

***LEGE ET FIDE***

***Ünnepi tanulmányok  
Szabó Imre 65. születésnapjára***

Szerkesztette:  
*Gellén Klára – Görög Márta*

Iurisperitus Kiadó  
Szeged, 2016

A Pólay Elemér Alapítvány Könyvtára

Sorozatszerkesztő:

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Felelős kiadó:

Balogh Elemér dékán, a Pólay Elemér Alapítvány kuratóriumának elnöke

Készült a Generál Nyomda Kft.-ben

Felelős vezető: Hunya Ágnes

ISSN 1786-352X

ISBN 978-615-5411-44-1

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# THE PROCEDURE AND OPERATION OF THE CARTEL COURT

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The rules and cases of the so-called legal actions of general interest in connection to the cartels were introduced by the 20<sup>th</sup> Act of 1931. According to the technical definition, the procedural law, as a specified aspect of Cartel Act, regulated the formal law so that the common good and the economy could benefit from it.<sup>1</sup> The methodology of the cartel supervision offices belonged to this area of law, and it was practiced by the government, the specific ministries, the Royal Hungarian Legal Board, the Cartel Committee and the Price Analysing Committee from the executive branch, and the regular, elected and Cartel Court from the judicial branch.<sup>2</sup> In this essay, I basically would like to describe the dispositions in connection to the procedural law of the Cartel Court, and with that, to analyse the existing legal precedents.

The Cartel Court has been introduced after the law came into effect, and it was reasoned by the statement of the Secretary of Agriculture as follows. The “measures which must be taken against a cartel should be objected to the consideration of a judge most of the times, so [...] the judicature of the Cartel Act could best be assured by a separate cartel court”.<sup>3</sup>

Should an agreement or a statement fall under Paragraph No. 1 of the aforementioned Act, then, according to the statement of the assigned secretary, the Royal Hungarian Legal Board could file a case at the Cartel Court.<sup>4</sup> The problem of the definition of cartels by the courts arose in legal proceedings in connection to the agreements. To be more exact, the problem was that what acts can be considered to be under the effects of Cartel Act.<sup>5</sup>

The aforementioned understanding of the act became interpretable by practice. The Cartel Court examined an agreement that considered the acquisition, resale, sale price and conditions of firewood, coal, charcoal and forge coal, and also contained rules on its accounts and mutual buyer protection. The Cartel Court interpreted Paragraph No. 1 of the Cartel Act, and determined that the intention of the respondent was not to regulate the

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<sup>1</sup> The research was supported by GVH. Ferenc HARASZTOSI KIRÁLY: *A kartel*. Grill Károly Könyvkiadóvállalata, Budapest, 1936. 510. See the economic background of the cartel regulation: György KOVÁCS: A kartellkérdés- és szabályozás gazdaságelméleti és gazdaságpolitikai háttere a két világháború közötti magyar közgondolkodásban. *Versenytükör*, 2016. Vol. 12. Sepc. No. 14-38.

<sup>2</sup> A kartelltörvény és a Kartelbizottság teljesíteni fogják hivatásukat. *Kartel Szemle*, Vol. 1, No. 1, 1. Összhangot kell teremteni a Kartelbizottság és az Árelemző Bizottság munkája között. *Kartel Szemle*, Vol. 1, No. 1., 1-2.

<sup>3</sup> Magyar Nemzeti Levéltár (Hungarian National Archive) (hereafter MNL) K-184. 1933. 41. 30061/35309. Sándor, KELEMEN: A megalkotandó kartelbíróóság szerepéről. *Kereskedelmi Jog*, 1931. Vol. 28, No. 2, 32-34., A Kurián ma megalakult a kartelbíróóság. *Budapesti Hírlap*, 6 Marc 1932. 17., István STIPTA: A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX. tc. hazai előzményei. *Versenytükör*, 2016. Vol. 12. Sepc. No. 61-63.

<sup>4</sup> MNL. K-184. 1933. 41. 31960/92488., MNL. K-184. 1933. 41. 30061/35309.

