

# The Situation of Orphaned Children in the World of Serfs and Peasants

MÁRIA HOMOKI-NAGY\* 

University of Szeged, Hungary

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## ABSTRACT

The present study, authored by a legal historian, examines the relationship between legal history and legal folklore through an investigation, centered on the market town of Szentes, one of a distinctive group of market towns in Hungary's Southern Great Plain, of the legal folklore that emerged at the end of the 18th century as a result of historical antecedents as well as demographic, economic, and social changes. The system of norms and values, the customary law, and the wealth of legal folklore that developed in these towns in the 18–19th centuries in the process of the emergence of the local middle class subsequently influenced the development of civil law at central level. The present study analyzes regulatory practice concerning orphans in the wills of the serfs and peasants living in the market towns of Hungary's Southern Great Plain, preserved primarily in local sources, based on entries in the “Book of Agreements” of the market town of Szentes. It seeks to identify the specific characteristics of guardianship customs in the world of the “lower class,” including how the position of widowed women and their responsibility for their children evolved, as well as expectations concerning stepfathers in the absence of guardianship. It also investigates how it became common practice in the market towns of the Southern Great Plain for the inheritance of the orphans of serfs not to be preserved in kind but rather sold, and, in an effort to preserve its value, the money was loaned out and the resulting interest was used to provide the bare necessities for the orphans.

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## KEYWORDS

legal history, legal folklore, Szentes, orphans, guardianship, stepfather, loan, agreements, book of agreements

The study of the everyday lives of serfs and peasants in the 18–19th centuries has been an important area of research in the field of legal customs in recent decades in Hungary. Documents found in the archives include sources of interest to both economic historians and social

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\* Corresponding author. E-mail: homoki@juris.u-szeged.hu

historians. However, these same sources are also indispensable to ethnographers and legal historians. When researching the development of specific civil law institutions, a knowledge of market town law is essential. In this respect, it is not only documents from the manorial courts that prove helpful but also written documentation from verbal disputes in the courts of individual market towns, should the landlord grant the relevant permission. Researchers have long recognized the cultural-historical importance of the extant wills of serfs and peasants, since the information contained in these wills not only indicate the property that made up an individual serf's inheritance but also makes it possible to research family relationships, family connections within the individual market town community, the existence of dower rights in peasant society, and the role of the division of property among children, while the wills even contain references to funeral-related customs, albeit varying according to area. Unsurprisingly, research into wills, and the publication of wills as a source type, have been among the most important tasks in recent decades.<sup>1</sup>

Besides wills, however, there is another group of sources, which, while they have not entirely escaped the attention of researchers, have nevertheless received far less scrutiny. These are the so-called books of agreements, protocols, or daily record books as they were called in Makó (NAGY 2012). In the mid-18th century, the extant agreements of the market towns of the Southern Great Plain, which were negatively affected by the Turkish occupation of Hungary and revived in the 18th century, concerned merely the sale or exchange of the occasional serf-owned house or vineyard, although, from the end of the 18th century, entries, contracts, and estate allocation agreements were recorded in growing numbers and in ever increasing detail. The recording of property sale announcements has a straightforward explanation. It became the commonly accepted rule that real estate owned by serfs and peasants, primarily houses constructed on plots within the settlement, or vineyards, could be sold exclusively with the permission of the landlord. Thus, almost without exception, such contracts include a note that the sale and purchase or exchange took place “with the faith of the Honorable Landlord” — that is, with the landlord's permission. At the same time, the examination of the contracts preserved in the market towns of the Southern Great Plain draws attention to one characteristic feature: up until the end of the 18th century, only rarely were contracts made concerning farmsteads and plots held in socage on the outskirts of the settlement — that is, ploughland. Since socage plots were owned by the landlord, subsequent to the enforcement of the regulations contained in the *Urbarium* issued by the Empress Maria Theresa, the object of transactions among serfs was not necessarily external plots. When an individual farmer divided a socage plot among his sons, a change in the ownership of the ploughland became possible. One family was unable to work the land that came into its possession, while another family was able to take on far more. However, when entries concerning farmsteads appear in the contracts, here too the text concerns the sale “of every building on my farmstead”<sup>2</sup> with the permission of the landlord — naturally according to the wording of the notary in the given town. These entries were written in keeping with the customary law and statutes of the period, since the landlord was the owner while the serf merely occupied and used the land, for which he

<sup>1</sup>József Horváth provides a comprehensive picture of research in connection with wills as well as source publications: HORVÁTH 2021.

<sup>2</sup>Hungarian National Archives (MNL), Szentes Archive in the Archive of Csongrád-Csanád County (hereinafter: MNL CSML Szentes) IV.A.O.1 *Book of Agreements*, page 23.



paid rent in the form of work and money. The wording of the contracts changed at the turn of the 18–19th centuries, and from then on the contracts refer to the sale of “my farmstead, owned with the permission of the landlord,” for which the approval of the landlord was of course necessary (HOMOKI-NAGY 2003).

