

*Changes in the Hungarian Insolvency Law in the Interwar Period**

Abstract

The First World War and the Trianon Treaty shocked the Hungarian economy. The Hungarian government implemented a payment moratorium from the start of the war, but after a one-year long moratorium, the government wanted to restore the working of the economy. But it desired to avoid the massive bankruptcies of the firms; therefore, a new institution, the compulsory non-bankruptcy settlement was introduced by the government in Hungary for helping the debtors. In my paper, I examine the rearrangement of the insolvency law in the interwar period which was generated by the compulsory non-bankruptcy settlement. This appeared beside the bankruptcy procedure, which regulation was passed by the National Assembly in 1881. It was the second Hungarian bankruptcy act, which remained unchanged until socialism. These two procedures were the significant elements of the insolvency law in the examined period. In my paper, I present the circumstances of the new institution's introduction, its modification and its relation to the bankruptcy procedure.

Keywords: bankruptcy procedure, compulsory non-bankruptcy settlement, exceptional power, state intervention in the private law, effect of the First World War, responses to the economic crises

Introduction

This paper aims to sketch a snapshot of the Hungarian insolvency law in the Horthy Era. I use the insolvency law as a collective term which includes every procedure against insolvent debtors, so this term is not the same as the bankruptcy law. The development of

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the insolvency law was closely related to the political and economic changes; therefore, I present a brief outline of the rearrangement of the political system and economic thinking in my paper.

The Realignment of the Hungarian State During the Interwar Period

The Austro-Hungarian Monarchy collapsed after the First World War, therefore, the conditions of the Hungarian economy changed essentially. The common market and the common monetary system with Austria – which were the results of the Austro-Hungarian Compromise of 1867 – ceased to exist. Based on the Trianon Treaty of 1920, Hungary lost 2/3 of its territory; thus, the extent of the Hungarian economy and market shrunk. For this reason, after the First World War Hungary had to rebuild its economy in the remaining areas, which was challenging since a significant part of feedstock and railway lines was beyond the country's borders.

The Hungarian Kingdom was the Member State of the Dual Monarchy until 1918. After First World War, the political situation also changed: the Aster Revolution gave control of the country to Count Mihály Károlyi on 31 October 1918. He was appointed by Archduke Joseph, who was the governor and the deputy of the king with full powers, as Prime Minister. The Hungarian King, Charles IV, laid down the management of governmental cases in the Proclamation of Eckartsau on 13 November 1918,¹ which was interpreted by the Hungarian political circles as an abdication of the throne. For this reason, the state of Hungary had to be changed, and the People's Republic was proclaimed on 16 November 1918.² However, this political system was ephemeral because the Party of Communists in Hungary grabbed political control in March of 1919, and they established the Soviet Republic instead of the People's Republic in Hungary. However, later on, the Hungarian Soviet Republic failed because of the Romanian invasion of Hungary on 1 August 1919.

The Hungarian political system was restored in 1920, which meant the beginning of the Horthy era when the Hungarian political elite relied on historical traditions; therefore, Hungary became a kingdom again. However, as the Habsburg Emperor could not return to the throne, the state was a kingdom without a king. The head of state was the governor, who replaced the king.³ This solution had already had a historical background since, in the 15th century, the governor had the power when the king was too young for the throne. The Hungarian governor was Miklós Horthy; thus, historians refer to the era from 1920 to 1944 using his name. Act I of 1920 on the restoration of constitutionality and the temporary settlement of the exercise of state power regulated the legal status and authority of the governor.⁴

¹ Szabó, "Az Osztrák-Magyar Monarchia", 315–6.

² Hollósi, "A történelmi emlékezet", 41.

³ Püski, *A Horthy-rendszer (1919–1945)*, 15–6.

⁴ Szabó, "A szokásjog és a törvény", 155.

