that property originated either from inheritance or independent work. Having adequate dowry was integral in securing financial stability and future for women. Families, mostly poor ones, were painfully aware of the fact that daughters without adequate dowries would mostly stay unmarried. Women from the countryside had only moveable property,<sup>25</sup> while those from richer families used to contribute to joint household with their estates.<sup>26</sup> They generally didn't manage their property once married and rarely had their rights on estates inscribed in official books. Female dependence was partially relieved with the institutes of matrimonial regime such as dowry, *donation*, alimony and widow's salary, which prove to be very important for women's financial security after the termination of marriage.

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<sup>24</sup> LEČEK, Suzana: Dobila je kulike su roditelji davali, ni po zakonu". Promjene u položaju žene u seljačkim obiteljima Prigorja i Hrvatskog zagorja između 2 svjetska rata [She got as much as the parents gave her, not according to the law! The changes in the position of the women in the peasant families of the regions Prigorje and Hrvatsko zagorje between the two world wars], Časopis za suvremenu povijest, Zagreb, 2001, p. 232.

<sup>25</sup> That property would include clothes, bedclothes, furniture, other useful tools related to household maintenance. KREŠIĆ, Mirela: Intestate succession of female descendants according to the Austrian General civil code in the Croatian-Slavonian legal area 1853-1946, Annals of the Faculty of Law in Belgrade - Belgrade Law review, Year LVIII, 2010, no. 3, p. 132.

<sup>26</sup> However, these estates were not subtracted from her family's existing property, but rather acquired solely for that purpose. *Ibid.*, p. 132.

# **Dr. Kinga RIGÓ: Two drafts, one theme: efforts of József Eötvös to regulate the Hungarian university system**

**Eötvös Loránd University, Faculty of Law**

## **1. Introduction**

József Baron Eötvös (1813–1871) was a famous Hungarian writer, lawyer, minister and statesman. He was two-time minister for public education and religion of Hungary in the 19<sup>th</sup> century: first in 1848 in the Batthyány- and later in the Andrassy-government from 1867–1871. As scholar, he was the president of the Hungarian Academy of Sciences (1866–1871) and father of Loránd Eötvös, the physician. He was a very productive minister and has proposed a lot of drafts concerning the Hungarian education. Most of them were accepted in his second term – or later during the ministerial period of his friend and colleague Ágoston Trefort. He has elaborated two drafts concerning the Hungarian university (1848, 1869) and although the second one was submitted to the Parliament, none of them were accepted.

Although these drafts were unsuccessful in his ministerial activity - if the acceptance itself can be considered as “success” it’s worth reading and studying them, for they show a very interesting picture of the university life of that time, and give us an overview of the ideas and imaginations of Eötvös as well.

The direct antecedent of both drafts was the Act 19 of 1848 on the Hungarian University. It contains only three sections, but in these three sections dispose about the freedom of studying, the freedom of teaching, it declares that the University belongs to the minister for public education, and last, but not least pronounces, that the Minister for public education has the obligation to elaborate a draft about all the necessary questions aiming to enforce the Act.

Eötvös wanted to fulfil this duty, so he elaborated very quickly the draft of 1848 with its 296 Articles, and twelve chapters, nevertheless just one reading makes clear, that it was not completed, for there are some mistakes in the draft and some part of it is missing. Its parts are as follows: I. Generally about the university, II. About the director and the university committee, III. About the faculty and its staff, IV. *This part is missing*, V. About regular students

and members of the university, VI. About studying, VII. About comprehensive exams and science exams, VIII. About the disciplinary authority of the university, IX. About the teacher's and priests' training colleges, X. About the Student's Library, XI. About the university restaurant, XII. About university hospital.

## **2. Doubts and their consequences**

These chapters contain very detailed descriptions of all perspective of university life. But before going into details it has to be mentioned that there is no evidence that this draft belongs to Eötvös. We think, we always knew, we strongly believe that this is the work of him, but, for now, it is not possible to prove it.

There is only one specimen of that draft and there is no stamp or signature on it. It is in the University Library of Eötvös Loránd University filed to the time-table of the year 1823-1848. Perhaps we can find answers to the emerging questions: perhaps the writer of the draft had no time to finish the draft, the revolution broke out, and something had to be done with the document. At that time – and now as well – the University had the possibility to comment the proposals of the educational government, this can be the reason why we can find this specimen in the university library. There is no cover letter or file next to it. Perhaps the stamp and signature were on them, but the revolution did not allow to finish the normal proceeding, and somebody wanted to hide this kind of proof that the university has taken part in the new type of decision-making. Nevertheless, we have some objective reasons as well to believe in the Eötvös-ownership.

The Act 2 of 1844 on the Hungarian Language and Nationality declared that all the documents should be proposed in Hungarian language to the National Assemble – so this draft must be written after 1844. We know beyond that, that before 1848, the Hungarian Diet did not handle with educational questions, the first Act on this topic was adopted in 1848 – at that time Eötvös was the minister. We don't have such intellectual property problems with the draft of 1869 – this draft can be found in the official document register of the Hungarian Parliament.<sup>1</sup> It consists of seventeen articles, and deals with the faculties,

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<sup>1</sup> Képviselőházi irományok (Documents of the House of Representatives), 1869. évi IV. kötet, 428. szám. Törvényjavaslat a pesti királyi magyar egyetem újból szervezése tárgyában (Bill on the reorganisation of the Pest Royal Hungarian University). [http://www3.arcanum.hu/onap/a110616.htm?v=pdf&a=pdfdata&id=KI-1869\\_4&pg=0&l=hun](http://www3.arcanum.hu/onap/a110616.htm?v=pdf&a=pdfdata&id=KI-1869_4&pg=0&l=hun) [Access on 16th October 2017]

lecturers, researchers, teachers and assistants, students, the jurisdiction of the university, the authorities of the university, and the financial questions.

### **3. Some crucial questions**

Let's examine the similarities and differences concerning faculty questions. In 1848, we can see six faculties, what is a huge difference regarding the traditional university conventions, which allowed only four faculties: the humanities as preparatory faculty, the faculty of law, the faculty of theology, and the medical faculty. In 1848 the following faculties belong to the university according to our draft: the Faculty of Humanities consisting of two parts: Humanities and Geometry, Faculty of Law consisting of two parts: political course and legal course, Medical Faculty (although in another place the draft abolish the medical faculty, and says that it can remain just as "Scholar's Association"), Faculty of Catholic Theology, Faculty of Reformed Theology and Faculty of Greek Theology.

In 1869, we can find six faculties as well: Faculty of Humanities, Philology and Natural Sciences (including the teacher's training college), Faculty of Law, Medical Faculty, Faculty of Catholic Theology, Faculty of Reformed Theology, Faculty of Greek Theology. In 1869, this sextet partition is explained by Eötvös in the bill's justification:<sup>2</sup> according it, the reason of the three theological faculties is financial. The establishment of the university was financed by the fund Péter Pázmány, and later on it was supplemented with the Jesuits endowments. If the university is a state-organ, these funds have to be put on university aims. But all the funds were catholic, that's why Eötvös wanted the separated faculties: according to him, all the other theological faculties have to be financed by the state, without the originally „catholic money". As the draft was not accepted, this explanation was also not successful.