Researchers can be grateful for the contemporary rule that filtered down from the world of nobiliary law among the customs of the serfs and peasants, according to which every contract concerning property had to be drawn up in writing and registered with the market town. For the serfs and peasants, this was the “place of authentication” (*locus credibilis*). On the basis of the registered contract, a contracting party that failed to perform its obligations could be forced to fulfil the agreed contract, or the contract could be used as evidence in legal proceedings. The result of this “public authenticity” was that, after a certain time, it was not only the types of contracts mentioned above that were registered: any mutual agreement entered into in the course of everyday life was also recorded.

Since a comprehensive presentation of the extant *Book of Agreements* from the market town of Szentes is beyond the scope of the present paper, I mention only those agreements registered in the 18th century that concern “social” issues in the modern sense of the word. Among these issues, I examine the agreements concerning provisions for orphaned children. This field is somewhat familiar among both ethnographers and legal historians,<sup>3</sup> although to date it has not been subject to a comprehensive investigation, thus it is worth exploring the kind of customs that existed in this respect in one particular market town.<sup>4</sup>

In his manual of customary law, the *Tripartitum*, István Werbőczy recorded rules related to guardianship, one of the most important of which concerned who could act as a child’s legal guardian (*Tripartitum* I, chapter CXIII). If a father named a guardian in his will, then the serfs were obliged to appoint that person as testamentary guardian. If no guardian was named in the will, then one of the father’s male relatives or the father’s brothers, or, if he was still living, the orphan’s paternal grandfather, became the guardian. The landlord ultimately had the right to appoint a guardian, and this right was already practiced by the magistrates of the market town in the 18–19th centuries (TÁRKÁNY SZÜCS 1981:139). Besides these rules, Werbőczy also stipulated that after the father’s death, the mother became, or could become, her children’s natural and legal guardian, but only up until she remarried. This rule was also valid among the serfs and peasants, and the only potential source of dispute was the management of the father’s inheritance.<sup>5</sup> One of the earliest entries to be found in the *Szentes Book of Agreements* concerning orphans dates from 1785, when the magistrates of the market town recorded that “since the six strips of vineyard belonging to the infant orphans of János Gombási have been found to be poorly tended, in accordance with the orders of the Honorable Steward Mr. János Halász ... they have been evaluated by Ferencz Nemes Nagy and József Pálovics, upstanding Members of the Council, and sold for good to Péter Sípós, resident of good repute, for a price of two hundred

<sup>3</sup>On the value of orphan-related documents as a legal historical source, see: HORVÁTH 2018.

<sup>4</sup>The emphasis in the present study is on the provisions recorded in the agreements found in the *Book of Agreements* and I do not analyze the extant documents of the orphans’ courts in the market towns dating from this same period, or even the specific lawsuits in the manorial courts that may have given rise to the agreements.

<sup>5</sup>In his renowned work, Ignác Frank referred to the orphans of serfs, although he provides only a brief summary of the legal provisions that emerged in the Hungarian Reform Era (1825–1848). These rules were shaped by everyday practice in the 18th century. cf. FRANK 1845:191–192.



and ten forints.”<sup>6</sup> Although the incident is extremely condensed in this entry, what does emerge quite clearly is that if a father left behind infant children on his death, their inheritance was sold and the money received was placed in a fund for the orphans. A similar entry can be found concerning the inheritance of the orphaned children of Mihály Szalai. “All moveable and immoveable properties of the orphans of Mihály Szalai... Katalin, Mihály, and Ersébeth, have been sold at auction on the orders of the Hon. Lord of the Manor.”<sup>7</sup>

The sale of the orphans’ share of the inheritance always took place by auction, and the sum received was placed in a fund for the orphans or was handed over to the orphans’ mother or named guardian. The inhabitants of the market town often took out loans from the orphans’ fund, and the interest they paid was spent on education and alimentation for the infant orphans. The entry quoted above also provides evidence that the guardians were obliged to keep an account of the assets managed by them. In the given example, there was no indication of the identity of the guardian of János Gombási’s orphans; all that can be established is that someone had not taken appropriate care of the vineyard that represented the orphans’ inheritance, and the steward had therefore decided to sell the land. Also in 1785, a legal agreement was recorded by the parties involved. Even without knowing the grounds for the litigation, it can be ascertained that István Berekszászi, as guardian to István Szepesi’s orphans, had filed a petition against the widow of István Szepesi, although an agreement between the parties was reached “without recourse to legal proceedings.”<sup>8</sup> Since the value of the inheritance was defined in the agreement, we can assume that in this case, too, the orphans’ inheritance had been sold and the money obtained from the sale had been divided among them.

However, the testator’s house and the possessions within it were omitted from the evaluation of the inheritance. On the basis of her dower rights, the widow of István Szepesi, Judith Kis, was entitled to remain in the house as long as she bore her husband’s name, although the agreement itself does not specifically mention the securing of dower rights. However, what is mentioned is that the inheritance included allodial property, the value of which was 29 forints, and this was divided equally among the four children, Mihály, István, János, and Sára. The remainder of the inheritance comprised money acquired rather than inherited by the testator. The agreement was important precisely because, according to the wording of the contract, this acquired wealth was divided “into four and a half parts.” The widow, Mihály, István, and Sára each received a whole share, while János received only a half share. This may mean that János, as the youngest son, remained in his father’s house, and that it was his duty to support his widowed mother. However, an alternative explanation may be that the house was not included in the agreement made between the parties. What was made explicit, however, in the agreement attached to the settlement between the parties — which may have given rise to the conflict between the guardian and the widow — is that, over time, both the widow and her sons took more money from the share of the inheritance due to them than they were entitled to. “But since the four of them received more of the Property than was their due, they are obliged to pay it back.”<sup>9</sup> They thus had to pay back the sum, since only then would the guardian be able to give Sára the share that

<sup>6</sup>MNL CSML Szentes IV.A.O.1. 9.