The Hungarian legislation was also changed after 1920. During dualism, the National Assembly, the Hungarian legislative organ, was bicameral. The House of Representatives discussed a bill for the first time. Typically the Ministry initiated the legislative process; thus, councillors of the Ministry worked out the drafts.⁵ Before the House of Representatives discussion, commissions of the National Assembly which were competent in the given topic debated the draft, and they made a report about their view.⁶ If the House of Representatives passed a draft, the House of Magnates or the second Chamber should discuss it a second time. This Chamber was modernised in 1885, and since then, it had been known as the House of Magnates. Finally, the king had to sanction a draft, and this approval made a draft an act. The National Assembly was disbanded because the form of the state changed in 1918. After 1920, the restoration of the later legislative organ failed, and in place of the National Assembly, unicameral legislation was established in 1920. The bicameral National Assembly was restored in 1927, and the second Chamber was reorganised by Act XXII of 1926, with the name changed to the Upper House.⁷ The Hungarian throne was not filled; therefore, the sanctioning right was not practised by the king. Instead of the sanctioning right, the governor supplied the Act with a publication clause with the aim of approval of the Act.

The Act was the main legal source in addition to the customary law in Hungary because the country did not have a written constitution in a single document until 1949. The Hungarian constitutional system was based on the historical (unwritten) Constitution.⁸ The government decrees and the decrees of the Minister were below the Act in the hierarchy of legal sources in the dualism and the Horthy Era.

Development of Exceptional Power in Hungary

The Hungarian government also strove for preparing the Hungarian legal regulation for the war period before the First World War, therefore, the Ministry created a bill about the exceptional power under the pressure of the common Minister of Defence, Moritz Auffenberg.⁹ Based on this bill, the Hungarian National Assembly passed Act LXIII of 1912 on special measures in case of war.¹⁰ This Act authorised the government to issue decrees in the competence of the National Assembly if necessary because of the war or danger threat of war. The limit of these government's measures was the liability of the ministers (Act III of 1848) and the permanent duty of reporting to the National Assembly about these measures.¹¹ Hungary followed the English model since the legislator permitted the civilian government to control the country during the war.¹² This

⁵ Püski, *A Horthy-korszak parlamentje*, 159–63.

⁶ *Ibid.*, 165–6.

⁷ Püski, *A magyar felsőház története 1927–1945*, 18–22.

⁸ Hörcher, “Is the Historical Constitution”, 89–90.

⁹ Kelemen, “Út a nemzeti jogalkotási”, 130–2.

¹⁰ Pölöskei, “A belpolitikai rendszer jogi”, 81.

¹¹ Kelemen, “A Honvédelmi Tanács. Szerves fejlődés”, 74.

¹² Galántai, “A háborús állam”, 195.

regulation included rules serving military goals, and it gave means to guarantee public security and public order in the country. During the war, this Act was allowed to limit freedom rights (freedom of movement, freedom of assembly, freedom of the press, rights of association).¹³ If the exceptional power was in force, Hungarian courts would be authorised to follow simplified rules of procedure in certain criminal cases.¹⁴

The most important effect of the First World War was on private law in Hungary was the breaking of the codification of the Civil Code.¹⁵ During this period, the Hungarian Civil Code did not exist; therefore, this area of law was regulated by the customary law in Hungary, with the Commercial Code (Act XXXVII of 1875) partly addressing this gap.¹⁶ Additionally, Act LXIII of 1912, regulated this question.¹⁷ This Act authorised the government to exceptional measures concerning the assertion of private law demands, civil actions and actions outside the court system.

The intervention in economic relations was necessary due to the army's demands,¹⁸ which were regulated in Act LXVIII of 1912 on military services. This Act allowed using the personal and material services of the civilian population for military goals in certain periods. For example, the civilian population under 50 could be required to fulfil military duties or to provide their means of communication or transportation (vehicles, telegraphs, carrier pigeons) on payment.¹⁹ This Act introduced the crime of evasion of price control in Hungary.²⁰

Changes in the Hungarian Economic Life

In the 19th century, the economy was ruled by liberal thinking in Europe as well as Hungary, so the state provided appropriate conditions for economic actors and did not intervene in the functioning of the economy.²¹ This was the *laissez-faire* principle formulated by Adam Smith. Unfortunately, the idea was not able to work in Hungary because the big investments (such as railway construction and heavy industry) required the support of the state because of the absence of financially strong economic actors. In Hungary, the economic expansion occurred in the second part of the 19th century thanks to the Austro-Hungarian Compromise. The commercial cooperation with the Austrian Empire supported the development of Hungarian agriculture, industry and bank sector. In this period, the private sector ruled the economy, so we can declare that the economy was able to function independently from the state.

¹³ Kelemen, "A háború esetére szóló", 76.