<sup>5</sup> MNL. K-184. 1937. 41. 86293/86293. See the regulation of cartel agreements: Mária HOMOKI-NAGY: Megjegyzések a kartellmagánjog történetéhez. *Versenytükör*, 2016. Vol. 12. Sepc. No. 45-52.

actions on one occasion but “defined the respondents’ behaviour in the terms of business for a longer time period”. The point of the agreement was to regulate the economic competition “in connection to the commerce and formation of prices of these merchandises, between two subjects of free trade”.<sup>6</sup> In its verdict, the Cartel Court stated that “such an agreement is under the effects of Paragraph No. 1 of the Cartel Act, with no consideration of its personal, economic or geographic field”.<sup>7</sup>

The definition of common good and the interests of public economics was one of the most notable problems of the legal institutions which regulated cartels. The works of Ferenc Harasztosi Károly should be highlighted among other literary sources, which stated that “the state must establish a public law system for cartels, which ensures that the cartel disagreements of economic life are taking place within a framework which ensures that they do not endanger the interests of public economy and of common good”.<sup>8</sup>

In this matter, we have to stress the first statement of principle of the Cartel Court (on the matter of business isolation, boycott or exclusion).<sup>9</sup> This statement – by referring to Paragraph No. 6 of the Cartel Act – established that it is against the common good and economic conditions “exclusion not only gives a party economically reasoned disadvantages, but in fact capable of destroying its complete economic existence”.<sup>10</sup> In connection to this, the Cartel Court also examined the cartel contracts containing the stipulations of isolation. The Cartel Court only agreed to enforce this if it had “reasons especially significant and relevant to the public”.<sup>11</sup> According to the Cartel Court, “the emphasis is not so much on private, but general interests”.<sup>12</sup> The committee referred to the justification of the 5<sup>th</sup> act of 1923: “The categorical imperatives of morals must also be validated during conflicts in the fields of commerce and industry, if one does not want to set individual selfishness loose on the trade”.<sup>13</sup> In connection to both fair competition and cartel regulations, one must always keep the interests of common good in mind.<sup>14</sup> The Curia also stated in Mandate No. IV. P. 4936/1927 that any contract which is against general interests and good morals shall be considered null and void.<sup>15</sup>

One could file a legal action to the Cartel Court if an agreement or an application of a regulation, or a cartel which was formed because of it, was against proper ethics or common good.<sup>16</sup> A secretary could ask for several things in such actions: the court should disband a cartel formed by such an application or regulation, and make a pecuniary offence if it keeps on functioning. The secretary could also ask for forbidding the execution of the

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<sup>6</sup> Cartel Court P. IV. 5261/1932. See: Nándor RANSCHBURG: *A karteltörvény joggyakorlata és annak alapján az 1932. év óta kibocsátott rendeletek az Árelemző Bizottságról, a kartelilletékről és a márkacikkek ármegállapodásairól*. Szerző kiadása, Budapest, 1935. 35., *A Kartel*. Vol. 3. No. 2. 6-7., MNL. K-184. 1933. 41. 31960/92488.

<sup>7</sup> Cartel Court P. IV. 5261/1932. In: RANSCHBURG, 1935. 35. See: Curia P. IV. 3065/1933-22. *Ibid.* 36-37., P. IV. 920/1933/9. In: *Ibid.* 35.

<sup>8</sup> HARASZTOSI KIRÁLY, 1936. 512.

<sup>9</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>10</sup> RANSCHBURG, 1935. 47. MNL. K-184. 1933. 41. 31960/92488.

<sup>11</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>12</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>13</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>14</sup> Izsó SZEGŐ: *A tisztességtelen verseny. (Az 1923. évi és az 1933. évi XVII. t-c. magyarázata.)* Budapest, 1936. 34-36.

<sup>15</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>16</sup> Károly DOBROVIC: *Kartelismeretek*. „Monopol” Könyvkiadó Vállalat, Budapest, 1937. 126. Lajos SZENTE: *A karteljavaslat. Kereskedelmi Jog*. 1931. Vol. 28. No. 1. 11-12., Lajos GAVALLER: *A közérdekű per. A Kartel*. Vol. 2. No. 1. 6.

agreement or the regulation, and for a fine if the participants continue to pursue their goals.<sup>17</sup> Filing a legal action introduced by the cartel court could be done by any office or individual by contacting the Secretary of Trade and providing ample evidence.<sup>18</sup> Before filing the legal action, the secretary could ask for a second opinion from the Cartel Committee, but it was not compulsory. However, if a public office or authority filed the claim, the secretary usually turned to the Cartel Committee for their opinion.<sup>19</sup>

