


NORBERT VARGA

 <http://orcid.org/0000-0001-6126-3099>

University of Szeged

*Introduction to the Hungarian Cartel Regulation in the Interwar Period**

Abstract

WWI significantly influenced the development of private and trade law. The regulation of economic law institutions came up as a necessity. To protect the consumers' interests, the state interfered with private law affairs and regulated sharking procedures, unfair competition and cartel law. By taking European regulation results into account, cartel regulation organisations were introduced by the Cartel Act; the most important of them was the Cartel Court. This paper shows the most important steps of the antitrust regulation in Hungary's special attention to the relevant European cartel regulations.

Keywords: price inflation abuses, unfair competition, cartel law, Cartel Court, the regulation of Austrian and German cartel law

The length of the peaceful period before the Great War and the lack of written memorials might make the impartiality that one could say left our private law defenceless understandable, but not forgivable.

Antal Almási¹

¹ Almási, *A háború hatása*, 8.

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1. Introduction

WWI affected private law and private law codification, which was made evident due to state interference, for apart from legal protection, the state keeps away from interfering in private law relations. The situation changed when the war broke out; in order to ensure state purpose and public interest, the necessity to interfere reared its head. This also happened in connection to the regulation of cartels.

Therefore trade combination went through such a change in the first half of the 20th century that resulted in the introduction of cartel regulatory organisations according to the 20th Act of 1931. The economic and political system of the interwar period exerted a significant influence over society, the legal response being the regulation of yet-to-be codified legal institutions. The war ended with the Treaty of Trianon, with its relevant Chapter III, “Hungary undertakes to adopt all the necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied and Associated Powers from all forms of unfair competition in commercial transactions.”² Therefore, as a result of historical events, a codification process was initiated that attempted to reflect on the shifting economic and social relations and ensure legal security for the future. The purpose of my study is to sum up the preludes to the regulation of Hungarian cartel law and provide a thorough description of the regulation of cartel supervision.

2. Price Inflation Abuses

In the time period preceding WWI, state intervention turned out to be extremely limited into private law relations and economic processes. According to the general understanding, the price of certain products resulted from the mutual effect of demand and supply had on each other. In cases of catastrophic circumstances (e.g., fire, pandemic or flood), temporary intervention could be enacted. However, if the severity of these cases affected economic life due to their time and extent, the need for price regulation arose. This exact occurrence came up after WWI, and it had a far-reaching effect on private law, especially on economic isolation and the changes in the relations between production and consumption. All of the above made the proper regulation of price formation a necessity. Due to the results of warfare and the rising number of abuses of public necessities, the government, given authority by its acts in exceptional circumstances in case of war (63rd Act of 1921; 50th Act of 1914) took the necessary measures.³

² 1921:XIII. tc. (1920. június 4-én kötött trianoni békeszerződés becikkelyezéséről) 210. cikk. [13th Act of 1921; On the Ratification of the 4th June 1920 Peace Treaty of Trianon; Clause No. 210].

³ Kocsoh, “Az árellelőrzés jogszabályai”, 342. See more about the extraordinary power of the Hungarian State: Pétervári, “A kivételes hatalom magánjogi viszonyokra”, 149–83; Pétervári, „A kivételes hatalomról rendelkező”, 25–39; Szivós, “Az 1911. évi I. törvénycikk”, 201–17.

The first step of the regulation was establishing the highest price margin of wheat and flour, which was established by regulation 8682/1914. M.E. (Prime Minister) Apart from price maximisation, it turned out that stepping up against the circulation misuses of general merchandise. Therefore price examination committees and the National Central Price Examination Committee were established in regulation 3678/1917. M.E. with authority to establish referential prices.⁴

The events of WWI caused widespread and radical changes in economic activities.⁵ New legal measures had to be established to effectively regulate the circulation and consumption of private and public necessities. The only viable solution turned out to be enforcing and aggravating the sanctions of penal law, not to mention that the government introduced measures in economic administration. The sanctions of penal law were collected in the 9th Act of 1916 to protect public provisions.⁶