<sup>7</sup>MNL CSML Szentes IV.A.O.1. 14.

<sup>8</sup>MNL CSML Szentes IV.A.O.1. 12–13.

<sup>9</sup>MNL CSML Szentes IV.A.O.1. 13.



was due to her. This settlement between the parties also illustrates what can be regarded as a general rule, which can also be demonstrated in the property division cases presented below. Since the inheritance of orphaned children was sold, it was the money obtained from the sale that was divided among the orphans and the widow. Based on dower rights, the serf's widow was guaranteed the equivalent of a child's share of the moveable property inherited from her husband (*Tripartitum* 1.99; FRANK 1845:519).

A good example of how provision was made for orphans in the world of serfs and peasants is the judgement passed by the court in the market town of Szentes and also recorded in the *Book of Agreements*. On his death, Mihály Szalai left two daughters and a son. Following the auctioning off of his inheritance, 12 forints were secured “for the immediate needs of the orphans” — that is, for their clothing. It was confirmed by witnesses that, before his death, the father had requested that “in addition to her share, his eldest daughter should purchase a skirt in return for her great ministrations for him on his sickbed.” Thus six of the 12 forints were set aside for clothing for the eldest daughter, and the two younger children received three forints each. A fattened pig and four sacks of wheat were allocated from the bequest for the orphans' education for a stipulated period of time. The stored grain and two of the previous year's calves were not auctioned off. (We also learn from this entry that, at the time of the auction, it was not possible to determine exactly how much grain there was in the storage pit, thus the sale could only be taken care of at a later date.)

The proceeds from the auctioned share of the inheritance were kept by whoever purchased the share as a kind of loan, with the payment of interest. The respective official declarations were also recorded, which reveal that László Bellér purchased the father's house for 60 forints. However, he was entitled to retain the price of the house with the obligation that “I will pay interest on the money as of the day of purchase... I also undertake to pay the sum of 60 forints whenever so requested.”<sup>10</sup> The larger share of the inheritance was purchased by the brother of the deceased father, the orphans' uncle, György Szalai, for 69 forints. “Furthermore, I have borrowed 80 forints from the price of the inherited items sold to others, and I undertake to pay interest on these two sums as of the day and year stated below, in the following manner: I am obliged to pay 150 forints whenever so required to meet the needs of the orphans. In addition, I will pay the interest stipulated by law on a regular basis, as due.”<sup>11</sup>

Based on these two entries, it can be demonstrated that in everyday practice, the money received from the sale of orphans' property was loaned, but the day on which the loan was to be repaid was not determined. All that was recorded was that the repayment of the capital took place when the orphans had need of it. One might of course argue that this date is not entirely vague, since we know that when girls reached the legal age they went into service, while the boys either became apprentices or likewise went into service. Following this, an effort was made to marry off the girls once they reached the age of 16, and to have the boys marry at the age of 18. This can be regarded as the deadline by which the debtors were obliged to pay the sum of the loan: ultimately, the deadline for the fulfilment of the agreement was the date on which the orphans came of age. The question arises as to whether this did in fact happen, or whether the debtor squandered the capital and did not repay to the orphans the money that was due to

<sup>10</sup>MNL CSML Szentes IV.A.O.I. 14.

<sup>11</sup>MNL CSML Szentes IV.A.O.I. 14.



them from the inheritance. Unsurprisingly, the apparently good solution was not deemed adequate by researchers, some of whom have even gone so far as to claim that orphans were often defrauded. In the words of Ernő Tárkány Szűcs: “Practice of this kind was advantageous to everyone: it was only injurious from the perspective of the orphans” (TÁRKÁNY SZÜCS 1981:427). Alajos Degré drew a similar conclusion (DEGRÉ 1977).

In the case of the Szalai orphans, an attempt was made to determine with relative accuracy when the debtors were obliged to pay the interest on the loan, and to ensure that the money was spent on the orphans’ education. In contrast, in 1787, in the case of the orphans of István Sípós, the town magistrates ordered that the orphans’ inheritance of 203 Rhenish forints be given to their stepfather “on condition that he pay no interest, but that György Vígh should take care of the two orphans and educate and feed them.”<sup>12</sup> This case reveals that the orphans had been raised by their mother, as their natural guardian, before she remarried, after which the handling of the children’s property could be entrusted to their stepfather.

A promissory note issued in 1783 provides evidence of the lending of orphans’ money. The promissory note records that József Janó borrowed 100 forints, József Nagy 30 forints, and Albert Szikszai another 30 forints “for certain needs ... from the money belonging to the orphans left by the late György Molnár ... for legal interest.” In 1790, József Nagy paid his debt of 30 forints, but in that same year, József Korogyi took out a loan of 40 forints from the orphans’ assets. The promissory note, however, was registered only in 1793, for the simple reason that one of the orphans, György Molnár, requested the recording of the promissory notes as he was “intending to travel.” This proves that, after 10 years had passed, it was only József Nagy who had paid back his debt, while the others had not.