The administrative offices only practiced initiative rights during proceedings, and after this, taking measures was assigned to the court. The offices could participate in the legal action as a party to the dispute. All in all, it was in connection to the consideration of court independence and the guarantees of judicial proceedings, not to mention the respect of basic rights.<sup>20</sup>

In a lawsuit based on a legal action of general interest, the court could decree the disband of the cartel, to shut down its operations, to forbid the fulfilment of an agreement or a regulation, or force them to cease a certain action or behaviour. The Act clearly stated what legal arrangements were within the jurisdiction of the government. This meant that in order to enforce these decrees, one did not need a court order. The secretary could enact these measures if the agreement or regulation enforced upon the cartel endangered economy or general interests, especially if it regulated the circulation of goods production or price formation in such a way that the interests of the customers, the entrepreneurs or the manufacturers were harmed.

It was within the jurisdiction of the ministry to examine the case, and, if was deemed necessary, it could propose to register the data, to make inquiries and submit official documents. With the participation of a commissioned, emissary, it could examine the business conductions and business management, and by looking at the business records and other documents of a cartel in question. It could also question the members and the employees. In case the ministry opted for the suspension of the operations of a cartel, then it could try to reach a peaceful solution by holding a hearing for the concerned parties. If this method was not fruitful, then it could propose to the government to withdraw tax and customs discounts, and the exclusion from public contracts. These arrangements fell under the topic of industrial codes and transport rates, and this is how the government intended to stop the cartel from continuing such actions that were against general interests.<sup>21</sup> Based on the suggestion of the Secretary of Commerce, the government could introduce these arrangements if none of the specified conditions dictated by the Act were present.<sup>22</sup>

In cases where the ministry filed for the cancellation of an official permit without which the cartel could not continue its intended activities, then they had to turn to the court. The ministry could make a suggestion to the government to modify or nullify the customs items written down in the customs tariff. There is an archived example for the latter. The Alkaloida Chemical Factory Inc. wrote an official letter to the Hungarian Royal Central Customs Directory in 12<sup>th</sup> December, 1933, which stated that “for preparations, and in exchange for the exported amount of morphine intended for transformation, the

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<sup>17</sup> Nándor RANSCHBURG: *Karteljog kartelszervezet. A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX-ik törvénycikk magyarázatával és végrehajtási rendeletekkel.* Budapest, Iparjogvédelmi Egyesület, 1931. 100.

<sup>18</sup> RANSCHBURG, 1931. 100., HARASZTOSI KIRÁLY, 1936. 513.

<sup>19</sup> István SZABÓ: *A kartellfelügyelet szervezete és hatásköre az 1931. XX. törvénycikk nyomán. Versenytilkör,* 2016. Vol. 12. Sepc. No. 70-74.

<sup>20</sup> MNL. K-184. 1933. 41. 30061/35309.

<sup>21</sup> MNL. K-184. 1933. 41. 30061/35309.

<sup>22</sup> HARASZTOSI KIRÁLY, 1936. 513.



morphine-derivates and their salts” be imported customs-free”.<sup>23</sup> Because of the emerged economic conditions, if everything else failed, the ministry could turn to the Cartel Court.<sup>24</sup> After briefly describing the rules of conduct, the procedural law – mostly civil law – rules in connection to the cartels will be described in a much detailed fashion, and the legal practice related to this and still available will also be presented.

## 1. Starting lawsuits of general interest

The concept of a lawsuit of general interest was understood as a legal action started based on a claim filed by the Legal Board on the order of the secretary of commerce, which the possible purposes of disbanding a cartel or to forbid them to continue their operations; the suspension of the ongoing legal action, without taking into account whether it is held by an orderly or a court of arbitration; to determine whether or not the actions of a cartel are against the law; the annulment of the verdicts made by the specialized courts.<sup>25</sup>

The question arose that in which cases can one pass a lawsuit of general interest. It can be stated that the general opinion was that if there was a chance that the state should intervene. The aforementioned Paragraph No. 6 of the Cartel Act determined these. This is not a taxative list, because the act mentioned above lists other cases for filing a statement in order to start a lawsuit of general interest in Paragraph No. 7. A statement could be claimed if the cartel’s operations were against the law, public morals or general decrees. Most of these types of cases were of private interest, and were held earlier by orderly courts or courts of arbitration of the chamber since they broke the law of fair trade. Among many others, some of these cases were lawsuits filed because of boycott or sale under price.<sup>26</sup> It is questionable whether these cases could become lawsuits of general interest since the law was broken, or the acts in question also harm general interests. This is a significant matter, for in cases where competition laws were broken and no general interests were harmed, orderly courts had the jurisdiction.