§ 1 of the 15th Act of 1920 established the eight cases of sharking misuse, which are listed hereby: price inflation, product usury, income usury, sharking profiteering, product withdrawal, product smuggling, the denial of the sales of products of general need and any appeal, volunteering, agreement or unification to participate in the aforementioned actions. The previous cases meant liability, and according to § 8 of the 26th Act of 1921, three severe cases were requalified as criminal actions. The 3rd section of § 3 of the law described the ninth case, which was none other than the usage of counterfeit documents or documents containing falsified data in order to mislead the price formation body, and it was qualified as criminal action. The tenth case was described by § 4, which included any and all omissions in connection to supervision or inspection perpetrated by the owner of a factory or company or the employer itself, and it was considered a misdemeanour.⁷

The object of price inflation abuses was public provisions. The legislators' intentions with the Act were that the possession and usage of public provisions would be available via fair turnover. Ferenc Finkey stated that "it took the World War for the triumph of a fair and humane understanding in the matter of usury, this exaggerated understanding of the economy, the 'exploitation' of stringent poor people". This shift in public perception is what the law enforced by

[...] severely punishing, hopefully, each and every method of 'price inflation', and bringing down the rod of justice on every group of soulless sharks who, in times of economic collapse and general misfortune, are capable of pushing their fellow, yet less savvy or overly honest men into the vortex of hunger, poverty, financial failure and the continuous moral depravity and debauchery, solely for despicable profiteering, and meanwhile they live Lucullan lives of luxurious lavishness and sumptuousness with the millions acquired through clever manipulations.⁸

The fact is that even production was shaken by the Great War, for it resulted in economic uncertainty, not to mention that product shortage and the remains of the wartime-

⁴ Kocsoh, *Az áellenőrzés szabályai*, 343.

⁵ The Hungarian State regulate the bankruptcy law in the interwar period too. Pétervári, "Csődeljárások a Szegeci Királyi Törvényszék", 89–100; Pétervári, "The Bankruptcy Act in Hungary", 77–9.

⁶ Wiener, "Gazdasági büntetőjogunk", 767.

⁷ Finkey, *A magyar anyagi büntetőjog*, 136. On the preludes of usury regulation: Bató, Homoki-Nagy, "Zwischen Privatrecht and Strafrecht", 83–118.

⁸ Finkey, *A magyar anyagi büntetőjog*, 137.

restricted trade gave rise to speculation. An attempt was made to thoroughly reform sharking misuses in the sense of criminal law *via* the 15th Act of 1920.⁹

3. Unfair Competition

The 5th Act of 1923 wished to regulate the cases of unfair trade.¹⁰ The law described its purpose as a protector of business fairness that served as the foundation of economic life and turnover. The viable method turned out to be state interference. This was necessary for the legislation to provide a safe haven from unfair competition, for according to the general directives of private law, this could not be guaranteed after the severity of changes in economic conditions.¹¹ These preludes of codification lead us to the fact that in 1931, a separate act was needed to sort out the agreements regulating economic life, a special and coordinated version of unfair market actions, the so-called cartels. The state used extreme prejudice against misuses in economic life and unfair competition. Wartime and the resulting economic conditions overshadowed individual interests. What was free became forbidden after the war, therefore, a whole line of laws (on sharking, unfair competition and cartel law) was created with which the state attempted to ensure the purity of economic life and the protection of consumers. The primary purpose of regulating cartel law was to prevent misuse of economic power.

4. European Preludes of Hungarian Cartel Supervision

The codification wave was not only a characteristic of our own nation but came up in almost each and every country in Europe. This nation's regulation of cartel law matched the codification processes of Europe.

Due to Hungary and Austria's connection in public law, it is important to mention the development of Austrian cartel law. In Austria, introducing a rule in competition law arose even as early as the 19th century. An important factor in Austrian cartel law regulation was that according to the rules of the criminal code of 1803, the so-called 'coalition' is punishable, and these rules were carried over to the criminal code of 1852, which forbade such actions both in the sense of price and wage regulation.¹² The Austrian minister of finance introduced the bill on cartel regulation in 1870. The bill primarily regulated

⁹ Dobrovics, "Kartel. A karteljog fejlődése", 16.