Something similar happened in the case of the property of the orphans of György Boros from the market town, when the two and a half strips of vineyard left by the father were sold and the sum obtained was used to support his widow and five sons.<sup>13</sup>

Loan contracts are frequently to be found among the contracts drawn up among serfs and peasants. Although, in the 18th century, it was already possible for the contracting parties to stipulate a legal rate of interest, the debtor had to pay this exclusively in the event that the obligation to pay interest was expressly included in the contract. If this was not the case, then the agreement was regarded as a cost-free transaction. Loan contracts were very often verbal agreements, and we have knowledge of them only if a conflict emerged between the parties in relation to the fulfilment of the contract and if the parties had recourse to the law. Wills typically contain references to the fact that the testators had provided loans without a contract. In other cases, the debtor issued a so-called *charta bianca* bill of debt to the creditor, which was either nullified when the contract was fulfilled, or which the creditor returned to the debtor (HOMOKI-NAGY 2003:33–48). These written loan transactions were recorded in the *Book of Agreements* in the 18th century. When someone requested or received a loan from the money obtained from the sale of the orphans’ inheritance, it was always recorded in writing in the hope that this would make it easier to oversee the orphans’ inheritance. However, the debtors were not always able to pay the interest in money, but rather accepted the obligation as a benefit in kind. In 1787, János Kiss requested a loan of 200 forints from the widow and orphans of Ádám Mindszenti Varga, on

<sup>12</sup>MNL CSML Szentes IV.A.O.1. June 3, 1787.

<sup>13</sup>MNL CSML Szentes IV.A.O.1. 20.



condition that “in return for the orphans’ money I voluntarily sow 7 bushels of wheat and 7 bushels of barley on my own land from my own wheat and barley, which in due time I will harvest at my own cost and also tread the grain, and I will take the grain in my hand to where they are living, and only the straw will be mine.” In connection with the repayment of the total amount of the capital, however, it was ordered that “if the Guardians wish [the money to be repaid], they should give warning two months in advance, so that I can in all honesty pay the sum in sound and current money.” Both Alajos Degré and Ernő Tárkány Szücs mention that the preservation of the orphans’ inheritance was at risk not only because the debtors failed to pay back the sum of the loan, but also because the money and its value were continuously changing. This explains the frequency of lawsuits concerning the kind of money to be used to pay off the debt: the money valid at the time when the loan was taken out, or the money valid when the contract expired. In this contract, the debtor undertook to pay his debt in the “sound” money valid at the time of the repayment. In the letters of agreement drawn up in the 18th century, it is rare to find a contract in which the debtor takes on the kind of contractual guarantees according to which, if he failed to repay the sum received as a loan, then “I undertake to give all my moveable and immoveable property, until the designated sum is covered, and I will give this to the widow and her orphans by *executio*, without recourse to the law.”<sup>14</sup>

This loan contract, which is registered in the *Book of Agreements*, not only provides an insight into how money could be borrowed from guardians but also sets out the potential method of interest payment and the procedure to be followed by the debtor when settling their debt. These loan contracts accurately reflect how the precise deadline for repayment was not determined. Either the repayment was due when the orphans had needed of it, or, as in the above case, when the guardians considered it necessary to settle the debt, they gave advance notice to the debtor. The notice of repayment also played an important role in court proceedings at that time, since if the debtor failed to pay on the date specified in the notice, the plaintiff, in this case the guardians and in other cases orphans who had reached the age of majority, could use it to file a petition or to summons the debtor to oral proceedings. The debtor encumbered his own property by stipulating in the contract the possibility of auctioning off his existing assets in order to settle his debt.<sup>15</sup>

After the father’s death, it was primarily the duty of his widowed wife, the mother, to bring up the orphans. If the widow remarried, the stepfather often became the guardian of the orphaned children. At the same time as the guardian was appointed, the stepfather was also entrusted with the administration of the orphans’ property. This was the case in 1787 when the notary made an entry in the *Book of Agreements* stating that “the entire inheritance (*successio*) of István Sípos’s two orphans, consisting of one hundred and three forints, was given to their stepfather... on condition that he pay no interest but take care of the two orphans.”<sup>16</sup> The remission of interest was natural, as it could be assumed that the stepfather would indeed provide for his family, including the orphans. An allocation agreement dating from the same

<sup>14</sup>MNL CSML Szentes IV.A.O.I. 37.

<sup>15</sup>The notary of the market town entered this contract into the *Book of Agreements*: the debtor merely signed it, endorsing the signature with a cross. Thus, the identity of the guardians of Ádám Mindszenti Varga is not made clear in the agreement itself.