¹⁴ *Ibid.*, 15–6; Tóth, "A kivételes hatalom szabályozása", 20, 25, 30, 75–87.

¹⁵ Homoki-Nagy, "Gondolatok a magyar kodifikáció", 92; Homoki-Nagy, "Geschichte der zivilrechtlichen", 497.

¹⁶ Horváth, "A kereskedelmi törvény", 227.

¹⁷ Mezey, "Az első világháború jogi", 12.

¹⁸ Kelemen, "A kivételes hatalom szabályozásának", 85.

¹⁹ Pétervári, "A kivételes hatalom magánjogi", 154–5.

²⁰ Varga, "Árdrágító visszaélések", 83.

²¹ Pongrácz, "Az állam gazdaságpolitikai szerepvállalásának változásai", 175–7.

The economic conditions were changed before the First World War in Hungary when the executive powers could influence the economic life based on the Act on the exceptional power. The authorisations regulated in the Act on the exceptional power were the first steps taken toward the economy being controlled by the state.²² This served as the foundation of war production during the Great War.²³ The regulations on the moratorium were governmental measures seeking to reduce the economic effects of the war. However, the introduction of the non-insolvency part was implemented as a preparation for peacetime.

The state did not give up these authorisations after the end of the war, but rather strengthened them and extended them in different directions.²⁴ As a result, the operation of the market economy changed significantly. For example, the crime of evasion of price control lasted throughout the Horthy Era.²⁵ As a sign of the extension of state intervention powers, the legislator regulated the unfair competition first with the Act V of 1923.²⁶ Subsequently, due to the Great Recession of 1929, the legislator created the legal background of the supervision of the so-called cartel activities with the Act XX of 1931.²⁷ These steps of the state intervention influenced the legal relationships between the economic actors in such a way that had been unprecedented previously, thus, the private law principle of the freedom of contract was restricted in many cases.²⁸ The crime of evasion of price control, the unfair competition and the introduction of cartels to the Hungarian legal environment aimed to protect the public interest,²⁹ which was the explanation provided for the restriction of the freedom of contract.

We can see that the former liberal concept of free competition was pushed into the background, and the state strove to regulate the market.³⁰ The reason for this shift was twofold: the changing of views of the economists such as Farkas Heller, the well-known Hungarian economist, and the effects of the Great War. The rationale was that the economy should serve the common interest and the public good; therefore, the state should not support liberal economic politics, but it must intervene in the working of the economy.³¹

Besides the change of economic thinking, a significant factor in the Hungarian economy in the 1920s was the inflation spiralling out of control in Hungary during the First World War, which continued after the war.³² For the first time, the government strove to stop inflation with a deflation policy, which meant a government-induced shortage of money, but this attempt was unsuccessful. The Hungarian government had to cre-

²² Pogány, “A nagy háború hosszu”, 265.

²³ Tomka, “Az első világháború mint történeti”, 20.

²⁴ Homoki-Nagy, “Kartellszerződések a gyakorlatban”, 5; Molnár, *A gazdálkodó szervezet vezetőjének*, 26.

²⁵ Angyal, *A hadviselés érdekei ellen*, 62.

²⁶ Krusóczy, “A tisztességtelen verseny a Szegedi Királyi Ítéltábla gyakorlatában”, 248.

²⁷ Varga, “Bírságolási eljárási szabályok kartellügyekben az 1931. évi XX. tc. hatálybalépését követően”, 46–7; Szabó, “Az 1931. évi XX. törvénycikk rendes bíróságok előtti gyakorlata”, 35–6; Stipta, “A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX. tc. hazai előzményei”, 61.

²⁸ Szabó, “Jogesetek az első magyar”, 489; Molnár, “A kartellmagatartások büntetőjogi szankcionálásának”, 30.

²⁹ Varga, “The Procedure and Operation”, 663; Kovács, “A kartellkérdés gazdaságelméleti és gazdaságpolitikai háttere II”, 15; Krusóczy, “A Budapesti Kereskedelmi és Iparkamara szerepe”, 197–8.

³⁰ Varga, *A kartellfelügyelet bevezetése*, 37–8.

³¹ Heller, “A kartel, mint közgazdasági probléma”, 9–10.