In my opinion – based on the understanding of the normative text, in order to a lawsuit of general interest to be filed to the Cartel Court, not only the law and public morals had to be broken, but also general interests.<sup>27</sup>

I agree with the statement of Nándor Raschburg, according to which even the name of the lawsuit of general interest excludes the opportunity for a private proposal. The legal action was proposed by the Secretary of Trade at the Royal Hungarian Legal Board.

This also referred to that not only the law and public morals had to be harmed, but also the general interests. The statement had to be filed to the Legal Board based on this. In the conviction, the Cartel Court’s verdict had to determine the harm that came to not only the law and public morals, but to the general interest, as well.<sup>28</sup>

The evasion of the Cartel Act was the purpose of the so-called “coal cartel”, where the coal merchants and the mines, the coal merchants and the medium vendors, and the MÁK and the Salgó reached an agreement. This contract resulted in a monopolistic situation in

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<sup>23</sup> MNL. K-184. 1933. 41. 30061/92818.

<sup>24</sup> RANSCHBURG, 1931. 100-101.

<sup>25</sup> HARASZTOSI KIRÁLY, 1936. 512., DOBROVICS, 1937. 126., SZABÓ, 2016. 77-78.

<sup>26</sup> MNL. K-184. 1933. 41. 31960/92488. Sándor KELEMEN: Bojkott, mint tisztességtelen verseny. *A Kartel*. Vol. 3. No. 1. 5-6.

<sup>27</sup> RANSCHBURG, 1931. 101-102.

<sup>28</sup> *Ibid.* 102.

the coal supplies of Budapest, for ten wholesale merchants took on the obligation to purchase 37.500 carriages of coal from two mines, which was almost the complete coal needs of Budapest for a whole year. The merchants were not allowed to sell any other coal. Because of this, any mines and merchants who were not involved in this contract got into a difficult position. Not to mention that if we look at the situation from the point of view of the consumers, they were forced to buy briquette. The purpose of the cartel was to sell the so-called powdered coal which was pent up.<sup>29</sup> According to the viewpoint of the Cartel Committee, several elements of the cartel contract endangered common good and the interests of public economy, and as such, it falls under the effect of Paragraph No. 6 of the Cartel Act, and because of this, they requested a rise in prices, the elimination of the uncertain economic situation, the decrease of unemployment, stopping the cartel from gaining any advantages in the field of public services, and the annulment of the disadvantaged position of the mines outside the cartel.<sup>30</sup>

## 2. The jurisdiction of the Cartel Court

Lawsuits of general interest, temporary measures, lay on pecuniary fines per orderly punishment, forbiddance, nullification of the verdicts of elected courts, and the suspension of execution of the regulations of elected courts were within the jurisdiction of the Cartel Court.<sup>31</sup>

The Cartel Court could only order the dissolution and the ban from ongoing operation of a cartel, if a cartel's operations were against general interests and there was no other way of terminating it. The law gave the secretary the right to ask for a termination directly from the court, without authorizing any other means. However, the rights related to the termination could mean constraining basic rights, especially the right to fusion. But the constitutional rights could only be limited in special cases and with legal authority. Any other case would make the court's actions illegitimate, and it would have been measured by the arbitrary legal practice.

With the dissolution of the cartel, the court generally forbade the cartel and its members to keep on their operation. The dissolution of the cartel did not mean that the members would not keep up its operation by acting in unison. This meant that the only way that the verdict would come into effect if the court forbade the cartel to practice their operation.

There were cases where in spite of the fact that the cartel was dissolved, but it kept on operating. The law did not forbid this per se, but in practice, what this meant is as it follows. The verdict of the court was only valid for the dissolution and the forbiddance of the operation of the cartel involved in the lawsuit. If a new cartel was formed based on a new treaty, then the former verdict did not come into effect there. A new legal action had to be taken against the operation of the new cartel, and new proof was needed that its operation is against general interests. However, in urgent cases, the secretary could place temporary solutions into effect.