### **4. University members: the so-called personnel**

We can find interesting regulations scheme concerning lecturers, researchers, teachers and assistants as well. In 1848 personnel has meant lecturers (regular and irregular professors, honorary professors, assistant lecturers) private lecturers, teachers, and all of them are appointed by the minister for public education. The administrative staff belonged

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<sup>2</sup> *Ibid.*, pp. 265–268.

to the university personnel as well and they were also appointed by the minister for public education. Students (of course part of the university members but not part of the university personnel) were regulated in detail in the draft: exams, fees, registration, expulsion etc. The regulation concerning the students covers approximately eighteen articles, and deals with only the regular students. Irregular students are mentioned only in the §5: they have the right to attend the open lectures. The most important provisions are the following: secondary education and entrance exam is always required for being a student, but the registration fee is not compulsory – the Dean can decide about it. General rule is, that the best students don't pay fees, and all the students has to register into the university record. The draft recites all the rights and obligations of the students also.

This draft knew the status of the honorary professors and private lecturers as well. The honorary professors have no salary – says the draft, and it describes precisely the appointment procedure of the professors: the faculty has the right to propose three candidates, and the minister has the right to choose. The regulation knew the so called university breakdown: in this case there was no proper candidate for the profession position, and the minister should choose – after a difficult procedure – from the proper private teachers.

Nevertheless, besides the procedural rules, some basic substantive regulation is missing: e.g, what does the regular professor, the irregular professor, the private teacher mean? These legal institutions were treated as notorious notions, although none of them were self-evident. In 1869 personnel has meant regular and irregular professors appointed by the king and assistant lecturers, private lecturers, teachers appointed by the minister for public education.

Students belonged naturally to the university members, but in this text, university life was not regulated, although the legal status of the students is in the draft. Only five articles are dealing with the students (cf. that of 1848, above), and says, that in the case of regular students some kind of not specified pre-education is required, and an entrance exam and the registration is compulsory. In the case of irregular students: registration without the pre-education is possible, with paying the fees, but both categories can get a degree. The administrative staff was in that case also appointed by the minister for public education.

## **5. University authorities and the jurisdiction of the university**

Both texts refer to university authorities as the most common thing in the legal history of the universities, and we have to admit that this authority was already known in the *Ratio Educationis*, but there was nowhere a definition about it. In 1848, according to the ideas of Eötvös we can read, that the university authorities were the director of the university, the Deans, the faculty-directors, the university committee (very similar to the senate of nowadays) and of course the university court.

In 1869 university authorities were the body of the regular and irregular lecturers of the Faculty (authority of first instance) and the University Board consisting of 24 members, elected by all the regular and irregular lecturers of all faculties of the university (authority of second instance). The jurisdiction of the university in 1848 covered acts of the students against each other or against their lecturer. In 1869 acts belonging to the competence of the judiciary of the university could be the acts of the lecturers: official negligence, moral misdemeanour, or acts of the students if its consequence was expulsion. Rule of procedures of the university court were totally elaborated in 1848. The jury of twelve student members and the university court of the Dean and two professors should decide the case – all the acts if punished with imprisonment, expulsion or losing of status. The Dean could punish in the case of minor offences. The trial was open, but only for the members of the university. Possible punishments could be as follows: reprehension (in front of the Deans, the professors or the students), fine, losing of the student supervisor status, imprisonment, exile and dismissal. In 1869 the University Court consisted of twenty-four lecturers and the setting up of the university Court should have been ordered by the university council. The prosecutor could be the Dean or the body of the lecturers. Possible punishments were dismissal, reducing of salary or outplacement. Beyond that, the draft of 1848 has several disposals about the teacher's and priests' training colleges, the student's library, the university restaurant and the university hospital. These provisions are missing in the draft of 1869, which is a tighter and a shorter one.

## **6. Afterword**

These notions of József Eötvös remained on paper, and although later Ágoston Trefort has made efforts to put over the notions and work of Eötvös, he did not try to put

over these two drafts. He tried to pass a law on higher education in 1872, but that draft was completely different from Eötvös's point of view. The common point of them is that none of them (not even the text of Trefort) was accepted by the Hungarian Parliament. Perhaps the circumstances did not allow by this time a new law on universities.



# **Eszter Virág NAGY: The formation and regulation of economic organizations in Hungarian law, with emphasis on silent companies**

**Eötvös Loránd University, Faculty of Law**

## **1. Introduction**

The subject of my essay is a particular phenomenon of the Hungarian commercial history whose evolution reaches back several centuries; however, its development into codified law was relatively short. The legislation of the silent company, as well as the limited liability company, came late compared to the other organization types; however, the latter plays a central role in contemporary economics, while the former effectively disappeared from our laws, albeit not without trace. The following essay will elaborate on the formation and the role of commercial law, and the development of regulations on silent companies.

## **2. The commercial law as *ius speciale***

Commercial law itself is a separate but integral part of private law and it can be considered special standard material from a variety of perspectives. From a historical point of view, the main difference emerges around the time of formation: unlike the predominantly ancient, Roman law derived private institutions, the point of inception of commercial law was the Middle Ages, more specifically the North Italian cities of the 12<sup>th</sup> century. While rudimental forms of the social division of labour were already present in the Ancient Ages (refer to the Greek *naotikos tokos* or the Roman *societas ominium bonorum*), it is disputed whether it is possible to even refer to such ancient rules of law as commercial law. The specific nature of traders is the basis for the dogmatic distinction of commercial law, since *ius mercatorum* was born as *ius speciale*, so as law that relates to persons practicing commerce, the background material of which is made up of general private rules of law, *ius generale*.<sup>1</sup>

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<sup>1</sup> FÖLDI, András (ed.): Összehasonlító jogtörténet [Comparative Legal History]. Budapest, 2014, ELTE Eötvös Kiadó, pp. 533–539.

Due to the boom of international trade, the initial particularism shifted towards universalism, and while in the Middle Ages it manifested as part of consuetudinary collections, in the 18<sup>th</sup> century German legislation turned against the tide of previous regulations and committed itself to codification.<sup>2</sup> Following this trend, codices regulating commercial law sprung up continent-wide, such as the French Code de Commerce, the German ADHGB and the HGB.

### **3. Codification in Hungary**

The initial wave of Hungarian codification began with the 1840 legislation; however, at this time the legislator summarized singular segments of the field of law in separate laws instead of a unified code. Three decades later, however, thanks to the trends sweeping across the European continent, the first unified Hungarian Commercial Code (Act 37 of 1875, Kt.) was established. Many parts of this code simply contained the translated equivalents of German laws.<sup>3</sup> Eight sections of the aforementioned code are still applicable in contemporary Hungarian law. This code regulated the activities of general partnerships, limited partnerships, stock companies, and cooperatives (§13); thus it did not yet include silent companies, and the Ltd., which is one of the most defining elements of Hungarian commerce, was not included in any legislation at the time. These institutions only appeared 55 years later, in 1930 with the introduction of the Act 5 (about the limited liability company and the silent company, Kftt.), regulating these companies in 127 sections.

The silent company as an establishment reaches back to the Italian ship-loaning of the Middle Ages, the regulation of which first appeared in German commercial law, making it a separate company entity, thus separating it from the institution of limited partnership. We can see the essence of these regulations transferred to 20<sup>th</sup> century Hungarian legislation.

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<sup>2</sup> HORVÁTH, Attila: A magyar magánjog történetének alapjai [Bases of the history of the Hungarian Private Law]. Budapest, 2006, Gondolat Kiadó, p. 360.

<sup>3</sup> MEZEY, Barna (ed.): Magyar jogtörténet [Hungarian Legal History]. Budapest, 2007, Osiris Kiadó, p. 194.