³² Pogány, “A nagy háború hosszu”, 272.

ate a new plan for reorganising the economy, but it needed the permission of the Great Powers. They accepted the Hungarian plan for financial rescue and the country received a big loan from the League of Nations. In 1924, Hungary established the first Hungarian central bank (Hungarian National Bank), independent of the government.³³ It was one condition for the loan from the League of Nations. The Hungarian government was able to stabilise the monetary system. To boost the economy and recover investors' trust, the government and the central bank introduced new money, and the Pengő (the name of new money) succeeded the Crown (korona) in 1926.³⁴

The Hungarian Bankruptcy Procedure in the Interwar Period

Hungarian National Assembly passed the second bankruptcy act in 1881, which modernised the Hungarian bankruptcy procedure. The bankruptcy law was regulated for the first time in Hungary in 1840; therefore, it was necessary to reform the insolvency law after the Austro-Hungarian Compromise. The Hungarian political elite desired to support the Hungarian economy with new, modern legal codes. The National Assembly passed the Commercial Code in 1875, the Bills of Exchange Act (*Wechselgesetz*) in 1876 and the Bankruptcy Act in 1881. The Hungarian government provided the appropriate legal frame for the economic actors working out these acts, and the solution was in line with liberal economic thinking.³⁵ All three were created by István Apáthy, a professor of commercial law, bills of exchange and international law at the University of Budapest between 1870 and 1889.

This Act (Act XVII of 1881) followed the German models.³⁶ István Apáthy compiled the Hungarian regulation based on the German Bankruptcy Act of 1877 and the Austrian Bankruptcy Act of 1868. For the first time, the material and procedural law of bankruptcy were regulated separately in Hungary under this Act.³⁷ The main rules concerning private individuals were the ordinary proceedings in the bankruptcy act. However, at the end of the legal provisions, the special commercial proceedings were also regulated. The subjects of the commercial proceedings were the merchants and the commercial companies, but the difference between the ordinary and the commercial proceedings was in the grey zone. The regulation of the opening of the bankruptcy proceedings and the competence of the courts in the bankruptcy cases differed in the ordinary and commercial bankruptcy proceedings.³⁸ The separation of the ordinary and commercial proceedings was similar to the Austrian regulation. But the two rules were not quite the same since the compulsory bankruptcy settlement was only allowed to the merchants and commercial companies in the Austrian Bankruptcy Act of 1868, contrary to the Hungarian Bankruptcy Act, in

³³ Bekker, Hild, "Közgazdaságtan a két világháború között", 518.

³⁴ Kaposi, *Magyarország gazdaságtörténete*, 282.

³⁵ Pétervári, "The Bankruptcy Act in Hungary", 70–3.

³⁶ Horváth, *A magyar magánjog*, 482.

³⁷ Korsósne Delacasse, "Die Anfänge des ungarischen", 74.

³⁸ Pétervári, "A kereskedelmi csőd a második", 280–1; Messinger, "Kereskedelmi csőd", 640.

which the initiative of compulsory bankruptcy settlement was not restricted to the merchants or commercial companies.³⁹

The passing of this legal Act aimed mainly at the acceleration of the procedure and the strengthening of the creditors' autonomy, but these goals were only partly realised. The procedure was accelerated in the Hungarian Bankruptcy Act of 1840, but it still took 5–10 years to resolve if the case was complicated. The creditors' autonomy also increased, but the Hungarian regulation left the main competence to the courts. For example, one of the most important actors in the bankruptcy procedure was the bankruptcy trustee, who handled and sold the bankruptcy assets and represented the bankruptcy assets against the creditors and the debtors of the bankrupt. Therefore, an important question was how the bankruptcy trustee won his authority. We can find many solutions to this question. The most liberal regulation was the Bavarian bankruptcy regulation which handed the decision to creditors who elected the bankruptcy trustee. The Hungarian legislative chose a conservative solution as it was the court appointed the bankruptcy trustee without consulting the creditors.