¹⁰ Klupathy, "A tisztességtelen verseny", 11–47; Nagy, *A magyar kereskedelmi jog*, 117; Vadász, *Magánjogunk főbb elvei*, 80–105; Kuncz, Balás, *A tisztességtelen verseny*.

¹¹ Krusóczki, "A tisztességtelen verseny", 249–51.

¹² "Verabredungen von Gewerbsleuten, Fabriks- oder Arbeitsunternehmern oder Dienstgebern, um eine Umänderung in den Arbeits- oder Lohnverhältnissen zu erwirken, oder um den Preis einer Waare oder einer Arbeit zum Nachtheile des Publikums zu erhöhen, oder zu ihrem eigenen Vortheil herabzusetzen, oder um Mangel zu verursachen, sind als Übertretungen zu strafen." § 479. Ráth, "Emlékirat a kartellekről", 72; Szokolay, *Az új osztrák büntető*.

the protection of consumption taxes and sharking measures “not to allow cartels to cause harm to the state.”¹³

The Koalitionsgesetz (Coalition Law) adopted on 7 April 1870 regulated the private law invalidation of cartels which, by the way, modified certain regulations of the criminal code of 1803 on agreements harmful to the community. “All in all, the Austrian government lately declared in its official statement that although the Koalitionsgesetz of 1870 possesses the nature of a cartel act at the same time, yet it can only be validated against cartels in a limited fashion.”¹⁴ The so-called Koalitionsgesetz (as it was summarised) of 1870 is none other than carrying over the valid regulations of the criminal code of 1803 that were also kept in the criminal code of 1852 to the private law.¹⁵ By accepting the relevant analysis of Zoltán Ráth, the marked rules should be interpreted by taking the contemporary conditions into account, according to which the referenced criminal code regulations refer to none other than the guilds, and wished to regulate concealment of tax transgressions and the concealment of general merchandises in connection to the price and wage regulating agreements. These criminal code regulations served to object to the guild craftsmen’s local monopolistic actions and referred to goods that were objects of everyday consumption; therefore, to quote the interwar term were considered general merchandise.

The legislation of 1870 gives a liberal treatment not only to the regulation of labour relations via oral agreement but also the sharking agreements of craftsmen by elevating them from a criminal code sanction and applying private law invalidation instead in order to keep up the freedom of circulation.¹⁶

Therefore these regulations did not refer to the large-scale industrial cartels of the interwar period, for these did not even exist back then. Because of this, calling this Act a cartel act in a contemporary sense is simply erroneous.

In his 1883 monograph, Austrian economist Friedrich von Kleinwächter drew attention to the critical situation in connection to cartels. He examined the economic effects of cartels or, as he put them, the children of need (*Kinder der Not*).¹⁷ After him, Austrian legal scientist Adolf Menzel was the one who described the effect cartels have on the economy, and as a result, he prepared his bill under the title Act on Cartels Possessing General Merchandises Taxed with Consumption Taxes Closely Related to Industrial Production. The bill’s primary aim was to actuate the ministerial supervision of cartels, yet it did not become an actual law.¹⁸

¹³ “Az osztrák kartell-törvény”, 2.

¹⁴ Baumgartner, Meszlény, *Kartellek, trustök*, 311.

¹⁵ Gesetz vom 7. April 1870, wodurch unter Aufhebung der §§ 479, 480 und 481 des allgemeinen Strafgesetzes in Betreff der Verabredungen von Arbeitgebern oder Arbeitnehmern zur Erzwingung von Arbeitsbedingungen, und von Gewerbsleuten zur Erhöhung des Preises einer Ware zum Nachtheile des Publikums besondere Bestimmungen erlassen werden, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001676> (accessed: 19.08.2021), Bayer, “Das neue österreichische Kartellgesetz”, 658.

¹⁶ Ráth, “Emlékirat a kartellekről”, 73.

¹⁷ Kleinwächter, *Die Kartelle*; Gerber, “The Origins of European Competition Law”, 406–40.