#### 4. The role and essence of the silent company

The reasoning of the law develops that the introduction of this format fills the loophole of the Commercial Code of 1875, since the instrument of the silent company is “widely used and highly beneficial”.<sup>4</sup> According to the law, if a person takes part in a company with their financial deposit (silent participation) without appearing as a member towards the public, thus allowing the owner of the company to decide about its use freely, a silent company is established.<sup>5</sup> So practically the silent company itself is not such a clear format of a partnership as the others known by the Hungarian legal system – the deposit of the person joining the company through a “silent partner contract” is merged into the assets of the company and the owner decides about its actual use. However, the identity of the silent partner shall remain hidden, they never appear as a member of the company towards third parties – they do not acquire rights or undertake obligations;<sup>6</sup> they only share the profit and the loss of the company in proportion to their financial deposit – but the Kftt. also states that the loss they share can never be higher than the deposit itself, and that they cannot be ruled out of the profit. (§116).<sup>7</sup>

The reasoning of the law justifies the existence of the silent company through historical evidence: it is actually the precursor of the medieval limited partnership (*commenda*), dating back many centuries. Namely the limited partners of the partnership could not appear as a member towards the public, as the menial character of the commercial activity would have had a poor reflection on people of high social status. In order to prevent that, the limited partner shrouded in anonymity, even though the decisive part of the profit landed in his hands. The fact that the silent company later converted into the limited company can be explained through the changes going down in the social structure of the continent: as the frames of the feudal society relaxed and eventually disappeared, the limited partner no longer needed the protection of anonymity.

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<sup>4</sup> Justification of the Act 5 of 1930, B)/I.

<sup>5</sup> FEHÉRVÁRY, Jenő: Magyar kereskedelmi jog rendszere [System of the Hungarian Commercial law]. Budapest, 1941, Grill Károly Könyvkiadóvállalata, p. 124.

<sup>6</sup> HORVÁTH, *op. cit.*, p. 450.

<sup>7</sup> NIZSALOVSZKY, Endre: A magyar kereskedelmi jog jogszabályai [Laws of the Hungarian Commercial Law]. Budapest, 1933, Grill Károly Könyvkiadóvállalata, p. 99.

## 5. The loan agreement-dilemma

An intriguing dogmatic problem appears when comparing the reasoning of the Kt. and the Kftt. The Commercial Code of 1875 did not incorporate the format of the silent company because the author considered it a simple loan agreement where the silent partner provides the loan for the owner of the company. The Kftt. confronts this approach by stating that even though an association kept secret cannot be considered a commercial company, and qualifying it as a loan agreement actually does have a legal basis, leaving it unregulated cannot be justified solely based on this theory.<sup>8</sup> The need for regulation is also evidenced by the differences between an actual loan agreement and the construction of a silent company. When entering a loan agreement, the economic interests of the parties do not conform; furthermore, the loaner can implement his claim irrespective of the commercial success, while the silent partner can benefit financially only if the profit indeed emerges. Moreover, the essence of a loan agreement is to get back the same amount and same quality of matter provided; by contrast, the silent partner shares not only the profit, but also the loss of the company – by stating that, it's clear that the construction of the silent company cannot be fit into the instrument of a loan agreement.<sup>9</sup>

## 6. The elimination of silent companies

The fate of the silent company took a few bad turns in the upcoming decades – although the Kftt. itself was practically never repealed, the new Civil Code does not impose any of its provisions. The idea of eliminating the institution from the legal system first arose in 1988, when a decision in principle was taken that it will not be a part of the first company's law because the limited partnership itself provides an adequate framework for taking part in a company solely with a financial deposit, in a verifiable manner. The emphasis is on verifiable here, but as the law was issued at the time of the political transition, the control the government wished to establish was not about prohibiting the gain of profit through deposit and without actual work done; it was merely the sign of the ideology that anonymity in the economy was not protected or supported anymore. The concept of regulating the silent company as a form of the limited partnership arose as a conceptual option at the

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<sup>8</sup> Justification of the Act 5 of 1930, B)/I.

<sup>9</sup> HORVÁTH, *op. cit.*, p. 452.

beginning of the 2000s, but the notion was rejected. The need for the silent company did not disappear from the economic life, but the legislator no longer supports the concept where one party remains hidden, cloaking even the existence of his membership in the company.<sup>10</sup> Despite that, agreements aiming towards the establishment of a silent company still arise today, but according to the *numerus clausus* applying in the law of commercial companies, it's not possible to resurrect inoperative formats that are no longer part of our contemporary regulation, just as transposing the formats of foreign legal systems that do not conform to ours.<sup>11</sup>

## 7. Conclusion

In conclusion, the historical justification of the silent company perished at the dawn of the 21<sup>st</sup> century. Even though in the time of equal rights there is still a connection between social image and the source of income, but it lost its medieval, feudal-binding meaning a long time ago. But the lack of this company form in our contemporary legal system could rather be linked to the difficulties of enforcement and responsibility, which arise due to the anonymity; thus the legislator eliminated the silent company from the legal system, in order to maintain the fairness and transparency of the economy.

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<sup>10</sup> VEREBICS, János: A csendes társaság polgári jogi természetéhez [To the civil legal nature of the silent company]. <http://ptk2013.hu/szakcikkek/verebics-janos-a-csendes-tarsasag-polgari-jogi-termeszetehez-gj-20137-8-38-44-o/2484> [Access on 6th July 2016]

<sup>11</sup> KISFALUDI, András: Társasági jog [Company Law]. Budapest, 2007, CompLex Kiadó Jogi és Tartalomszolgáltató Kft., pp. 56–57.

# **Matija PLAŠĆ: Hungarian Commercial Code and its application in Croatia and Slavonia**

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## **1. Introduction**

Hungarian (–Croatian) Commercial Code was a law passed by Joint Diet in 1875 as Article XXXVII. This Code was a first full codification of commercial law for the Hungarian part of Austro-Hungarian Monarchy. It supposed to be a common act but because of differences between Hungarian (original) and Croatian (translated) text, application of this Code in real life resulted with a number of differences. In this paper I am going to explain historical and legal importance of this Commercial Code for Croatia and Slavonia, differences between Croatian and Hungarian edition of the same act and its application on the territory of Croatia and Slavonia.

## **2. Development of the commercial law in Croatia and Slavonia**

„Development of commercial law in Croatia and Slavonia was closely related to the development process in Hungary. That process was a consequence of the turbulent political and statehood opportunities that were present at the time“.<sup>1</sup> Commercial trading in Hungary, as well as in Croatia and Slavonia was firstly regulated by the common law but at the end of 18<sup>th</sup> century in Hungary started to appear first attempts of codification. These attempts were not very successful until the period of 1839-1844 when it was adopted significant number of laws.<sup>2</sup>

At that time commercial trade in Croatia and Slavonia was regulated from several sources. One of them was the Hungarian commercial law, specifically Art. 16, 18, 19, 20 and 22 from 1840 and Art. 6 and 7 from 1843/44, and the other were a number of laws imposed from Vienna during the centralistic periods of the false constitutionalism (1849–1851) and

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<sup>1</sup> STRAŽNICKY, Milorad: Predavanja iz Trgovačkog prava [Lectures on Commercial Law], Bibliografski zavod, Zagreb, 1926, p. 7.

<sup>2</sup> *Ibid.*, p. 7.

Bach's absolutism (1852–1859), like Bill of Exchange Statute (1850). Consequently, Croatia and Slavonia (as well as Hungary) did not have an integral trade law until the 1875.

### **3. Croatian-Hungarian Compromise**

Croatian-Hungarian Compromise is an act made by the Joint Parliament in 1868. This act regulated the state and legal relations between these two countries after they were interrupted in 1848 when the Croatian Parliament, following the establishment of self-government in Hungary, refused to accept the Hungarian parliament as a common legislative body and break up every legal relation with Hungary. Text of Compromise was adopted in both Parliaments (Hungarian and Croatian) but with some differences. Hungarian edition emphasized the unique Hungarian state in which Croatia was just a province with autonomy and political identity.<sup>3</sup> On the other side, Croatian edition insisted on equality between these two countries and defines Croatia as a „political nation“ which has autonomy with the features of statehood.