This Second Bankruptcy Act was in effect in Hungary during the interwar period. The legal circles recommended the modification of this Act many times,⁴⁰ but it remained unchanged.⁴¹ However, I was able to identify a few recommendations. According to Andor Jacobi, the difference between the commercial and the ordinary procedures would have to cease, and the desired situation was the growth of the creditors' autonomy against the rights of the debtor. He argued for the protection of the creditors because the support of the debtor is a 'fake humanism', meaning that the legislative sacrificed the existence of the majority of people to one person's existence if it protected the interest of the debtor. He considered the French bankruptcy logic the best.⁴² Arthur Meszlény proposed to shorten the bankruptcy procedure, and he wanted to limit the actions of rescission⁴³ concerning bankruptcy procedures. For this reason, he recommended that the special privileges of the creditors would be invalid under the law if they were granted 60 days before the declaration of bankruptcy. The fees of bankruptcy trustees were also too high; therefore, he proposed that these fees followed the percentage of the sold bankruptcy assets.⁴⁴

The Introduction of the Compulsory Non-bankruptcy Settlement in Hungary

At the outbreak of the First World War the Hungarian government issued some decrees to ease the difficult economic circumstances based on the authorisation of the exceptional power act. These decrees, called moratorium decrees, allowed a postponement of

³⁹ Apáthy, *A magyar csődjog, rendszere*, vol. 1, 63.

⁴⁰ Sebestyén, "A kényszeregyesség reformja", 158; Fuchs, "Beszámoló a Jogászgyűlésről", 113.

⁴¹ Halmos, "A csődtörvény csődtörténete", 224; Lőrinczi, "A mai magyar csődjogi szabályozás", 21.

⁴² Jacobi, "Csődjogi elmélgedések", 12–3.

⁴³ Creditors were able to annul the acts with which the debtor distracted one part of his assets from the bankruptcy assets (*Anfechtung* in German).

⁴⁴ Fuchs, "Beszámoló a Jogászgyűlésről", 113.

the private law obligations for the economic actors. They also regulated the material law questions. Nevertheless, the government supplemented this regulation with procedural rules of the *juristitium* decrees. These legal norms closed out the chances of private law assertion by the judge.⁴⁵

In these decrees, the bankruptcy procedures which were started by creditors were suspended, and the creditors were not able to initiate new bankruptcy procedures.⁴⁶ The Hungarian government maintained the moratorium on bankruptcy procedure until 1915. At the Ministry, the councillors sought the solution to order the economic relations because the Hungarian political elite recognised that if they had immediately restored the effect of the Bankruptcy Act, it would have caused a financial shock. Thus they established the compulsory non-bankruptcy settlement (*csődönkívüli kényszeregyezés* in Hungarian, *das gerichtlichen Zwangsvergleichsverfahren zur Abwendung des Konkurses* in German) with the Decree of Prime Minister No. 4070/1915 in Hungary, and the moratorium of the bankruptcy procedures ceased to exist as of 1 December 1915 simultaneously with the new institution entering into force.⁴⁷ The government hoped that the merchants and the firms that had financial difficulties because of the war could survive based on the new regulation.⁴⁸ This institution was accepted in most countries of Europe (UK, France, Spain, Switzerland) at the end of the 19th century, so Hungary joined the European trend. The compulsory non-bankruptcy settlement introduced in Hungary was not introduced in Germany, which had the closest economic relation with Hungary.⁴⁹

The substance of the compulsory non-bankruptcy settlement was that the creditors remitted a part of their claims or they gave the debtor a delay to pay. Thus the debtor was able to avoid the bankruptcy procedure and its adverse legal consequences; he was able to initiate the procedure with the submission of the compromise offer.⁵⁰ If the majority of creditors supported the compromise offer, the court could support the agreement, which obliged the minority of the creditors who opposed the agreement. The negotiation between debtor and creditors was conducted before the court, which controlled the procedure. The judge had the right to rule *pro et contra* ex officio. In the second instance court of the Hungarian judicial system, the regional royal courts were competent in the compulsory non-bankruptcy settlement. The court proceeded as a single judge instead of a panel of judges. The court appointed the court administrator who examined the assets of the debtor and helped the debtor settle the debts.

This institution could be a more beneficial procedure for the creditors than the bankruptcy procedure, even though they lost a part of their claims at the end, because with the help of the bankruptcy procedure, they very often got only a small part of their claims, and it took a lot of time. For this reason, the aim of the government with the compulsory non-bankruptcy settlement was (1) The more efficient satisfaction of the creditors than in

⁴⁵ Szivós, “Az 1911. évi I. törvények”, 212–5.

⁴⁶ Pétervári, “A kivételes hatalomról rendelkező törvény”, 31–4.

⁴⁷ Meszlény, *A csődön kívüli*, 14.