<sup>16</sup>MNL CSML Szentes IV.A.O.I. 29.



period also shows that the widowed mother had to care for her infant children. There is no indication in the allocation agreement itself that anyone was appointed as guardian of the infant orphans, although the agreement was made by the widow “on behalf of her three infant children born to her deceased husband” and her husband’s adult son. There is no mention in the allocation agreement as to whether the adult son was born to the deceased husband’s first marriage and the agreement was thus made between the stepmother and her stepson, or whether the son, having reached adulthood, entered into an agreement with his widowed mother. The agreement itself can be considered as a way of securing the widow’s rights, since the first clause concerned the use of the house left by the deceased. According to this clause, the mother and adult son each owned half of the house, and “as long as they lived together in it, they had equal shares in it.” The farmstead and “all the buildings therein, with a stack of hay and half a stack of straw, a plow, a field with all the farming implements belonging thereto” went to the son, but “[the son] shall remove a piece of fallow land reserved for the widow from his share, performing all the work, and the widow shall have a one-third share of it.” This condition still fits within the typical maintenance of widows. However, the final clause in the agreement states that “the seven pieces of livestock, 4 four-year-old steers, two three-year-old and one yearling heifer shall all belong to the widow and her children.”<sup>17</sup> Apart from what is stated in the allocation agreement, there is no evidence that the deceased father had any movable or immovable property other than the house and the land of the farmstead. The question therefore arises as to whether the three children under the mother’s care received their father’s inheritance, or whether the town magistrate was satisfied with the contract between the mother and the adult son.

The agreements recorded in the *Book of Agreements* primarily concern the fate of the orphans’ inheritance, and the respective measures are also related to questions of inheritance law. It is therefore worth analyzing the entries concerning the orphans of János Király in slightly more detail. The first entry records a provision by Ferenc Szabados, resident of Csongrád, documented in writing on June 1, 1785. This entry confirms the practice whereby the orphans’ inheritance was to be evaluated and then sold by the town magistrates. This also happened in the case of the orphans of János Király. From among the movables that were part of the inheritance, Ferenc Szabados redeemed “four old horses with a suckling colt for eighty forints, three cows, a three-year-old and a yearling steer and the same number of heifers for 70 forints, for a total sum of 150 forints, such that, as long as I have that sum of money from the orphans in my possession, I am obliged to pay and will pay legal interest.”<sup>18</sup> Also in 1785, Ferenc Szabados then purchased six oxen from the movables belonging to the orphans’ inheritance, “half the price of which, 81 forints, I took from Mrs. János Király for the orphans, and I kept the orphans’ cart for myself for 7 forints, so that I have in my possession a sum of 88 forints belonging to the orphans.”<sup>19</sup> From these two promissory notes it can be established that Szabados retained a total of 238 forints as a loan, but he undertook to pay interest only in the first promissory note, without doing so in the second. In the 18th century, it was common practice for a debtor to pay interest only if they had contractually undertaken this obligation. However, there is absolutely no indication in these promissory notes as to when the loan was to be repaid.

<sup>17</sup>MNL CSML Szentes IV.A.O.I. 29–31.

<sup>18</sup>MNL CSML Szentes IV.A.O.I. 51.

<sup>19</sup>MNL CSML Szentes IV.A.O.I. 51.





Further entries suggest that there was a dispute between the members of the family of the late János Király, which was settled by an agreement between the orphans' mother (Borbála Hegedűs) and their aunt (Ilona Király), and that an estate inventory was attached to the letter of agreement in 1789. The document made reference to the will of the older Mrs. János Király, Mária Tutela.<sup>20</sup> From the marriage between Mária Tutela and János Király Sr. were born Ilona (whose husband became Pál Bugyi) and János (whose wife was Borbála Hegedűs). Two children — János junior and Borbála — were born to the marriage of Borbála, whose inheritance from their father was mentioned in Ferenc Szabados's promissory notes. According to the will made by the orphans' grandmother, half the house and the farm buildings went to her daughter Ilona Király, while the other half was "bequeathed to Pál Bugyi," on the proviso that he pay to the orphans the price of the house, which amounted to 79 forints. Similarly, half of the estimated price of the farmstead buildings was given to the orphans. The will also made reference to vineyards, and according to the agreement between the women, the orphans already owned half of them. Ilona Király, the wife of Pál Bugyi, requested that it be recorded that she "ceded to the orphans her quarter share of the vineyard at 40 forints." This amount was deducted from the amount payable to the orphans, thus Pál Bugyi was obliged to contribute 39 forints as the orphans' inheritance. (Since the exact wording of the will is unknown, it is difficult to determine why Ilona Király mentions the quarter of the vineyard as her share. After all, if she was entitled to half of the house and half of the farmstead buildings, then she should have owned half of the vineyard.)

This agreement, which was concluded in 1789, proves that the grandmother divided the property — comprising parts fitting for landed serfs, thus the house, farmstead (the external plot, the animals required for its cultivation), and vineyard with the tools needed for its cultivation<sup>21</sup> that she had acquired jointly with her husband — equally between her two children, Ilona and János, who died before her, with the orphans receiving her son's share. In her will, however, she did not stipulate that the orphans' inheritance be transferred in kind, but she obliged her son-in-law to pay the price of the orphans' share of the house and farm buildings. The vineyard was presumably owned by the orphans with their mother and Ilona Király. An effort was also made to terminate this joint ownership by means of the orphans redeeming a quarter of Ilona's share. According to the agreement, the vineyard included a vat and barrels with a capacity of five-and-a-half and two *akós*, which the orphans received, while the orphans were obliged to return to Ilona Király "a smaller vat that they had previously taken."<sup>22</sup> In the *Book of Agreements*, an estate inventory was attached to this registered agreement, which proved that Ferenc Szabados, as the stepfather of the orphans, took possession of the assets belonging to the orphans. The estate inventory listed the movables that had also been included in the two promissory notes, with the additional note that eight more pigs had been purchased from the orphans' inheritance, that the entire vineyard of János Király had been transferred to Ferenc Szabados and its value estimated at 160 forints, and that the 39 forints from the orphans' inheritance from the house and vineyard had also been given to Szabados. This estate inventory proves that the widow, Borbála Hegedűs, married Ferenc Szabados in 1789, and he, as the

<sup>20</sup>Unfortunately, I was unable to find this will in the Szentes archives. On the wills, see: [HOMOKI-NAGY 2018](#).