Compromise established sort of sub-dualistic structure in the Hungarian part of the Monarchy. Common institutions were the Joint Diet and the central government with competences that covered for example public finance, post office and telegraph, railways as well as commercial and maritime law. The remaining affairs – internal administration, judicial matters, education and religion – were left to the Croatian autonomy i.e. Croatian Diet, Ban and the Provincial Government. Also, according to the Compromise Croats were confirmed the right to their own language.

### **4. Hungarian (–Croatian) Commercial Code**

In accordance with the provisions of the Croatian-Hungarian Compromise, which stipulates that commercial law is one of the common affairs, in 1875 Joint Parliament passed the new Hungarian (–Croatian) Commercial Code as Art. XXXVII. Code entered into force on

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<sup>3</sup> ČEPULO, Dalibor – KREŠIĆ, Mirela: Hrvatsko-ugarska nagodba: institucije i stvarnost [The Croatian-Hungarian Compromise: institutions and reality] In: ŠOKČEVIĆ, Dinko (ed.), „Mint nemzet a nemzettel“...Tudományos a magyar-horvát kiegyezés 140. évfordulója emlékére / “Kao narod s narodom”...Konferencija u spomen 140. obljetnici Hrvatsko-ugarske nagodbe, Budimpešta: Croatica, Budapest/Budimpešta, 2011, pp. 141–155.

January 1st 1876 in Croatia and Slavonia and January 1st 1880 in the former Military Border. This act was valid on the territory of all countries of the Crown of St. Stephen. More specifically on Croatian side it was an area of Croatia and Slavonia, Međimurje, Baranya and Rijeka.<sup>4</sup>

Hungarian (–Croatian) Commercial Code was a very modern act modelled on the German Commercial Code from 1861 and the Austrian Commercial Code from 1862. It should be emphasized that this Code was much more extensive (although it does not regulate Maritime law), more unified, liberal and better than Austrian.<sup>5</sup>

## **5. Differences between Hungarian and Croatian edition of the Code**

### **5.1. Text differences**

The official text of the Code was adopted in Hungarian language, but as we have said earlier before, on the Croatian territory it was used Croatian language so the text of the Code had to be translated to Croatian language. Translation was entrusted to lay persons, ministerial officials, and therefore occurred to significant differences between texts on Hungarian and Croatian language. Although the mistakes were noticed quickly and text translated and published again, new translation was not good as well, so it was rate as non-judicial and quite superficial.<sup>6</sup> Since judges were bound to apply law how it was prescribed in Code, that led to significantly differences in resolving similar cases on Hungarian and Croatian territory.

#### **5.1.1. Mistakes related to legal terminology and procedures**

Some mistakes related to legal terminology and procedures could not be corrected by the methods of interpretation which resulted with a different resolving of the similar or same cases by the courts in Hungary and Croatia and Slavonia. First example is related to the process of initialling of the trade books as it was prescribed by Art. 25, which states that

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<sup>4</sup> BARBIĆ, Jakša: Pravo društava [Companies Law], Opći dio, Organizator, 2008, p. 73.

<sup>5</sup> STRAŽNICKY, *op. cit.*, p. 7

<sup>6</sup> STRAŽNICKY, Milorad: Trgovački zakon valjan za Hrvatsku i Slavoniju [Commercial Law valid for Croatia and Slavonia], Dionička tiskara, Zagreb, 1918, pp. 3–4.



„Every trader is obliged to keep bound books, every page of which must be provided with consecutive numbers, all of them being perforated and tied together by a string, and in these to show clearly his business transactions and the state of his fortune“.<sup>7</sup> Bit error has been made in the Art. 40 which elaborates the process of initialling and say that “The proxy signs by adding to the firm name his own, with a statement that it is by procuration“.<sup>8</sup> Translated text does not mention his own and that error significantly changes entire meaning of this article. Another important omission is in the Art. 503 which prescribes that the payment period for the debt is 8 days long instead of 15 days, how it was in Hungarian text.

In some cases where *ratio legis* demanded it, errors could be corrected by the methods of interpretation. For example, in art. 38 and 258 Hungarian word “elidegeníteni” was translated as sell while it should be translated as alienation. Then in Art. 258, 294, 398 we have mistranslation of the word “értékpapír” as a paper cash value and it is supposed to be loan stock.<sup>9</sup>

### **5.1.2. Mistakes related to other terminology**

„In terms of trade and the legal language compiler of Croatian text showed great disorientation and inconsistency“.<sup>10</sup> For example the term company (in Hungarian: “üzlet”) was several times equalized with terms like transaction (in Hungarian: “ügylet”), trade, store, management, commerce. That equalization is wrong because all these terms have different meaning although they are connected with the same legal and economic area.

Furthermore, *vis maior* was literally translated as higher power and interpreted once as irresistible and the second time as external. In Art. 19 translator used the term owner, and later in the same context in the art. 173 he has used term possessor. As we know, in context of civil law, owner is a „person recognized by the law as having the ultimate control over, and right to use, property as long as the law permits and no agreement or Covenant limits

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<sup>7</sup> <https://archive.org/stream/cu31924061105551#page/n77/mode/2up> [Access on 29th July 2016]

<sup>8</sup> <https://archive.org/stream/cu31924061105551#page/n79/mode/2up> [Access on 29th July 2016]

<sup>9</sup> STRAŽNICKY, 1918, *op. cit.*, p. 4.

<sup>10</sup> *Ibid.*, p. 5.

his or her rights”<sup>11</sup> and possessor is a person „who holds, detains or enjoys a thing, either by himself or his agent, which he claims as his own”.<sup>12</sup>

### 5.1.3. Ordinary omissions

Sometimes translator made some ordinary omissions like it was in Art. 509 when he wrongly quoted Art. 467 instead of 469. Then we have an example in Art. 493 where he used term steam machine instead of steam boiler and in Art. 187 where Hungarian word “és” was translated as or instead of and. This mistake changes the entire context of the article from cumulative to the alternative. Probably the weirdest mistake has been made in the Art. 495 when the word “jármű” was translated as opportunity instead of vehicle.

## 5.2. Differences in application of Hungarian and Croatian edition of the Code

Language differences were not the main reason for differentiation between Croatian and Hungarian edition of Commercial Code and its application. As we know judges apply law sources hierarchically. Firstly they apply legislative act, but if no applicable regulation can be found in the code, they apply commercial customs. In absence of commercial customs they apply civil law as subsidiary law. In our case subsidiary law in Hungary and Croatia and Slavonia was different and application of these codes depended of effective civil law. In Hungary after 1861 was reintroduced *Tripartite*, while Croatia kept *Allgemeine Bürgerliche Gesetzbuch* (ABGB) introduced during the period of Bach absolutism.

Not knowing Hungarian language was sometimes an obstacle in using solutions of Hungarian Legal Science. Judgements of Hungarian courts, especially Supreme Court, were always interesting because they showed the differences in application of the same Code in two different legal areas. Also it is interesting to mention the fact that judgements of Vienna Supreme Court were more in focus of interest of Croatian judges and lawyers, especially considering provisions which were the same in Austrian and Hungarian (–Croatian) Trade Code.