¹⁸ Baeck, “The Austrian Cartel Law”, 798–800; Menzel, *Die Kartelle*; Resch, *Industriekartelle in Österreich*.

The cartel bill of 1897 significantly affected legal development in connection to cartels. The 21-section bill referred to products that, to quote the legal terminology of the period after the Austro-Hungarian Compromise, fell under the “indirect taxing closely connected to industrial production” (e.g., sugar, alcohol, beer, butter, salt)¹⁹ One could say that they wished to regulate cartels in connection to products that fell under the jurisdiction of consumption tax.

The first individual to ‘handle’ the bill was Baron Ernő Dániel, after which he wrote a circular letter to the chambers of trade and industry and agricultural trade unions and called upon them to form an opinion on the possible effects cartels have on the economy and whether or not their regulation was necessary. After all this, the process of the formation of the Hungarian law, for lack of a better term, got more or less lost in the background of political struggles. The chamber of Győr remarked on the misdeeds of cartels in 1899, giving a fresh boost to the national regulation of cartel law.

In the very same year, minister of trade Sándor Hegedűs commissioned Zoltán Ráth, teacher of the legal academy of Kassa, to make a professional monograph which this essay already quoted as a significant summarisation of Hungarian cartel law. However, the regulation itself still did not come to pass.²⁰ Following this, the minister of trade Károly Hieronymi commissioned a lawyer and member of the Parliament Pál Mandel, to create a bill that was published later, in 1904. The thought occurred that Hungary should establish a shared Cartel Act with Austria and form a shared cartel office and cartel court. However, the regulation of the Austro-Hungarian Compromise of 1867 made this impossible to conduct in a public law sense, and the set of mutual cases was not allowed to broaden.²¹ However, the Austrian bill served as a pattern for the Hungarian nation’s legislators while establishing the contents of the supervisory authority.²²

In connection to the Austrian regulation, an expert on the topic, Richárd Árkövy, stated that “a hundred to one that we will follow suit.”²³ The quote published in the *Pest Journal* proved to be sound, for the first cartel law bill got through the finish line due to the results of the Hungarian Cartel Act regulation. In his 1916 study, Tibor Forbáth emphasised that

[...] neglecting the matter of cartels is less than correct and our lawyers will have no choice but to deal with cartels more thoroughly sooner or later, for it is inappropriate that in our country cartels only see the light of day away from the general public and only in their results.²⁴

The Austrian cartel movement affected cartel law regulation at the turn of the century in an effective manner. However, here one cannot find criminal code regulations connected to cartels. The courthouses (e.g., the Reichsgericht) were the first to deal with

¹⁹ “Osztrák kartelltvény”, 5.

²⁰ “A kartelek szabályozása hazánkban”, 16.

²¹ “A kartelek szabályozása hazánkban”, 5.

²² Árkövy, “A Kartellszerződésekről”, 3.

²³ *Pesti Hírlap* 1 (1908): 49.

²⁴ Forbáth, “Kartelljogi kérdések I.”, 114. In Austrian law, other important stepping stones in cartel regulation appeared in 1938 and after this, in 1951, which no longer bore any relation to the regulation of the Hungarian Cartel Act of 1931.

cartel matters due to freedom of industry and contract.²⁵ Robert Liefmann assessed the cartels' position in an economic sense, especially in connection to the predomination of the freedom of competition.²⁶ The first European cartel act turned out to be the German Cartel Decree on 2 November 1923. The contents of the decree established the concept of cartels and in what cases a cartel contract shall be null and void when the operation of a cartel endangers public interests and the interests of the economy itself. The decree also secured the role of the imperial minister of economy in the supervision of cartels. The decree established the most prevalent organisation of cartel supervision, the Cartel Court and regulated the foundations of its composition and proceedings.²⁷

§ 1 of the German Cartel Decree of 1923 stated that all contracts or agreements that establish obligations in connection to the regulation of production or circulation, the application of business conditions, the method of price formation or pricing demands are only valid in written form.²⁸ The Hungarian cartel act of 1930 also adopted this regulation.