In cases where the misconducts of the cartel could be nullified by the fulfilment of an agreement or a decree, then this became the court's order. This was also the decision where the nullification for the statement of claim was filed. In spite of all this, if the statement only asked for the nullification of the agreement or the decree, then the court could not

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<sup>29</sup> MNL. K-184. 1933. 41. 51140/88831

<sup>30</sup> MNL. K-184. 1933. 41. 51140/88831. MNL. K-184. 1932. 41. 51140/53726. MNL. K-184. 1932. 41. 51140/88298.

<sup>31</sup> HARASZTOSI KIRÁLY, 1936. 528-529. See: A Kartelbíróóság újabb ítélete. *A Kartel*. Vol. 3. No. 1. 8.

state the dissolution in its verdict. In these cases, the court would have overruled the statement of claim, which is against 1<sup>st</sup> Act of 1911 (Judicial Procedure Code, JPC from here on out). They only petitioned for the nullification of the operations or behaviour, if the behaviour of the cartel could not be demonstrably correlated to an agreement.<sup>32</sup>

### 3. The structure and procedure of the Cartel Court

#### 3.1. *The structure of the Court*

The structure of the Cartel Court was regulated by the Cartel Act itself (Paragraph No. 8). This court was a separate institution, which was established, interestingly enough, within the Supreme Court (Curia), the topmost institution within the ordinary judicial system with a president, two appointed judges and two lay judges. Its head was the president of the Supreme Court, or an individual appointed by the Supreme Court: the vice president or one of the presiding judges of the Supreme Court. The two judges were invited by the presiding judge appointed by the Supreme Court and the president of the acting council from the two appointed judges. The two lay judges were selected by the president of the acting council from those ten specialists which were selected every three years from the list assembled by the Secretary of Justice and the Secretary of Commerce, containing thirty names. The reason behind this was ensuring competency.<sup>33</sup>

#### 3.2. *The procedure of the Court*

Lawsuits of general interests had to be delivered for all participants concerned. In cases where representatives were announced or appointed, then the statements had to be delivered to this individual. In these legal actions, any participants could participate separately, and accompanied by their legal representatives.

In order to ensure a professional opinion, the court could meet with the Cartel Committee ex officio. If it proved to be necessary, the Cartel Committee could do the same with the Price Analysis Council.<sup>34</sup> For example, they followed this procedure in the case of the so-called tin box cartel, in order for the matter to be properly examined. The Cartel Committee called upon the Price Analysis Council in order to proceed with the run-down of the prices of some “cartelised commodities”. For example, hemp, string and canvas belonged to this group. There were some agricultural tools on the list, as well, for example, spits, hacks and shovels.<sup>35</sup>

The Cartel Committee took the report of the Price Analysis Council into account in connection to the price of wool and cloth. They also elaborated upon the fact that what business policies should the concerned parties follow in order to increase the price of Hungarian fleece. They collected their suggestions on appendix sheet 92157/1933, which, among others, listed such suggestions like increasing the influence of the state.<sup>36</sup>

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<sup>32</sup> RANSCHBURG, 1931. 103-104.

<sup>33</sup> Ibid 104., HARASZTOSI KIRÁLY, 1936. 528., SZABÓ, 2016. 77., Katalin GOMBOS: A Kartelbíróóság és a Kartelbizottság tagjainak élte. *Versenytükör*, 2016. Vol. 12. Sepc. No. 96-105.

<sup>34</sup> HARASZTOSI KIRÁLY, 1936. 522-526. Sándor KELEMEN Sándor: A Kartelbizottság újjászervezése. *A Kartel*. Vol. 3. No. 2. 1-3.

<sup>35</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>36</sup> MNL. K-184. 1933. 41. 31960/92157.

The Cartel Court took the examination results of the Price Analysis Council into account in the suit of Alkaloida.<sup>37</sup> They wished to determine the price of narcotine by moderating.<sup>38</sup> The Committee formed a specialised group while determining the prices. This group reached a decision after the acquisition of the necessary data and conducting hearings for the concerned parties.<sup>39</sup> In the case of the so-called “oil cartel”, they criticised the price and quality determined by the Committee. Quality assurance methods had to be established, as well.<sup>40</sup>

In connection to the work of the Price Analysis Committee, a registry can be found amongst the archived materials, with a short description of price reduction for each and every commodity. This report specifically mentions white oils (paraffin, gasoline, diesel oil), lubricating oil, agricultural tools (ie. axles, horseshoes, shovels), ironmongeries, machine lubricants, textbooks, linseed oil, pesticides, textile, cement.<sup>41</sup>