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<sup>11</sup> <http://legal-dictionary.thefreedictionary.com/owner> [Access on 29th July 2016]

<sup>12</sup> <http://legal-dictionary.thefreedictionary.com/possessor> [Access on 29th July 2016]

Speaking of courts, we have to say that there were no commercial courts on the territory of Croatia and Slavonia during the Monarchy. The need for specialized adjudication in commercial matters definitely occurred with the introduction of the Commercial Code in 1875 but there were many reasons or excuses why commercial courts shouldn't be established. Some of them were lack of experience, financial reasons and the fact that commercial business was not as strong as it was in then advanced countries. Because of that resolving of trade and a bill disputes has been entrusted to the commercial division of county courts whom one member was not a judge but a member of merchant class. Also we have to mention that those courts had the jurisdiction to conduct trade registers.<sup>13</sup>

## 6. Conclusion

After several attempts of codification during the late 18<sup>th</sup> and the beginning of the 19<sup>th</sup> century, commercial trading was finally codified in the Hungarian (–Croatian) Commercial Code. Although Code shows strong similarity with the German Commercial Code (1861), it definitely has in some questions an independent conception.

Commercial Code was effective over the whole territory of the Hungarian part of the Monarchy. But speaking of its application on the territory of Croatia and Slavonia we can notice some differences comparing to the application in Hungary. One of the reasons derive from the imperfect translation of Hungarian text to Croatian language. But more important reason is a result of different private law systems in Hungary and in Croatia and Slavonia. While private law based on *Triparite* was used as subsidiary law in Hungary, the Croatian private law was based on ABGB whose regulations were used. Because of that, some jurists spoke of two (different) commercial codes, Hungarian and Croatian.

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<sup>13</sup> ČEPULO, Dalibor: Izgradnja modernog hrvatskog sudstva 1848-1918. [Building of the modern Croatian Judiciary], Zbornik Pravnog fakulteta u Zagrebu, 56, 2006, 2-3, p. 359.

# **Dr. Tímea MIREISZ: The development and codification of the Hungarian press law between 1848–1945**

**Eötvös Loránd University, Faculty of Law**

As a result of changing social and political relations in the 19<sup>th</sup> century, the political space and at the same time the demand for information role and liability of the press had extremely grown. The need for preventing any possible abuse has also increased with the need for credible and precise information, which urged to state regulation. The development of the press law supposed to begin at the age of revolutions across Europe, therefore the freedom of the Hungarian press and the laying the press law's foundation proceeded in the Hungarian Revolution of 1848. The development of the press law had begun with exceptional quick, demanding to abolish the obstacles of press law by establishing the freedom of press and by declaring an end of all forms of the censorship.

## **1. April Laws and the first Act on Press in 1848**

The mass that was held by the 'Revolutionary Youngs' has occupied the printing presses of Landerer and Heckenast on 15th March 1848 and printed the first publications without censorship, namely the 12 points (the twelve demands of theirs) and the National Song. The official termination of the censorship had to be acknowledged by the Royal Council of Governors – so the freedom of the press had taken effect without any legislative action, as a fact. The Parliament in Bratislava set to began to codify the rules of press law in April. The first draft act had led to substantial debate because it prescribed strict punishment for violation of the press law nevertheless the amount of the bail was also very high (HUF 20.000) in order to inhibit the adversary's possibilities for leverage or promoting their own interests. The draft act that represented a backward step compared to the real expectations with its retrograde, only by the Royal Council of Governors acceptable rules, was burnt in public. After the revision and reargue of the draft it was accepted and our first Press Act had born with the Act 18 of 1848. The preamble of the Act declared the dissolution of the (pre and after) censorship in addition to refer to the provisional state of the act, that was ment by the legislator transitional intending to make a new Act after the relations would had been

consolidated.<sup>1</sup> The most significant innovation of the Act was to accept the freedom of the 'printed words' as a part of the freedom of expression that was established in Section 1 as follows: „Everybody shall have the right to express its thoughts freely and to freely disseminate them.”

Besides, the Act defined not only the declaration of rights but also the substantial and procedural obligations. So there was a reporting obligation to the authorities in case of founding a press, but a 'press founding ball only needed to pay for the political press and/or the newspaper or periodicals that were published at least twice a month. As the press founding bailment was reduced by half (for daily newspapers HUF 10.000,- otherwise HUF 5.000,-) and provided guarantee because of the fines imposed for violence of press, it became one of the most liberal Acts on Press in Europe. However, the amount of the bailment was still significant in practice the majority of the papers did not pay the guarantee and the government required it only to expert pressure for the opposition.<sup>2</sup>

The Act was divided into four extensive chapters, which ruled different aspects of the press' operating (also the questions of different fields of press law). The first chapter provided the violence against the press and the applicable penalties. It sentenced as a major offence and inflicted a penalty in case of provocation to commit crime or an offence, publishing a provocation to intending to overturn the constitutional order of Hungary or the dynasty (6 years prison and HUF 3.000 penalty fine). It had also criminalised the mockery of religion or moral, the incendiarism, the libel of other state or private persons. Nevertheless the act included the potential liability-principle, too: „For violence of press shall be punished the author, failing of this the publisher, failing of these the press or the owner of the press” (Section 13). The act had also an other interesting provision regarding personal rights, namely the above mentioned provision, according to which „The files and public sessions of the diet, municipalities, courts of justice and other corporations created by the law shall be reported truthfully, without bringing an action based on the reported content.” So a whole procedure and the sentence may have been published if the content was truthfully.

The second chapter provided rules of procedure, as the way of negotiation the violence of press in a public proceeding. A press jury is also made, that was subordinate

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<sup>1</sup> SZÉKELY, László: Magyar sajtó-és médiajog [Hungarian Press and Media Law], Dialóg Campus Budapest, Pécs, 2007, p. 24.

<sup>2</sup> *Ibid.*, p. 25.

under the Palatine's Court. The act also disposed the powers of the investigating judge and the judge, the personal conditions of the jury members, the way of the opening as well as the progress of the procedure, and the term of limitation. The third chapter provided the rules for periodicals so it regulated also the above mentioned notification obligation towards municipalities, bailment as well as the giving of exemplars. Finally the fourth chapter of the act provided again a separate field of law, it included rules for presses and booksellers. The rules of the presses were governed by the rules set out for traders (Act 16 of 1840), and the establishment of a press was bound to pay a high amount of bail in cash. The implementing rules to the act were prepared by Ferenc Deák but it was unfortunately never taken effect.

## 2. The dual monarchy

After the defeat of the Hungarian Revolution and the restoration of the Habsburg power, the Hungarian state has lost its sovereignty and existed *de facto* only as a part of the Habsburg-empire between 1849–1867.<sup>3</sup> During this period the Hungarian legislation, the April Laws and reform laws had not applied, instead of them the country was governed with Austrian imperial decrees (in Hungarian *pátens*) and the Austrian legal system came into force. In this frame had no place for the Acts of 1848 neither for the Act on Press.

After the Austrian-Hungarian Compromise of 1867 the Andrassy-government's first action was to restore the legislation and to dispose the Act on Press to enter into force as soon as possible. However the Press Act was meant to be provisional, no other new act was adopted for sixty years.<sup>4</sup>

At the same time the enforcement of the Act 18 of 1848 did not ment that the implementing rules made by Deák or the setting up of a jury would have taken effect without any change as well. Many proposals have already arised in that moment to fill the legal gaps in the Press Act (e.g. the rules for liability, immunity and honour in private sector),<sup>5</sup> but instead of the completed comprehensive act got entered into force, the legislator

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<sup>3</sup> MEZEY, Barna (ed.): Magyar jogtörténet [Hungarian Legal History], Osiris Kiadó, Budapest, 2007, p. 253.

<sup>4</sup> SZÉKELY, *op. cit.*, p. 25.