⁴⁸ “Indokolás a csődön kívüli kényszeregyezésről”, 99.

⁴⁹ Meszlény, *A csődön kívüli*, 5–12.

⁵⁰ Pétervári, “The Bankruptcy Act in Hungary”, 77–8.

the bankruptcy procedure in general; (2) To help the debtor to remain an active economic actor despite his financial difficulties.⁵¹

Based on the foreign models, the necessity of implementing this institution came up in 1883, especially because the economic circles encouraged this idea.⁵² The first draft of the compulsory non-bankruptcy settlement was made by attorney Jakab Schreyer, based on Dezső Szilágyi's charge, who was the Minister of Justice at this time. It received a favourable review from Simon Messinger at the session of the Hungarian Jurists' Association,⁵³ but this did not become a legislative act. Because of the newer motivation of the commercial circles, Schreyer revised again his draft based on the former discussion in the Hungarian Jurists' Association⁵⁴ around 1910.⁵⁵ The Commercial Congress declared the necessity of the compulsory non-bankruptcy settlement's introduction in Hungary in 1914.⁵⁶ This draft was on the agenda when this institution was regulated by a decree in the Austrian Empire, which came into effect on 1 January 1915.⁵⁷ Simon Gold already recommended providing an opportunity for economic actors to agree on a frame of compulsory non-bankruptcy settlement with the purpose of preventing the massive bankruptcies in November of 1914.⁵⁸

The transformation of the draft into a legal norm accelerated with the actions of Jenő Balogh, Hungarian Justice Minister, in June of 1915.⁵⁹ After reworking the Ministry of Justice the Minister issued the decree which ordered the introduction of the compulsory non-bankruptcy settlement. In this way, the legislator established a new institution – which basically influenced the functioning of the economic life – in the legal system through a decree, but the significant questions were regulated by a legislator in earlier acts. The *Attorneys' Journal* criticised this solution in its leading article in April of 1915, when the draft was published, and the introduction of the compulsory non-bankruptcy settlement arose by decree.⁶⁰ The constitutional problem was based on the authorisation of the government, which only extended extraordinary measures pursuant to the provisions of the Act on exceptional power, but the writer of the leading article considered it doubtful whether the introduction of this new institution should be part of the necessary extraordinary measures. The author of the article thought that the National Assembly, which was in session in April 1915, should pass the draft in the form of an act despite the decree. This solution was given reasons in the preparatory work of the Act, which confirmed the compulsory non-bankruptcy settlement; later on, the meeting of consultants

⁵¹ Antal, *Szegedi Királyi Ítéletábla*, vol. 3, 32–3.

⁵² "A fizetésbeszűntetések törvényhozás utjání rendezése", 408.

⁵³ Messinger, "Csődjogi reformok (Három törvénytervezet)", 14.

⁵⁴ The Hungarian Jurists' Association was established in 1879, and the founding members wished uniting the Hungarian lawyers. Their aim was establishing the opportunity for the discussion about the improvement of the Hungarian legal system and supporting the Hungarian legislation. The organisation held many scientific discussions about different topics, and they published the results of these meetings. It was a very important association in the examined period which had determining role in the development of Hungarian legal scholarship. Richter, "Foundation of the Hungarian Jurists' Convention", 60–4.

⁵⁵ Messinger, "A csődönkívüli kényszeregyezés intézménye", 3–68.

⁵⁶ "A kereskedelmi kongresszus", 217.

⁵⁷ Messinger, "A csődönkívüli kényszeregyezés intézménye", 27.

⁵⁸ Gold, "Kényszeregyezés csődön kívül", 470.

⁵⁹ Stipta, "Balogh Jenő, az igazságügy", 40–1; Meszlény, *A csődön kívüli*, 13.