### 3.3. *The contentious parties*

As I previously mentioned, the Secretary of Trade could give an order to the Legal Board to start a lawsuit of general interest. The plaintiff of these lawsuits was the Royal Legal Director, who always stood for the interests of the state and the general population. No single individual could become the plaintiff in such lawsuits.<sup>42</sup>

It is also noteworthy that the outline of the Cartel Act would have given an opportunity for a competitor outside the cartel (a so-called *outsider*) to file a claim for a lawsuit of general interest. However, the counterargument was brought forward that *outsiders* would most likely try to secure their private interests by a lawsuit of general interest, and it would be “a direct harassment of the cartel, would learn and publish their business secrets, and their ultimate goal would be to enforce a bigger and bigger contingent for themselves, and also to join the cartel, and after that, would nullify the lawsuit which was started by them being the plaintiff”.<sup>43</sup> But there were reasons for the outsiders to become plaintiffs, stating that this would have helped the detection of cartel abuses. The lawsuits filed against cartels could have been much more successful if these were started by *outsiders*. However, private and general interests were separated within the law proposal, so in the proposition submitted to the parliament, outsiders were not granted the right to become plaintiffs. Legislation accepted this viewpoint.<sup>44</sup>

This meant that no interest of private law could be enforced in lawsuits of general interests. “The legal action of private law – publica action – can only serve to protect and avoid the endangerment of the law, public morals, general interests, and by that, economy and the welfare of the public, and in order to do so, it shall not be used to serve personal interests”.<sup>45</sup> In cases where individuals suffered private wrongs due to the operation of cartels, then a civil lawsuit, and not a lawsuit of general interest was necessary. If, apart from his complaint, the operation of the cartel endangered general interests, the individual

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<sup>37</sup> MNL. K-184. 1936. 41. 50306/55755.

<sup>38</sup> MNL. K-184. 1936. 41. 55714/55714.; MNL. K-184. 1936. 41. 50306/55594. MNL. K-184. 1935. 41. 62330/62330. MNL. K-184. 1933. 41. 51140/88831.

<sup>39</sup> MNL. K-184. 1935. 41. 62330/62330. MNL. K-184. 1934. 41. 28720/71729.; MNL. K-184. 1934. 41. 26180/71732. *8 Órai Ujság*, 1934. Vol. 20. No. 246. MNL. K-184. 1932. 41. 51140/66312.

<sup>40</sup> MNL. K-184. 1932. 41. 51140/53726.

<sup>41</sup> MNL. K-184. 1932. 41. 51140/66312.

<sup>42</sup> HARASZTOSI KIRÁLY, 1936. 533.

<sup>43</sup> RANSCHBURG, 1931. 105.

<sup>44</sup> *Ibid.* 105.

<sup>45</sup> HARASZTOSI KIRÁLY, 1936. 532.

had the opportunity to draw the attention of the supervision and the ministry to this fact. After this, the ministry had to take the necessary legal actions.<sup>46</sup>

The respondent of a lawsuit of general interest could be all of the concerned parties. In a case when a cartel was operating as a legal entity, then the respondent mostly became the cartel itself via a representative. The members of a cartel could also be included in the lawsuit as concerned parties.

If a cartel did not have a separate legal entity on its own, the legal action was taken against its members. In cases where a cartel had a sales office or administrative organisation functioning as a legal entity, or all of its transactions were fulfilled by the cooperation of a bank, then it was practical to include these in the lawsuit, as well, for most of the debatable legal actions were made under the names of these legal entities. This is why it became justified that the enforcement to discard the ban or actions could be carried into effect directly against these, as well.<sup>47</sup>

There is a specific example for these in the contract in the case of the “bakery cartel”, where Paragraph No. 30 elaborates upon the legal entity’s jurisdiction and tasks. A bank was delegated to fulfil these tasks, and it did so by using its own name but by keeping the interests of the members of the contract in mind, so “is legally bound in their name, and in case of becoming a plaintiff or a respondent, could act on its own, and practice all rights that is present for all concerned parties as individuals”.<sup>48</sup>

### 3.4. *Summoning*

The large headcount of the cartels could significantly make summoning more difficult, and could slow down the legal action. So if a cartel had a registered legal representative, the statement of claim had to be delivered to that individual. If there was no such person, then the head of the Cartel Court appointed a representative. If the representative accepted the statement of claim, it meant that all of the cartel members received and noted it. It was the obligation of the representative to notify each member of the cartel on the contents, who could participate in the lawsuit with separate legal advisors.