<sup>5</sup> KENEDI, Géza: A sajtó különjoga [Special law of the press], Jogtudományi Közlöny, Vol. 29 No. 52, 1894, p. 414.

wanted to fill the bigger gaps with amendments, that has been waiting for itself till 1914.<sup>6</sup> However the Press Act's reform was cancelled in the first decades of dual monarchy, the deficit of the press' regulation was brought on more and more frequently because of the dynamic evolution of the press, therefore the substantial modification of the Press Act became a matter of urgency. Nevertheless, many acts in connection with the press law were born (e.g. on the limit advertisement or on the narrowed powers of jury) in the last decades of the century, and the first Criminal Code also significantly modified the violence of press in the Press Act of 1848 that tightened just a bit the sentence prescribed, although the freedom of press' form remain wide.

### **3. Way of codification to the second Act on Press**

The setting up for the preparation of the second Press Act was implemented more than a half century after the first Press Act. The excellence of politicians, jurists, the committee of the criminal law association, the civil society organisations (e.g. organisation for press workers) all got work together to reform the whole formula of the act. The draft act that transformed the press act got ready in June 1913 and was revised by Jenő Balogh subsequent Minister of Justice. The draft act submitted to the parliament a year before the war generated a heated debate in which the wide spectrum of the thinking about the press reform has shown.<sup>7</sup>

The Act 14 of 1914 regulated in five chapter the rules of thoughts report and dissemination in press. The first part, the preamble of the Act declared the substantial terminology essentially identical to the previous Act, such as the freedom of establishment press, the freedom of press and the freedom of speech by press. The freedom of establishment press products were restricted only by notification towards municipalities; however the street dissemination needed to have an official permit, thereto. The permission of the Minister of Interior Affairs was necessary for the domestic dissemination of national press products, and the first man municipality's permission was needed for the

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<sup>6</sup> RÉVÉSZ, T. Mihály: A magyar sajtószabályozás kezdetei és hőskora [Beginnings and heroic era of the Hungarian press regulation], In: MÁTHÉ, Gábor – RÉVÉSZ, T. Mihály – GOSZTONYI, Gergely (eds.): Jogtörténeti Parerga, Ünnepi Tanulmányok Mezey Barna 60. születésnapja tiszteletére [Legal Historian Parerga, Festive essays in honor of the 60<sup>th</sup> birthday of Barna Mezey], Budapest, ELTE Eötvös Kiadó, 2013, p. 307.

<sup>7</sup> *Ibid.*, p. 312.

dissemination of local press products.<sup>8</sup> Only the publishers of periodical with political content were obliged to pay a bail. The second chapter of the act contained long the rules of press patrol and the necessary prescriptions for exercise, or its effective framework compared to preamble. Among the rules of the act it is worth noting the rule regard to limitation of dissemination, according to which: „The street dissemination of press product shall be not permitted if it abuses or endangered public order or public moral, especially which is able to incite hatred against any nationality, class or religion or discuss internal cases of family life unless it is required by common interest“.<sup>9</sup> The Act of 1914 on Press with its casuistic press patrol and liability rules narrowed at first sight the possibility to make way for freedom of press. A closer look into the act shows that many rules of the act had already been in practice for decades, but to convert them in law, these rules which prevent press law abuse have increased to law level.<sup>10</sup> An important innovation of the act was the reformulating of graduated responsibility,<sup>11</sup> the law for press-correction in Chapter 2 Section 4, and a range of legal provisions, that served the defence of the authors of newspapers in Chapter 3 and 4.<sup>12</sup>

Nevertheless, the Press Act, as so many opportunities regarding the Hungarian codification's progress, was in force for a short period and has fallen victim to the events of history. The Act 63 of 1912 on the exceptional provisions in the case of war has brought back the conceptual possibility to use censorship at the outbreak of World War I in order to inform about the military events correctly and to avoid panic<sup>13</sup> in practice by banning press products by the government.<sup>14</sup> After the Aster Revolution entered into force the short-lived Act 2 of 1918. It consisted only two sections, in which it abolished all forms of bailment and censorship, abrogated the freedom of press' limitation by an exceptional power and the authorization procedure regarding street dissemination.<sup>15</sup>

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<sup>8</sup> *Ibid.*, p. 312. and for the defamation in private law see: Act 34 of 1897, Section 16

<sup>9</sup> Act 14 on 1914, Section 13

<sup>10</sup> RÉVÉSZ, *op. cit.*, p. 313.

<sup>11</sup> See detailed about potential liability-principle in: POPPER, Manó: A fokozatos felelősség [Gradual liability], *Ügyvédek lapja*, 1914, Vol. 31. No. 24.

<sup>12</sup> RÉVÉSZ, *op. cit.*, p. 312.

<sup>13</sup> ANGYAL, Pál: Háború és sajtószabadság [War and freedom of press], *Bűnügyi Szemle*, Vol. 3., No. 2, 1914, p. 87.

<sup>14</sup> KLEIN, Tamás: Adalékok a Horthy-korszak sajtórendészeti szabályozásához II., *Sajtószabadság és/vagy nemzetérdek – egy „öncélú nemzeti állam” sajtószabályozása (1931–1936)* [Dadas to the regulation of the press police in the Horthy erall., Freedom of press and / or national interest – press regulation of „an autotelic national state” (1931–1936)] , p. 46., <http://media-tudomany.hu/laparchivum.php?pdf=34> [Access on 9th July 2017]

<sup>15</sup> SZÉKELY, *op. cit.*, p. 26.



#### 4. After World War I

The legislation of the Hungarian Republic of Councils had begun to validate the dictatorship of the proletariat in its constitution in theory and the communist regime in practice, too by eliminating the civil press.<sup>16</sup> After the failure of the Hungarian Republic of Councils entered into force the Act of 1914 on Press together with the Act 63 of 1912 on the exceptional provisions again, and the pre-censorship were introduced in order to consolidate its power, too. However, the decrees issued by the exceptional authorization still remained and they have enabled to forbid the appearance and dissemination of domestic periodicals and they have enabled to control the press products from abroad again (Decr. Nr. 5484/1914., 5720/1914. ME).<sup>17</sup> Many decrees with regard to press law have been born after the World War I, so Decr. Nr. 4680/1919 ME has forbidden all forms of possession or issue of press products that „endangers public order and public security” to avoid primarily the re-strengthening of communist or Bolshevik rule. Decr. Nr. 5499/1919 ME introduced censorship again. It was an interesting Decree of the Government after the Treaty of Trianon that reregulated the procurement and redistribution of rotary newsprint and printing-paper.<sup>18</sup> The Decree on Paper contingent was needed, because the supply of paper had become limited – considering the fact that every paper factory got abroad as a result of the treaty – so in fact using a real problem, a redistribution system was introduced (limiting also the dissemination) that limited also the composition of publicity and the circle of freely appearing press.<sup>19</sup>

The Decrees of the next years were described by the increase of central power that has already been enabled by an amendment to practice press patrol for an indefinite period by regulation. Instead of way of amendments appeared general draft acts in the era of Government Bethlen which led to the first draft of press reform on 21 June, 1921. The draft amended the Act of 1914 on Press with extraordinary/singular press patrol procedure against periodicals with intent on conspiracy against the state and aimed to reverse the potential liability-principle to joint liability, in which every official organ would have been punished by prohibition in case of committing a crime by press. In the twentieth years came up with the idea of setting up a press chamber for many reasons but essentially to

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<sup>16</sup> KLEIN, *op. cit.*, p. 185.

<sup>17</sup> SZÉKELY, *op. cit.*, p. 26.

<sup>18</sup> KLEIN, *op. cit.*, p. 187.

<sup>19</sup> *Ibid.*, p. 187.

protect the interest of journalists. The second draft in 1923 included besides the extension of the opportunities for the creation of a government decree, the increased insurance for public order, and many rules apart from press law. The drafts also intended to be strict in the next two years, but the press law reform in 1924 and in 1925 never become an act.