<sup>21</sup>For more detail, see: [SZABÓ 1947](#).

<sup>22</sup>MNL CSML Szentes IV.A.O.1. 52.



stepfather of the orphans, also became the administrator of the orphans' inheritance. However, the stepfather did not necessarily have to pay interest on the loan that he received from the orphans' inheritance in 1785.

If someone borrowed money from the orphans' fund, interest had to be paid on it. This rule was not so clear when it was the stepfather who requested a loan, or when he administered the proceeds from the sale of the orphans' inheritance. An entry from the year 1794 refers to this. In this entry, János Vajda Jr. acknowledges that his stepfather paid his father's inheritance and that he did not demand interest from his stepfather. According to the son, "I was also prompted by the words of others to ask for interest on that sum and I addressed my above-mentioned stepfather, but I was assured by reports both from my stepfather and my mother that my inheritance was not a loan to my stepfather and was consequently not given to him for interest but was only entrusted to his care."<sup>23</sup> Some contracts stipulated that the stepfather undertook to bring up, care for, and educate the orphans and was not therefore obliged to pay interest. In other cases, no such comment is included in the contract. It was the guardian's duty to care for the orphans, although in many cases the stepfather did not act as the orphans' guardian, because it was rather the mother who served as their natural and legal guardian. However, it was always the husband's duty to manage the property, whether he was bringing up his natural child or stepchild.

Although widowed mothers usually became the guardians of their orphaned children, there are also examples in the *Book of Agreements* of the market town of Szentes where a mother was prohibited from managing her children's inheritance. According to a measure recorded in an entry from the town's court, the widow Judit Kovács received a dower of 20 forints as promised by her late husband, György Fábíán Nagy. In addition, under dower rights she was entitled to "two barrels of wheat, one barrel of barley, one bushel of millet, two bushels of corn on the cob, 20 pounds of bacon, 10 pigs, 20 sheaves of flowering hemp, and 20 sheaves of seed hemp," on condition that she "makes no further demand on the orphans and leaves the house."<sup>24</sup> The town appointed as their guardian the orphans' uncle, András Fábíán Nagy, who, "taking the orphans' inheritance into his hands, committed himself to increase it and to hand it over to the orphans once they reached adulthood."

The town court also decided to draw up an estate inventory that reflected the possessions of a poor serf family of the late 18th century. According to this record, the orphans' inheritance consisted of the following moveable and immovable assets. "A house in the town, farmstead buildings, two five-year-old steers, two old cows, one five-year-old cow, three four-year-old heifers, one three-year-old heifer, one weaned ox calf, one weaned heifer calf, three cart-drawing horses, one saddle-horse and two mares, one weaned mare colt. One plowing cart with yoke, 2 plowing irons, 1 coulter, 4 tow hitches with yoke, 1 harrow, 1 tow bar, 2 haystacks, 1 cart, 1 set of reins, 2 pitchforks with handles, 2 scythes, 1 wheelbarrow, 1 axe, 1 anvil with hammer, 1 table with legs, ... 1 grinding stone, 1 double-handled knife, 1 reed cutter, 1 towing rope, 2 harnesses, 1 saddle with an axe, 2 wooden forks, 2 hoes, 1 shovel, 1 hatchet, 1 scythe-stone with holder, 1 iron pot, ... 1 sledge, 1 check-rein chain, 1 bell — these were found on the farmstead. 2 chests, 1 kneading trough, 3 washing and kneading troughs, 1 small book holder, 1 table,

<sup>23</sup>MNL CSML Szentes IV.A.O.1. 63.

<sup>24</sup>MNL CSML Szentes IV.A.O.1. 55.



2 benches, 1 large canvas, 2 pitchforks, 1 cheese chair, 1 tub, 9 hens, 1 lantern, 9 bread-dough baskets, 1 measuring bushel, 15 sacks, 1 shelf for the pantry, 1 iron rake, 1 spool, 1 baker's shovel, 2 logs and 3 pieces of wood, 1 large barn ladder, 1 breaker and 1 hemp breaker, 6 wooden covers, 1 plank and a wheel, 1 copper kettle — these items were found in the House.”<sup>25</sup>

Often, the town notaries who kept the *Book of Agreements* even recorded, subsequent to earlier agreements, whether the debtor had repaid the amount of the loan or if the promised interest had been paid in part. In the above case, 10 years after the court decision in 1792, the town clerk recorded in 1802 that the orphans of György Fábíán, András and Ferenc, had received all their property from their “guardian and kin” and that they had no further claim against their guardian or his heirs. This case provides evidence that the orphans’ uncle had kept his promise. Although unable to increase their father’s inheritance, he had preserved it for the sons. One question remained during the research, as three orphans (András, Ferenc, and Kata) were mentioned at the time of the town court’s decision. However, the *Book of Agreements* remains silent about what happened to Kata and her inheritance. Presumably, she had not yet reached the age at which she could claim marriage.