The proceedings of the Cartel Court were held with the basic principle that nobody with private interests can participate in them. As I mentioned above, the concerned parties were represented by attorneys in the legal action. In cases of general interests, the action at law could only be filed against all participants, which, in these cases, meant all members of the cartel.<sup>49</sup>

### 3.5. *Application of the rules of the Judicial Procedure Code (1911)*

In a lawsuit held by the Cartel Court, the rules of the Judicial Procedure Code had to be applied. The JPC did not contain any specific rules in connection to the lawsuits held by the Cartel Court.

This meant that there were no “strict rules of procedure” in a single-stage lawsuit held by the Cartel Court, which meant that this institution had the freedom to form their own proceedings.<sup>50</sup> It means that basically the Carte Court used the regulation of JPC.

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<sup>46</sup> RANSCHBURG, 1931. 105-106. MNL. K-184. 1937. 41. 86293/86293.

<sup>47</sup> RANSCHBURG, 1931. 106., HARASZTOSI KIRÁLY, 1936. 534.

<sup>48</sup> MNL. K-184. 1934. 41. 26180/71732.

<sup>49</sup> RANSCHBURG, 1931. 106-107., HARASZTOSI KIRÁLY, 1936. 534.

<sup>50</sup> RANSCHBURG, 1931. 107., HARASZTOSI KIRÁLY, 1936. 534., György JANCÓSÓ: *A magyar Polgári perrendtartás rendszeres kézikönyve*. Athenaeum Irodalmi és nyomdai Részvénytársaság, Budapest, 1912.349-368., Dezső FALCSIK: *A polgári perjog tankönyve*. Politzer-féle Könyvkiadó-vállalat, Budapest, 1908. 14-30. See more

Publicity is one of the main principles of the Judicial Procedure Code, and in connection to this, Paragraph No. 207 contained a regulation that the court could ordain the exclusion of the public as requested by one of the participants, if the publicity of a lawsuit would harm their reasonable interests.<sup>51</sup> The exclusion of the public could apply for the whole lawsuit, or merely for a part of it. According to this, if such information would come to light which, if made public, would violate the business secrets or reasonable interests of the cartel members, then the court could order the exclusion of the public even in the middle of a session.<sup>52</sup>

The basic principles of the CCP only had to be enforced if the Cartel Act did not state any decrees opposing these. It was one of the court's duties that any discussed information which was considered to be business secrets could not be acquired by the competitors of the cartel.<sup>53</sup>

In order to protect business secrets, the Cartel Committee usually held its meetings privately. The records of the Cartel Committee indicate this very clearly. During the committee session on October 20<sup>th</sup>, 1933, the president, Béla Ivándy stated that he requested the members of the board earlier "not to mention any specific announcements mentioned during the sessions of the Committee to either the press or the participants". After this, the esteemed president brought up a specific example. "The lords of the Cartel Committee requested that I would send the prearranged suggestions and reports to the members of the Committee in enlacement, but I did so hoping that any information listed there would be kept in private".<sup>54</sup> One can determine from this warning that the members did not always kept themselves to this rule.

The rules of the judicial procedure code were applied during the verification, as well. There was only a limited place made for the validation of the inquiry principle in the judicial procedure code, and this was true during the procedures of the Cartel Court. According to these rules (Paragraph No. 323 of the judicial procedure code), the Cartel Court could request a participant to present a relevant document. Apart from this, the organization could not ask any other data or explanation from the cartel in order to find out the bearings of the case. Even the books could only be asked for in order to examine if they were administered in a satisfactory manner, and could only examine their debatable items

In the case of the "bakery cartel", a short description can be found amongst the record of the Cartel Committee, which, among other things, contains a report on an incident in the small market on the 7<sup>th</sup> of August, during which food saleswoman Mrs. Gyula Balázs tried to acquire pastries cheaper than the cartel price from several places.<sup>55</sup>

If a technical question arose, the Cartel Court could appoint a specialist or turn to the Cartel Committee to ask their opinion.<sup>56</sup> The court could officially decree the latter, which meant the verification of the principle of officiality. The principle of discovery arose during the lawsuit that the court could decree verification *ex officio* in order to get the statement of the facts. The court could obligate a participant to present a document, or could propose for the presentation of the original trade books.<sup>57</sup>

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about the code of 1911: Imre SZABÓ: *Plósz perrendtartása és napjaink Pp-módosításai*. In: József HAJDÚ (ed.): *90 éves a szegedi jogászképzés*. Szeged, 2013. 157-162.