⁶⁰ "A csődön kívül köthető kényszeregyesség", 1.

supported this because the introduction of the institution was desirable and the exceptional power made it possible, but its justification was less reasonable.⁶¹

The introduction of the institution by decree was unusual because the decree was issued on 15 November 1915. Still, the Minister of Justice handed a draft concerning the compulsory non-bankruptcy settlement to the National Assembly. The House of Representatives already discussed it on 17 December 1915.⁶² The Act entered into force on 1 February 1916 as the Act V of 1916 on the compulsory non-bankruptcy settlement and the amendment of some provisions of the bankruptcy act. This legal norm included only an authorisation for the government concerning this institution to regulate the compulsory non-bankruptcy settlement by decree until further provisions of the legislation. Besides that, the government was entitled to supplement, amend or even repeal the decree to be issued as necessary on the basis of new experiences. The Act still regulated crimes connected to bankruptcy procedures or compulsory non-bankruptcy settlement. The leading article of the *Attorneys' Journal* considered this general authorisation constitutionally problematic again because this new insolvency procedure allowed broad intervention in the private laws of individuals.⁶³ Under this procedure, the majority of creditors were able to accept the proportion of creditors' satisfaction from the debtor's assets which was offered by the debtor. For this reason, the creditors opposing the compromise had to surrender the claims above the proportion of satisfaction despite their wishes, so a part of their individual private rights was taken away from these creditors to satisfy the public interest. For this reason, implementation of the compulsory non-bankruptcy settlement would be reasonable. Therefore, it was an adverse solution that the government was able to decide about the formation of the procedure without restriction based on the authorisation.

The journal would only provide the government with more limited authorisation to determine the details of the procedure, and it would lay stress rather on the codification than the enactment of the compulsory non-bankruptcy settlement. However, according to the report of the Commission of Justice concerning the Act took the view that the maintenance of the regulation by decree guarantees adequate practical experiences for final regulation by the Act.⁶⁴ We can conclude from this explanation that the legislator considered the regulation of the compulsory non-bankruptcy settlement by decree only a provisional solution, and it desired the enactment of the institution because of the restriction of private ownership. This is similar to the statement of Antal Almási that in peacetime, the regulation of private legal principles by decree is possible only exceptionally, and it has to be allowed in the case of indifferent rules.⁶⁵

The government's authorisation in the Act concerning the compulsory non-bankruptcy settlement was necessary because the legal background of the Decree of Prime Minister No. 4070/1915 was given by Act LXIII of 1912; therefore, the decree would be repealed by the expiry of the exceptional power. The motivation of Act V of 1916 pointed out that the institution was ruled in the decree profoundly; therefore, it could be

⁶¹ "Indokolás a csődön kívüli kényszerezegységről", 98.

⁶² *Az 1910. évi június hó 21-ére hirdetett országgyűlés*, vol. 26, 592.

⁶³ "Háborús igazságügyi törvényjavaslatok", 1.

⁶⁴ "A képviselőház igazságügyi bizottságának", 80.

⁶⁵ Almási, *A háború hatása*, 22.

a proper solution if the former decree remained in force after the war. Accordingly, the government issued a new decree about the maintenance of the effect of Decree of Prime Minister No. 4070/1915 until further orders of the government on 31 January 1916, no more than nine days after the publication of Act V of 1916, which was on 22 January 1916.⁶⁶

The transposition of the compulsory non-bankruptcy settlement in the Hungarian legal system was slightly overshadowed by way of its introduction, but it could be the reason for this solution that wartime was not the suitable period for the codification.⁶⁷ Besides, we have to mention that the complete enactment of the institution did not occur, but the reinforcement in Act happened in a short time. The regulation of the compulsory non-bankruptcy settlement was recognised in professional circles,⁶⁸ which praised the work of the Minister of Justice, Jenő Balogh and his co-worker in the Ministry, Lipót Vadász, who was responsible for the editing of the text of the decree.⁶⁹ At the end of Jenő Balogh's ministerial mandate, the implementation of this decree which sets 'rightly a model abroad' was considered the best work in his laudation published in *Jogtudományi Közlöny* (Journal of Jurisprudence).⁷⁰

Modification of the Regulation of Compulsory Non-bankruptcy Settlement

In the first half of the 1920s, the economic crisis ran through Central and Eastern Europe, so the Hungarian government wanted to remedy this situation with the modification of the insolvency law. It wished to make the trust of investors stronger with this instrument in addition to the introduction of the new money. As I mentioned previously, the bankruptcy regulation remained unchanged, but the compulsory non-bankruptcy settlement was modified by the Decree of Prime Minister No. 1410/1926. The aim of this improvement was the elimination of problems around this procedure. The creator of the new decree, Sándor Kornél Tury (secretary of the Ministry of Justice), identified three complaints in connection with the procedure: (1) The bad faith of the debtors during the procedure which caused damages for the creditors; (2) The procedure is too lengthy; (3) The procedure is too expensive.⁷¹ The most harmful practices of the spiteful debtors were those referred to in item 1. They do not inform the creditors about their critical financial situations, but they turn immediately to their attorneys and through them to the court because of the compulsory non-bankruptcy settlement. Debtors often do not perform their compromise with creditors, which they established during the compulsory non-bankruptcy procedure.