The inventory of the legacy of János Király’s orphans was registered when the widow remarried and the orphans’ property was entrusted to their stepfather. Three orphans were left on the death of György Udvardy, two of them — György and István — from his first marriage, and the third — András — from his second marriage. The allocation agreement was drawn up between the guardian of the two older orphans, István Udvardy, “the older brother of the late György Udvardy and the legal guardian of the orphans” and the widowed second wife, Ilona Dadi, who was stepmother to the two older children. The estate was sold in this case as well, and the value of the property originating from the mother of the two older orphans was first deducted from the proceeds, after which the father’s earnings were divided into four equal shares among the three sons and the widow. On receiving the orphans’ money, the guardian of the two eldest sons promised that “while the children are being brought up, he would keep, clothe, and educate them in an appropriate manner from the interest on the money, and, on their reaching adulthood, he would give them the sum ... with no loss, in full, into their own hands.”<sup>26</sup> Although the expression “to give [a sum of money] by number and in hand” is rarely found in the entries, it clearly expresses the guardians’ obligation that, should the orphans’ share of the inheritance be auctioned off and the proceeds given to the guardian, he was to receive the money counted out and was to return it to the orphans in the same manner. This constituted legal conduct on the part of the guardian. This custom was an inherent aspect of the serf and peasant world, since the expression “accountable herdsman” also implied that he was responsible only for what he calculated before taking it into his care.

The entry also refers to another important inheritance-related custom. In the first clause of the allocation agreement, it was recorded that the maternal inheritance of the two eldest sons was deducted from the father’s estate. If the wife died, the wife’s property remained in her husband’s care as her dowry and the children received their maternal inheritance only after the father’s death.

In the given case, the youngest son’s share of the inheritance was placed in the care of his mother, since the guardian, István Udvardy, “did not take this sum into his hands.” In this

<sup>25</sup>MNL CSML Szentes IV.A.O.1. 56.

<sup>26</sup>MNL CSML Szentes IV.A.O.1. 59.



allocation agreement, we also find a later entry recording the fact that András Udvardy died in 1793 and his inheritance was divided into three equal shares between the two older orphans and the widow, Ilona Dadi. The older orphans' share was placed in the hands of their guardian.

When the siblings of the deceased husband established the scope of the provisions ensured for the widow in a specific agreement, behind the securing of the dower right there was often also a reference to the provisions for the orphaned children. After the death of József Tóth, five *fertály*s — that is, one and a quarter socage plots — remained in the hands of the widow and orphans, which the widow was presumably unable to cultivate. In the agreement drawn up between the widow and István Tóth, her husband's brother, István Tóth received the land of the farmstead; he, however, undertook that “for 12 years, while her orphans are growing up, I undertake to sow each year on this land six bushels of wheat, four bushels of barley, and half a bushel of flax seed, such that... I always provide the seed myself and am obliged to carry out all the related work, ploughing, sowing, hauling, harvesting the grain and cleaning it, and I undertake to do this always in good time, not first my own and then that of the widow.” István Tóth's other brother, Antal Tóth, also accepted this responsibility in the event that “my brother István should die.”<sup>27</sup>

In some serf families, both of the children's parents died, and rather than appointing a guardian for the children the town approved their adoption in the modern sense of the word. We find evidence of this from 1794, when Vencel Hering adopted Erzsébet, the daughter of Tamás Molnár, “following the sudden and accidental death of the girl's mother.” In the entry, it was also stipulated that the girl “cannot be taken or alienated from them by any of their relatives, and no circumstance shall prevent them from raising her and putting her to use as their own until she be given in marriage, all the more so since it was they who had held her beneath the holy water” [of baptism].<sup>28</sup>

In the foregoing, we have analyzed the entries concerning the orphans of serfs made in the last third of the 18th century in the *Book of Agreements* of the market town of Szentes. From these entries, it is possible to trace the living customs of the Southern Great Plain in relation to guardianship and the administration of the property of orphans. While the *Book of Agreements* is an outstanding source for legal historians, ethnographers, and social scientists alike, it is clear that if we wish to obtain a comprehensive picture of the situation of the orphans of serfs, this source is not sufficient in itself. It is necessary to study the extant records of verbal proceedings, Church registries, the lawsuits of the manorial court, and, last but not least, documents from the orphans' court. Indeed, future researchers might find it valuable to compare the agreements drawn up in matters concerning orphans with marriage contracts, morning gift agreements (JUKIĆ 2021), and extant wills, since these sources also contain a great deal of essential evidence and references to orphans.

## REFERENCES

DEGRÉ, Alajos

1977 *A magyar gyámsági jog kialakulása a dualizmus korának gyámsági kódexéig* [The Development of Hungarian Guardianship Law up until the Guardianship Codex under the Dual Monarchy]. Budapest: ELTE ÁJK Magyar Állam- és Jогtörténeti Tanszék.