<sup>51</sup> JANCsó, 1912. 366., Marcel KOVÁCS: *A polgári perrendtartás magyarázata*. Pesti Könyvnyomda Részvénytársaság, Budapest, 1927. 579-581.

<sup>52</sup> RANSCHBURG, 1931. 107., HARASZTOSI KIRÁLY, 1936. 535.

<sup>53</sup> RANSCHBURG, 1931. 107.

<sup>54</sup> MNL. K-184. 1933. 41. 31960/92488.

<sup>55</sup> MNL. K-184. 1934. 41. 26180/71732.

<sup>56</sup> RANSCHBURG, 1931. 107-108.

<sup>57</sup> HARASZTOSI KIRÁLY, 1936. 536.

### 3.6. Cost of the proceedings

The person who should pay law expenses was a significant question. In case the treasury lost the legal action, then the respondent could not be forced to cover these. The compensation of the financial impairs of the legal action and the official proceedings could not be demanded from the state.

The question remained whether the individual participants could be held responsible for the cost of the proceedings caused for the cartel, if the secretary filed the claim for legal proceedings based on a motion, but the claims were proven false. According to Ranschburg, if “it can be proven that false data lead to the start of the proceedings or for the preliminary actions, then the private law responsibility of the participant which filed the complaint should be taken into account according to culpability”.<sup>58</sup>

### 3.7. Execution

In the verdict – in case of amerce – the court always forbade a cartel or one of its members from continuing their operation, or the enforcement of an agreement or regulation by a pecuniary fine. This is how a cartel was forced to discontinue its operations. The verdict did not state the size of the fine, the executive branch was tasked to establish that. The execution was asked by the Legal Board. The application had to be filed to the Cartel Court, and certify that the cartel or its members fulfilled their obligations as stated in the verdict. The Cartel Court determined the fine after a hearing with the amerced participant. During this, they had to take the wealth intended to be gained from the action and the financial status of the participant into account. The warrant which enacted the fine was a legal document also carrying executive powers, which were obligated by a judicial executive. Not obeying the interdiction could result in the repeated infliction of the fine.<sup>59</sup>

The warrant on the Alkaloida factory of the Central Royal Country Court of Budapest became legally binding, which meant that the pecuniary fine was drafted to Dr. József Fésüs lawyer, which contained the capital with interests and the reimburse of any expenses which came up.<sup>60</sup> In the definition of expenses, any possible prices of travel and appearance had to be taken into account.<sup>61</sup>

After the turn of the century, the economic changes started processes in both the field of legal life and legal sciences, and as a result of this, a demand arose to legally codify any rules in connection to cartels. The foundations of these were found in private law, especially in the regulations of the commercial law, which could be further elaborated upon and lead to a development of the regulations on the annulment of contracts in connection to dishonourable business competition. Beyond the creation of the technical legal regulations, the establishment of certain judicatory institutions was inevitable in order to enforce these.<sup>62</sup> This is how the Cartel Court and the Cartel Committee became one of the most decisive legal institutions in economic life up until the middle of the 20<sup>th</sup> century.

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<sup>58</sup> RANSCHBURG, 1931. 108.

<sup>59</sup> RANSCHBURG, 1931. 108-109., HARASZTOSI KIRÁLY, 1936. 536.

<sup>60</sup> PK. VII. 632242/6.1993. In: MNL. K-184. 1933. 41. 30061/92147.

<sup>61</sup> MNL. K-184. 1935. 41. 62106/65563, MNL. K-184. 1935. 41. 62106/63572, MNL. K-184. 1935. 41. 62106/63572.

<sup>62</sup> See: Pál SZILÁGY – András TÓTH: A kartellszabályozás történeti fejlődése. *Versenytükör*, 2016. Vol 12. Sepc. No. 4-13., STIPTA, 2016. 61-63.