The legislation of the next years has narrowed qualitatively and quantitatively the parts of freedom of press, while the Act 18 of 1938 has ordered to set up „press patrol” on behalf of defend the state order by preparing for the World War II. The act obligated to get the permission of the Minister by founding a periodical again and also included a censorship for the irregularly appearing press products, according to which the appearance and disseminate depended on giving a permission for it after the examination of state prosecutor.

The appearing Jew Laws also took effect on position of the press in interwar period. The Act 15 of 1938 ruled setting up of press chambers and maximized at 20 percentage the number of Jew journalists in the press chamber and ordered to employ Jews (with few exceptions) only in a way that their number shall not exceed 20 % of the number all co-workers under employment relationship. Furthermore the annual amount of their salaries on any legal title may not exceeded 20 % of the annual amount of the salaries on any legal title of all co-workers under the same employment relationship (§5). This percentage has increased one year later only at 6 %. Jews may not been members of the press chamber at all which resulted a fully prohibition to exercise their professional activity.<sup>20</sup>

The status of the press did not returned to that free and independent state after the World War II that was given by the legislator in its first impulse and that restoration had no chance besides a Bolshevik press represented the interests’ of the party till the end of communism in 1989, when this kind of guided and controlled press was terminated.

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<sup>20</sup> SZÉKELY, *op. cit.*, p. 26.

# **Rita ANGELI: The development of Hungarian law of succession, especially the legal status of the surviving spouse**

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## **1. The background**

The period of 1848–1945 is a determining time as regard to the development of Hungarian law, thanks to the fact, that the civil right institutions, instead of the out-dated feudal system were consolidated this time. As far as the law of succession, especially the succession of the spouse is concerned we can experience remnants of the feudalism, so that it's worth to follow up the permanent abandonment of them.

The change of the private law, including the law of succession was inspired by the recognition, which highlighted the deficiency of the feudal private law, furthermore the obsolescence of the system. The feudal property impeded the economic development. The abrogation of the hindering institutions, such as the copyhold property, *aviticitas* and the system of donation was targeted by the progressive experts of the era, lining up prominent politicians and thinkers, like István Széchenyi, Ferenc Kölcsey and József Eötvös. This period, interwoven with ideology, between 1830 and 1848 is called „the era of reforms”.

Numerous objectives are traceable as regard to the ownership. It became a significant endeavour to focus on the individual property instead of familial. Moreover we can mention the merchantable land as a crucial purpose, which necessarily entailed the abandonment of the out-dated institutions.

All of these brought about several changes in the law of succession. The demand of individual property hand in hand with the abolishment of familial property deleted the difference between hereditary and acquired possessions, as far as the intestate succession is concerned. Due to this claim, a new principle came to light, according to which the order of succession is determined by the relationship of the descendant and the inheritor, neglecting the differences deriving from the origin of the property. In addition, the free testament as an integral part of the freedom of will was declared. The realization of the

principles above would have provided a prominent place for the surviving spouse in most of the cases.<sup>1</sup>

## 2. The legislation of 1848

The era of reforms culminated in the legislation of 1848. The principles were carried into effect this time. By the progress, the construction of civil law, based on equality before law and the freedom of property was emphasised as a main aspect. As a profound effect of the abolishment of *aviticitas*, the land became alienable and merchantable, bringing about the far-reaching, economic consequence and the creditability (XV. Article of 1848). The liquidation of the system of donation resulted in the fact that none of the rights reverted to the ruler. The abolishment of the copyhold property put an end to the institution of the serfdom (IX. Article of 1848). Theoretically, the destruction of these 3 supporting-pillars totally ruined the feudal private law. However, in several fields, taking for instance the law of succession, the settlement was provided to be Janus-faced, whilst the institutions of feudalism are traceable in an essential proportion.<sup>2</sup>

As the landed property far outweighed the significance of industry and capitalist company enterprise, the protection of the owners became inevitable. Thus, the surviving spouse – as regard to the family property – was treated as a stranger. We also have to take into consideration the political aspects after the economic ones. The Austrian Codification, initiated by the oppressive regime made the reforms detested. The feudal law, opposite to the Austrian system incarnated the national values. This duality made it significant to find solutions to the issues. The problem of the hour in this branch of law was the following:

Should be any difference made between the origin of the property regarding to the succession? Examining the question from the aspect of the surviving spouse and answering yes, it can be claimed, that the spouse does not participate in the hereditary property, whilst in the case of an answer in the negative, the origin of property does not influence the succession.

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<sup>1</sup> WEISS, Emília: A túlélő házastárs öröklési jogi jogállása – történeti kialakulásában és fejlődési tendenciáiban [The status of the surviving spouses in the aspect of its historical development and development trend], Akadémiai Kiadó, Budapest, 1984, p. 96.

<sup>2</sup> ENGEL, Kornél: Az ági öröklés intézménye [The institute of branch inheritance], Budapest, Engel S. Zsigmond kő- és könyvnyomdai műintézete, 1918, p. 13.

### 3. Temporary Juridical Rules (TJR)

Several issues, including the question above, were put in order in 1861 in the so-called "Temporary Juridical Rules" (TJR). The dualism of the period set the group for the feudal system against the group for the reforms. As for the law of succession, the conservatives emphasised the fact that after providing the free disposition, the economic growth has become possible; it could not be hindered by the *aviticitas*. Moreover, it was claimed that this was the most appropriate way to conserve the identity of Hungarian nation and families. The opponents of this tradition – lead by Ferenc Deák – highlighted that the legislation of 1848 had played a crucial role in the life of the nation, furthermore it was frequently stated that the reforms had to be considered without the influence of emotions.<sup>3</sup>

In the discussion the conservative opinions overweighed the arguments of the reformers, resulting in the fact that the *aviticitas* was re-established, however concerning the hereditary property, the freedom of the testaments had become a demand. Therefore, the property reverted to the branch of originator, serving the principle, according to which the property remains in the family of the originator. This system is the so-called branch inheritance. Thus, the surviving spouse was excluded by any of the distant relatives. Furthermore, the TJR showed a regress – compared to the feudal law – since compensating the free disposition *inter vivos* instead of the ancestral property, the ancestral value was introduced, consequently having a negative effect on the inheritance of the spouse. Whilst he or she was entitled to the part of the acquired property, remaining after the discount of the ancestral value.

The TJR also came back to the ancient law in other issues of the succession. Although, the dower had shown development – as the restriction of the right could be asked by only the lineal descendants – we can realise several obsolete provisions. It was the wife's legal due, as an alimony, furthermore it became invalid after remarriage. The conjugal inheritance remained the only form of the mutual succession. It was extended to the acquired property, in lack of lineal inheritors, moreover – considering the above – the ancestral value had to be discounted.

It was the widow's succession, which mostly came back to the feudal roots. Not just the distinction, on the basis of genders, the differentiation based on feudal layers can be

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<sup>3</sup> WEISS, *op. cit.*, p. 100.

discovered, since these rules provided several goods – for instance: the robes of state, the vehicle, the wedding ring, one child’s share of the acquired chattels and the pledged landed property – of the defunct husband for the noble widower. To sum up the main provisions, we can state, that alongside with conserving feudal institutions, they insured an advantageous position for the surviving spouse in many cases.

#### **4. The period of 1861–1880**

In the following period, the law of succession was developed by trial practice. Although, we cannot forget about theoretic work and the productive discussions, concerning the issue. We can separate two periods within the era. The duration of the first period could be set from 1861 to 1880, whilst the second from the middle of 1890s till the end of the era. The first period can be described by the battle of two groups, just like earlier. The quarrel was about the branch inheritance, namely about the question: should be the property by origin distinguished? Considering the topic we have to examine the effects on the surviving spouse in both cases.