<sup>27</sup>MNL CSML Szentes IV.A.O.I. 78–79.

<sup>28</sup>MNL CSML Szentes IV.A.O.I. 64.



FRANK, Ignác

- 1845 *A közigazság törvénye Magyarhonban I. rész.* [Public Justice Law in Hungary. Part 1]. Buda: Magyar Királyi Egyetem.

HOMOKI-NAGY, Mária

- 2003 *Egyes szerződési típusok a dél-alföldi mezővárosok joggyakorlatában* [Individual Types of Contracts in the Legal Practice of the Market Towns of the Southern Great Plain]. Szeged: Szegedi Tudományegyetem Állam- és Jogtudományi Karának tudományos bizottsága. (Acta Juridica et Politica Tom. LXIII. Fasc. 8).
- 2018 „Az általam megkért hiteles tanúk előtt következő végső rendelkezésemet tészem...”, *Jobbágy-parasztok végrendeletei Szentés mezővárosában* [“I Draw up the Following Last Will and Testament Before the Trusted Witnesses I Have Summoned...” The Wills of Serfs and Peasants in the Market Town of Szentés]. Szekszárd: Pécsi Tudományegyetem Kultúratudományi, Pedagógusképző és Vidékfejlesztési Kar. (Jogi Kultúrtörténeti, Jogi Néprajzi Kiskönyvtár 5).

HORVÁTH, József

- 2018 Az 1848 előtti Győr megyei falusi árvairatok jogtörténeti forrásértékéről [On the Value, as a Legal Historical Source, of Documentation Concerning Orphans from the Villages of the County of Győr Dating from Before 1848]. In NAGY, Janka Teodóra (ed.) *A jogi kultúrtörténet és a jogi néprajz új forrásai I*, 143–158. Szekszárd: Pécsi Tudományegyetem Kultúratudományi, Pedagógusképző és Vidékfejlesztési Kar. (Jogi Kultúrtörténeti, Jogi Néprajzi Kiskönyvtár 7).
- 2021 A végrendeletek kutatásának újabb eredményei (2008–2020) [Recent Findings in the Field of Testamentary Research (2008–2020)]. In NAGY, Janka Teodóra – BOGNÁR, Szabina – SZABÓ, Ernő (eds.) *Száz plusz tíz. Jubileumi kötet. Tárkány Szücs Ernő (1921–1984). Tárkány Szücs Ernő Jogi Kultúrtörténeti és Jogi Néprajzi Kutatócsoport (2011–2021)*, 283–296. Szekszárd: Pécsi Tudományegyetem Kultúratudományi, Pedagógusképző és Vidékfejlesztési Kar – Bölcsészettudományi Kutatóközpont Néprajztudományi Intézet. (Jogi Kultúrtörténeti, Jogi Néprajzi Kiskönyvtár 10).

JUKIĆ, Zita

- 2021 „Ösze eskettettek ilyen egyezkedés mellett...”: *Drávaszögi és szlavóniai református ígéretlevelek és házassági egyezségek* [“Married Under the Following Agreement...” Calvinist Promissory Letters and Marriage Contracts from Drávaszög and Slavonia]. Eszék: “Zrinyi” Magyar Kultúrkör. (Jogi Kultúrtörténeti, Jogi Néprajzi Kiskönyvtár 9).

NAGY, Janka Teodóra

- 2012 *Népi jogélet a Dél-Alföldön egy jogtörténeti és történeti forrás tükrében (1781–1821)* [Legal Folklore in the Southern Great Plain as Reflected in a Legal Historical and Historical Source (1781–1821)]. Szekszárd: PTE IGYK.

SZABÓ, István

- 1947 *A jobbágy birtoklása az örökös jobbágyság korában* [Serf Ownership in the Age of Perpetual Serfdom]. Budapest: Magyar Tudományos Akadémia.

TÁRKÁNY SZÜCS, Ernő

- 1981 *Magyar jogi népszokások* [Hungarian Legal Folk Customs]. Budapest: Gondolat.

**Mária Homoki-Nagy** (PhD) is a legal historian, Head of the Department of Hungarian Legal History of the University of Szeged’s Faculty of Law and Political Sciences. She is a founding Member of the Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnographic Research



Group and Editor-in-Chief of *Acta Juridica et Politica* (FORVM). She has been awarded scholarships to carry out academic research at several German Universities (Karl-Ruprecht Universität Heidelberg 1989–1990, 1993; Leopold-Wenger Institut München; and Max-Planck-Institut für Europäische Rechtsgeschichte Frankfurt/M, 1994). She acted as deputy rector for education at József Attila University / University of Szeged (1997–2000) and deputy dean for education in the Faculty of Law and Political Sciences of the University of Szeged (2003–2005, 2009–2012). Her research interests include the history of Hungarian civil law in the 18–19th centuries, the codification of Hungarian civil law, the emancipation of the serfs in Europe and Hungary, and the history of commercial law and intellectual property. Of particular importance among her publications are the findings of her legal historical, historical, and archival source research investigating the historical background to certain legal institutions, especially civil law institutions, and analyzing the social and economic conditions of the serfs and peasants in the 18–19th centuries and common law norms among serfs.

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