Following this, on 26 June 1930, the cartel emergency decree to prevent price binding was ratified.²⁹ The decree gave the government authority to either declare agreements of pricing null and void or suspend their execution; it allowed the government to forbid the application of such business conditions that limited any individual's pricing methods, not to mention forbidding any and all actions that influenced the efficiency of the circulation or production of goods. The imperial council could ordain that the contracting parties could back off from fulfilling the contents of the contract if the conditions objected above are hold good. Before taking the aforementioned regulations, the imperial council was obligated to hear the interested economic operators, not to mention asking for the opinion of the imperial economic council. If the council's decision concerned more than one country, the final decision must have been reached in unison with the governments of all involved nations. Violation of the regulations established by the decree could result in a fine.³⁰ After this, a decree on price binding was issued on 30 August 1930.

To thoroughly examine the topic, one must touch upon the relevance of the so-called compulsory cartel act of 1933, which fundamentally puts an end to the development of German cartel law in the first half of the 20th century. So far, the cartel decree of 1923 meant a line of defence against economic associations. By contrast, the formation of compulsory cartels was issued in 1933. The imperial minister of the economy could

²⁵ Baumgartner, Meszlény, *Kartellek, trustök*, 316–47; Blaich, *Kartell- und Monopolpolitik*; Webb, "Cartels and Business Cycles", 205–24.

²⁶ Liefmann, *Kartelle, Konzern und Trust*; Grunzel, *Über Kartelle*; Tschierschky, *Kartell und trust*; Pelle, *The German Roots*.

²⁷ Kessler, "German Cartel Regulation", 680–93. Verordnung gegen Missbrauch wirtschaftlicher Machtstellung vom 2 November 1923 see: Dobrovics, Köházi, *Kartell, árelemzés, külföldi törvények*, 17–25; see also: Kuhlmann, *Kartellbegriff und Genossenschaften*, 5–18; Jsay, Tschierschky, *Kartellverordnung*; Lehmann, *Grenzen der Kartellgerichtsbarkeit*; Denzel, *Mißbrauch der Kündigung*; Birnbaum, *Die Rechtsprechung des Kartellgerichts*.

²⁸ Verordnung gegen Missbrauch wirtschaftlicher Machtstellungen vom 2 November 1923. RGBl. I., 1067.

²⁹ Verordnung der Reichspräsidenten zur Behebung finanzieller, wirtschaftlicher und sozialer Notstände vom 26. Juli 1930. In Dobrovics, Köházi, *Kartell, árelemzés, külföldi törvények*, 17–25; Hinden, *Die Stimmhaltungsvorschriften*.

³⁰ Dobrovics, Köházi, *Kartell, árelemzés, külföldi törvények*, 27–9.

force companies into syndicates or similar associations for market regulation to secure public and economic interests. As the minister fulfilled this duty, he had the authority to regulate the rights and responsibilities of the members. The modification of the agreement also required ministerial consent. The minister also practised supervisory and audit rights over the aforementioned economic groupings. To ensure peaceful agreements between the participants, he could initiate conciliatory hearings. If everything else failed, the verdict fell under the jurisdiction of the Cartel Court.³¹

5. Cartel Supervisory Authorities after the 20th Act of 1931 Came into Effect in Hungary

The Hungarian regulation controlled cartel public law to ensure the interests of the general public and shared interests. The state also wanted to keep an eye on cartels themselves, and the tools to do so became the cartel supervisory organisations.³²

First of all, the names of the individual cartel supervisory organisations should be stated. From the executive branch of the state, the government itself, more specifically the authorised ministry, the Hungarian Royal Legal Directorate, the Cartel Committee and the Price Analysing Committee; from the jurisprudence system, the Cartel Court, the orderly courts and courts of arbitration participated in supervisory practices, namely cartel inspection. The reasoning of the Cartel Act referred to the fact that the influence of cartels' operations is widespread, especially among the workers of the industrial sector. Lawsuits against cartels affected both cartel members and individuals connected to the said cartels, therefore, the legal action affected the examined economic branch as a whole. This is why the legislature thought that exploring individual cartel cases required an unusual amount of circumspection and professional knowledge. In the following section of this essay, I would like to elaborate upon the short description of the protection of public interests, meaning the most critical cartel supervisory agency, the Cartel Court.