The maintenance of the branch inheritance results in the fact, that the legacy is determined by the origin of property, namely the proportion of the hereditary and acquired goods. In the case of abolishing the institution, it was crucial whether the spouse a close or a distant relative inherit with.<sup>4</sup>

The former standpoints were lighted from other angles. The legal continuity was emphasised as an essential aspect by the conservatives moreover, the demand according to which goods should have remained in the originator’s family was claimed as a basic justice.<sup>5</sup> Béni Grosschmid came up with a unique viewpoint. He described familial feeling as a mixture of love and obligation, stating that the branch inheritance divides them in the most appropriate way.<sup>6</sup> In this system, the succession of the acquired goods could be suited for love, whilst ancestral ones for obligation. The supporters of branch inheritance estimated that the position of wife undoubtedly met the needs, since the usufruct was provided in all

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<sup>4</sup> WEISS, *op. cit.*, p. 103.

<sup>5</sup> ENGEL, *op. cit.*, p. 37.

<sup>6</sup> GROSSCHMID, Béni: *Magánjogi tanulmányok, tervezetek és kisebb dolgozatok, főként az öröklési, kereskedelmi és családi jog köréből* [Studies, drafts and smaller researches in the field of Private Law, mainly in the law of successioninheritance, commercial law and family law], Budapest, Politzer, 1901, p. 36.

of the cases as the care of the defunct husband. In spite of insisting on the traditions, progressive proposals also can be discovered, take for instance the restriction of the branch succession, which would have meant that the last branch inheritors would have been the grandparents and their descendants.<sup>7</sup>

On the other side of the coin, the anachronism of the institution was frequently brought into the limelight by the opponents of branch inheritance. They contradicted that the familial feeling would have been incarnated by the institution. Dell'Adami defined this kind of succession "unfamiliar": he thought that the introduction of familial feeling to the law could be possible on the basis of the nearness of the defunct. The extreme position of wife was also emphasised, in addition, we have to mention the fact that the succession of the certain family members was dependent from the origin of property. They realised the economic drawback as regard to the widow's usufruct, namely the division of property right and the right of usufruct.

Both of the groups rejected the widow's succession thanks to the fact, it had become obsolete. The included goods was not considered to have a great significance anymore, the maintenance of the feudal differences had become causeless. In addition, it was a main aspect to limit the right by the death, not by the remarriage of wife. The discussion of the issue, concerning the compulsory share of the surviving spouse can be mentioned as an over-disputed topic in the Third Assembly of Lawyers, held in 1872. According to some of the opinions, the spouse could not have been at a disadvantage, compared to the parents, thus the right should have been extended to her/him. Not only did the conservative, even the progressive lawyers' stand up against the suggestion – underlining – the denying of the right could have brought about scandals, which is opposite to the nature of family life.

In 1873 the Ministry of Justice entrusted István Teleszky with carrying out the proposal regarded to the Law of Succession of the General Code of Civil Law. Whilst executing the work, he largely relied on the arguments heard on the Second Assembly of Lawyers, held in 1871. As for the inheritance of the spouse the following principles were underlined: The further relative the spouse inherit with, the bigger share (s)he receives; spouses inherit equally and mutually from each other; in lack of descendants the legacy has to be distributed; the spouse is entitled to compulsory share. However, the proposal did not

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<sup>7</sup> ENGEL, *op. cit.*, p. 48.

take a stand on abolishment of usufruct, being the descendants alive, the right had been pronounced mutual and was limited by the spouse's death.

The proposal can be described, as a high standard experiment of codification even among the European conditions. Owing to the high level, the failure of it is regrettable. It could be mainly attributed to numerous counter-proposals of Béni Grosschmind. With refusing the suggestion, an efficient period came to an end.<sup>8</sup>

## **5. The period from the middle of 1890 till 1945**

After the silence of one and a half decade, from the middle of the 1890s the law of succession became again an integral part of the discussions, the experiments of codification can be firmly connected to the name of Gusztáv Szászy-Schwarz. In the field of the spouse's succession we have to think over the following questions: the issue of maintenance of the branch inheritance; the usufruct of the spouse; the right of succession entitled to the parents being the spouse alive; the compulsory share of the spouse.

As for the branch inheritance, Szászy-Schwarz stated that however, the former legal ground of the institution had come to an end; it did not mean that there is no more ground of it.<sup>9</sup> In addition, he underlined that during the succession, two justices (the justice of the originator and the defunct) clashed; furthermore, the absolution of this contradiction was only possible by the system of branch inheritance. The opponents highlighted, alongside with the earlier viewpoints that it was difficult to verify the origin of the property, thus, as a consequence, protracted legal actions could be experienced.

During the twenties and thirties the restriction of the branch inheritance had become an intention, aiming the deprivation of the institute from its harmful inflictions, such as from the unfavourable possibility, that a distant relative may rob the spouse of its heritage. There was a debate in more issues of the usufruct of the spouse, primary regarding to the reservation of the institute. However, the already announced economic disadvantages have been emphasized also here, the arguments underlining the advantages took the large majority of the standpoints. The perspectives highlighting the advantages are

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<sup>8</sup> WEISS, *op. cit.*, pp. 102–115.

<sup>9</sup> SZÁSZY-SCHWARZ Gusztáv: Az ági öröklés intézménye [The issue of branch inheritance], Pesti Lloyd, Budapest, 1898, p. 12.



as follows: the appropriate allowance of the wife and the reservation of the consistency for the heirs of blood. Due to the fact, that Hungary was qualified as an agricultural country, the economic disadvantages had not appeared considerably.

In this field, the usufruct in fix portion as a new settlement had appeared, which would have restricted the usufruct to the half of the heritage. The draft was rejected by the vast majority, due to the rigidity of this institute.

The problem of the establishment of the reciprocal treatment was also examined. The first draft of the Civil Code in 1900 had rejected the application of that, emphasising the point of view, that the application of reciprocal treatment would undermine the masculinity, since the existence of the husband cannot be grounded on the property of his wife.

The position of the succession of parents had been ranging between extremisms. In case of branch's property, the parent only inherited those assets, which had been reverted from its own branch to the defunct. Its position was further undermined, if the wife was the surviving party, since in this case the property was subject to usufruct. In case of acquired property the parent was excluded from the succession. Due to the dominance of the increased proportion of the acquired assets in the heritage, the parent's situation of succession had become worse. It must be underlined, that in the case of a surviving wife, in the duration of life of the parent, the branch's property was generally subject to usufruct, meaning, that the parent had not had any benefit from the property. However, the first draft of the civil code had included the point of view, that the previous system should be preserved, since the fairest situation is as follows: if the parent may exclude the spouse from the branch's property, the spouse may exclude the parent from the acquired property.

Finally, as to the compulsory share of the spouse, the first draft of the civil code has supported the establishment of this institute. Later it became contested, only the right of usufruct of the widower was acknowledged by the law.<sup>10</sup>

## **6. Conclusion**

According to the above, it can be set out, that the law of succession has always been a special part of the legal system, since here — in addition to the economic interests — the

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<sup>10</sup> WEISS, *op. cit.*, pp. 116–133.

emotions and the family links took an integral part of the rational legal system. If we examine the topic of the spousal succession in the world history, with a slight exaggeration a love story seems to be appeared behind the rules of customary law and the paragraphs since, during the decades the surviving spouse has become from an heir in a neglected position of succession to one of the heirs in the most favourable position. It is proven thereby, that in this one-decade-long period of the Hungarian private law the surviving spouse has had increasingly more reputation in theory.