⁶⁶ 21. A m. kir. minisztérium 1916. évi 451. M. E. számú rendelete, 40.

⁶⁷ Baditz, "A csődeljárás reformja", 207.

⁶⁸ Medgyes, "A csődönkívüli kényszeregyezés", 484; "A csődönkívüli kényszeregyesség", 1; "Rendelet a csődön kívüli kényszeregyességi eljárásról", 1.

⁶⁹ *Az 1910. évi június hó 21-ére hirdetett*, vol. 27, 594.

⁷⁰ "Balogh Jenő", 213.

⁷¹ Tury, "A csődönkívüli kényszeregyességi eljárás reformja", 42–3.

The most important innovation of the modification was the introduction of the private settlement procedure without the court. This element was obligatory, and it became the first part of the compulsory non-bankruptcy settlement. The new decree allowed the debtors to start the procedure if they suited the requirements, whose aims were to guarantee the good faith of the debtors. The private settlement procedure was led by the National Credit Protector Association (Országos Hitelvédő Egylet), which was established by this Act by the Chamber of Commerce and Industry of Budapest and the chambers outside Budapest. The speciality of this new private procedure was the decision of the majority about the compromise offer, which the minority had to accept; thus, the unanimous decision about the compromise with the debtor was not necessary like earlier in the private settlement. The decree provided 30 days for the establishment of the compromise through the private settlement procedure; if it was unsuccessful, the compulsory non-bankruptcy settlement was initiated. The procedure was faster due to the limitation of the establishment of new deadlines and the legal remedies. The modification was striving to make the procedure cheaper; therefore, the fees of court administrators, consultants and the National Creditor Protector Association determined a fixed proportion of the financial covers.

Summary

The statement of the *Attorneys' Journal* about the acts enacted during the war was illusory, “The word of the legislator, however, is not such a statement which would be temporary and fleeting in its effect but has a long-term influence even after losing its force, since it sets the way of the legal development and forecasts the way of the future”.⁷² The economic, legal development of the following years was determined by the principle which had to be prioritised during the First World War:⁷³ “the increased acknowledgement of public interest and its enforcement against individual interest – in the field of criminal law and private law as well”.⁷⁴

The Hungarian insolvency law followed this tendency only partly because the bankruptcy procedure was not modified during the interwar period; therefore, this regulation was not able to support the development of the Hungarian economy. On the other hand, the compulsory non-bankruptcy settlement was a modern procedure that provided better requirements for the economic actors, although the state also intervened in the private law relations with this regulation. The constitutional problems connected to this institution were not solved by the legislator during the whole examined period. We can see that the modification of this regulation also happened by decree, which was also contrary to the separation of powers.⁷⁵

⁷² “Háborús igazságügyi törvényjavaslatok”, 1.

⁷³ Varga, “„Egy választottbírósi eljárás”, 29.

⁷⁴ “Háborús igazságügyi törvényjavaslatok”, 1.

⁷⁵ Sorix, “Rendeletek”, 110–1.

It was a special situation because two insolvency procedures functioned separately. Many academic articles recommended integrating these procedures,⁷⁶ but it was not realised. But the new insolvency institution changed the insolvency law in Hungary because the compulsory non-bankruptcy settlement pushed the bankruptcy procedure into the background and took place of the bankruptcy procedure. The economic actors settled the insolvency cases through the compulsory non-bankruptcy settlement, and the role of the bankruptcy procedure was only threatening means against the debtors whose aim was forcing the payment or the compromise.⁷⁷ The reason for this tendency was that the bankruptcy procedure was too expensive and disadvantageous for both the creditors and debtors.

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⁷⁶ Sebastyén, “A kényszeregyesség reformja”, 157; Sommer, “A csődönkívüli kényszeregyesség reformja”, 174; Fuchs, “Beszámoló a Jogászgyűlésről”, 113.

⁷⁷ György, “Hitelvédelmi problémák II”, 31–2.

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