The Cartel Court was established after the law came into effect. As a specially-created court, the Cartel Court was organised within the Curia as it sat on top of the hierarchy of orderly courts, which was a unique solution in itself. The Cartel Act itself (§ 8) regulated the makeup of the Cartel Court. The court was a specialised court, the ruling branch of the hierarchy of orderly courts and was made up of a president, two judges and two side judges. Its president was either the president of the Curia or an individual selected by the president of the Curia; either the vice president or one of the presidents of chambers. The two judges were called upon by the elected president of chambers and the president of the commissioned chamber from among its judges. The side judges were chosen by the president of the commissioned chamber from ten experts from the list of 30 experts

³¹ *Ibid.*, 30–7.

³² Harasztosi Király, *A kartel*, 510. This chapter was also published in Varga, “The Lawsuit of Public Interest”, 361–74.

selected by the minister of trade in advance every three years. This solution ensured appropriate professional knowledge.³³

In cases when an agreement of decree fell under the jurisdiction of § 1 of the aforementioned Cartel Act, then per the instructions of the authorised minister, the Hungarian Royal Legal Directorate initiated a lawsuit at the Cartel Court. This was the lawsuit of public interests, also a *novum* in procedural law practices. And the best way to describe the concept of the lawsuit of public interest? Legal action was initiated to protect public interests and public well-being, meaning that the aforementioned lawsuit of public interest was the generic term for any legal action brought by the legal director with the purpose of either disbanding a cartel or forbidding to continue its operations; forbidding the fulfilment of the cartel agreement or decree; apart from suspending a lawsuit brought to either an orderly court or a court of arbitration, to decide whether or not the operations of a cartel are against the law, and also to invalidate the verdicts of courts of arbitration.³⁴ Lawsuits of public interests were one of the most vital tools of state intervention. In § 7, the Act described the option of initiating an act of public interest: a lawsuit of public interest could be brought against a cartel if the cartels' operations were against the law, good morals or public order, especially if they violated economic and public interest.

All in all, the Hungarian Cartel Act did not view cartels as violators of public interest. In a cartel law sense, the concept of public interest did not coincide with the concepts of economy and public well-being. Violation of public interests was an inevitable condition of initiating a lawsuit of public interest. The royal legal director initiating a public interest lawsuit for private vices would have been unimaginable. This legal action needed the immediate endangerment of public interests. Therefore the legal director could only base a case of public interests on the violation of the interests of the economy and public well-being. During the trial, the only thing the Cartel Court could examine was whether or not the actions of the cartel harmed economic and shared interests. The reason behind the initiation of a lawsuit of public interest was the protection of the interests of the economy and general well-being; therefore, deciding every other matter fell under the jurisdiction of civil courts and courts of arbitration. In lawsuits of public interest, the Cartel Court did not decide “over the foundations of private law affairs”, according to which one can draw an exact line of demarcation between the jurisdictions of the Cartel Court and the orderly courts.³⁵

6. Conclusion

The economic changes after the turn of the century initiated such shifts in legal life and legal sciences that resulted in a need to codify regulations in connection to cartels on an official level.

³³ *Ibid.*, 528; Gombos, “A Kartelbíróság”, 96–105.

³⁴ Dobrovics, *Kartelismertek*, 126.

³⁵ Dobrovics, “A közérdekü per”, 14.

The regulations of private law, more specifically the regulations of economic law, served as the foundations upon which regulations on the invalidation of contracts in connection to unfair competition could build, therefore enabling the regulation of cartel law. To validate the rules of substantive law, it was inevitable that apart from the formation of formal law regulations, the operations of cartel supervisory organisations that are capable of enforcing them should also be regulated.

In Hungary, cartel organisations rose to a significant level while they were permitted in the first half of the 20th century, and courthouses played a prominent role in keeping them within legal boundaries, therefore putting pressure and having an effect on the operations of companies playing a significant role in economic life and the shaping of said economic life itself.

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